



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

द्वितीय तल, जी एम टी भवन / 2<sup>nd</sup> Floor, GST Bhavan,  
रेस कोर्स रिंग रोड, / Race Course Ring Road,  
राजकोट / Rajkot - 360 001

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सत्यमेव जयते

रजिस्टर्ड डाक ए.डी. द्वारा :-

DIN-20220364SX0000924434

क	अपील / फाइल नम्बर / Appeal / File No.	मूल आदेश नम्बर / OIONo	दिनांक / Date
	V2/95/RAJ/2021	4 to 5/DC/KG/2020-21	11/02/2021
	V2/94/RAJ/2021	4 to 5/DC/KG/2020-21	11/02/2021
ख	अपील आदेश संख्या (Order-In-Appeal No.):		

**RAJ-EXCUS-000-APP-119 TO 120-2021-22**

आदेश का दिनांक /  
Date of Order: **25.03.2022** जारी करने की तारीख /  
Date of issue: **26.03.2022**

श्री अखिलेश 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 एवं 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/ST / GST, Rajkot / Jamnagar / Gandhidham :

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

**M/s Bhumi Polymers Pvt. Ltd. (erstwhile/s Bhumi Polymers), Surrvey No. 236, plot no. 11/B, Behind  
Hotel Pitru Krupa, Krishna Industrial Estate, national highway 8-B Veraval (Shapar) Dist. Rajkot .**

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

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत  
एवं बित्त 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) बर्माकरण 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, 2<sup>nd</sup> 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 किताब  
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, व्याज 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/- रुपए,  
5,000/- रुपए अथवा 10,000/- रुपए का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की  
शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रखांकित 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। स्थान आदेश (स्ट ऑर्डर) के लिए आवदन-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, बित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमावली, 1994, के नियम 9(1) के तहत  
निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है 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, व्याज 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/- रुपए, 5,000/- रुपए अथवा  
10,000/- रुपए का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक  
रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रखांकित 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। स्थान आदेश (स्ट ऑर्डर) के लिए आवदन-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  
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 नियमवली, 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 प्रतियां 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 (सेन्टेट) 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 जमाना विवादित है, या जमाना, जब केवल जमाना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि इस करोड़ रूप 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 अर्जी 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 कोपनरीक्षण आवेदन :  
**Revision application to Government of India:**  
इस आदेश को पुनरीक्षणवाचिका निम्नलिखित मामला में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मजिल, 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 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) मुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो क्यूटी केडीटी इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं- 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए हैं। /  
Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
- (v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संश्लेषण 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 साथ-साथ TR-6 की प्रति संलग्न की जानी चाहिए। /  
The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.
- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।  
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए।  
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पत्रों 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, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
- (E) यथामंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 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 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](http://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](http://www.cbec.gov.in)



**:: ORDER-IN-APPEAL ::**

The below mentioned appeals have been filed by the Appellants (*hereinafter referred to as* "Appellant No. 1 & Appellant No. 2"), as detailed in Table below, against Order-in-Original No. 04 to 05/DC/KG/2020-21 dated 11.02.2021 (*hereinafter referred to as* 'impugned order') passed by the Deputy Commissioner, Central GST Division-II, Rajkot (*hereinafter referred to as* 'adjudicating authority'):-

Sl. No.	Appeal No.	Appellants	Name & Address of the Appellant
1.	V2/95/RAJ/2021	Appellant No. 1	M/s Bhumi Polymers Pvt. Ltd (erstwhile Bhumi Polymers), Survey No. 236, Plot NO. 11/B, Behind Hotel Pitru Kurpa, Krishna Industrial Estate, National Highway 8-B, Veraval (Shapar), Dist. Rajkot.
2.	V2/94/RAJ/2021	Appellant No. 2	Shri Ashokbhai Khimjibhai, Baldha, Director of M/s Bhumi Polymers Pvt. Ltd, Survey No. 236, Plot NO. 11/B, Behind Hotel Pitru Kurpa, Krishna Industrial Estate, National Highway 8-B, Veraval (Shapar), Dist. Rajkot.

2. The facts of the case, in brief, are that Appellant No. 1 was engaged in manufacture and removal of excisable goods i.e. HDPE and PVC Pipes and fittings thereof falling under Chapter 39 of the First Schedule to the Central Excise Tariff Act, 1985. On the basis of intelligence that the Appellant No.1 had cleared HDPE Pipes and fillings thereof falling under CETSH 39172190 without payment of central excise duty by wrongly classifying them under CETSH 84248100 and having availed the benefit of Notification No. 03/2005-CE dated 24.02.2005, an enquiry/investigation was initiated by the departmental officers. The investigation culminated into the issuance of SCN dated 17.02.2015 to the Appellant No. 1 & 2 calling them to show cause as to why

- (1) The HDPE Pipes and fitting, manufactured and cleared by the Appellant No.1 should not be classified under CETSH No. 391790;
- (2) Central Excise duty amounting to Rs. 5,35,912/- should not be demanded and recovered from them under Section 11A of the erstwhile Central Excise Act, 1944 (*hereinafter referred to as* "Act") by invoking the extended period of limitation;
- (3) Interest at appropriate rate should not be recovered from them under Section 11AA of the Act;
- (4) Penalty should not be imposed under Section 11AC of the Act read with Rule 25 of the Central Excise Rules, 2002 (*hereinafter referred to as* "Rules").



5) Penalty should not be imposed upon Appellant No. 2 under Rule 26 of the Rules.

2.1. The above said Show Cause Notice was adjudicated vide the impugned order wherein the adjudicating authority has confirmed the proposal for classification made in the SCN for the "HDPE Pipes and Fittings" cleared by the Appellant No. 1 under CESTSH No. 39172190 instead of 84242100. She further confirmed the demand of Central Excise duty amounting to Rs.5,35,912/- by invoking the extended period of limitation under proviso to Section 11A of the Act along with interest under Section 11AA of the Act. She also imposed penalty of Rs.5,35,912/- under Section 11AC of the Act read with Rule 25 of the Rules upon Appellant No. 1 with option of reduced penalty as envisaged under provisions of Section 11AC of the Act. Penalty of Rs. 5,35,912/- was also imposed upon Appellant No. 2 under Rule 26 of the Rules.

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

Appellant No. 1:-

- (a) It is misconceived that Rule 3(a) is applicable and Rule 3(b) or 3(c) would not be applicable. The goods sold by them to M/s. Gujarat Agro Industries Corporation Ltd (GAICL) can be said to be composite of goods consisting of different materials or made up of different components as it was not a single item but set of different pipe/fittings. Therefore, in terms of Rule 3(b) of the Interpretative Rules, the same was required to be classified under CETSH 84249000 which gives them its essential character. Without prejudice to the above, in terms of Rule 3(c) of the General Rules for interpretation of the first schedule to the CETA, 1985, when the goods cannot be classified by reference to the Rules 3(a) and 3(b) they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.
- (b) As per Ch. Note 2(a) of Ch.39, this chapter does not cover articles of Section XVI (machines and mechanical or electrical appliances) and as per section Note 29a) of Section XVI subject to Note 1 to this section and Note 1 to Ch.84 and Note 1 to Ch.85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8548) are to be classified according to the following rules:- (b) Parts which are goods included in any of the headings of Ch.84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538) are in all cases to be classified in their respective headings.  
Therefore, as per above notes, classification made by them was correct.
- (c) The investigating officer while relying on Cir no. 380/13/98-CX dated 16.03.1998 has intentionally avoided reproducing relevant para 4 of the said circular. The said paragraph essentially envisages that plastic parts including modified pipes with attached coupling, fittings etc. manufactured only for sprinkler equipment are required to be classified under CETSH 8424.91.
- (d) The Director of the Appellant had explained during the inquiry that the goods sold by them to GAICL were different from the HDPE/Rigid PVC pipes that the same were specially manufactured as HDPE pipes for use in sprinkler system and were supplied alongwith related fittings such as 'Connecting Nipple', 'HDPE Band' 'END stop', and 'Rubber Ring' and such pipes were used for sprinkler irrigation system classifiable under CETSH 84249000, which attracts NIL rate of duty.

- (e) As regard, submission of documentary evidence to prove that the goods supplied were meant for Drip irrigation system it is to state that tender documents mentioned open pipe but BIS no. mentioned in the tender document i.e., 14151-Part-II is meant for pipes for sprinkler system only also produced copy of BIS certificate and a copy of BIS certificate for normal HDPE pipe. It can be seen that BIS NO. for normal HDPE pipes is 4984 which is different from pipes for sprinkler system. It was also clarified that goods supplied by them to GGRC and GAICL were exempted and the pipes were specialized / modified meeting with BIS standard having male coupler at one end and female coupler at the other end. It is further evidenced from the invoice that all the components of sprinkler set are as per the standard approved by the Agricultural department.
- (f) The main line pipe (which was the principal component of the system) was a specially designed HDPE pipe widely different in character and usability from other ordinary pipes in pressure ratio, size, tensile strength, elongation at break, working stress, length, utility, life period etc.
- (g) The goods supplied to M/s. GGRCL and GAICL both are meant / used in sprinkler irrigation systems which are exempted under Notification No. 03/2005-CE ;
- (h) The adjudicating authority at para 9.6 referred para 2 of the circular but has not considered relevant para 4 of the said circular. The said paragraph essentially envisages that plastic parts including modified pipes with attached coupling, fittings etc manufactured only for sprinkler equipments are required to be classified under CETSH No. 8424.91
- (i) The adjudicating authority at para 9.7, 9.8 and 9.9 find that pipes and fittings thereof and rate quoted by the Appellant was supposed to be inclusive of all taxes including Central excise duty and the Appellant was aware that the HDPE Pipes and fittings were not exempted under Notification No. 03/2005-CE. In this regard, it is to clarify that it is general practice in trade, while floating tender, to mention that the all taxes should be borne by whom. It does not mean that if the exemption is available the assessee can be denied.
- (j) The adjudicating authority has interpreted the rules as per their convenience and without going in to the details of Chapter notes, Exemption notification and Board circular.
- (k) No discussion or findings has been offered by the adjudicating authority on the cases relied upon nor distinguished the decision of the various tribunal and courts on the issue relied upon
- (l) The Hon'ble Supreme Court while dismissing the appeal filed by the department in the case of M/s. Elgi Ultra Appliances Limited have held that LDPE/HDPE pipes manufactured by the Appellants being component part of Drip irrigation System are classifiable under sub-heading 8424.91 of CETA and should be eligible for the benefit of exemption under the Notification No. 56/95-CE -reported at 2000(120)ELT A119(SC) . In addition to above reliance is placed upon following cases laws

- 1)Phoel Industries (2005(183)ELT 192(Tri.Del.)
- (2)Indian Plastics and Laminates Ltd 2004(169)ELT 51(Tri.Del.)
- (3)Rungta Irrigation Ltd 2004(174)ELT 250(Tri.Del.)
- (4)Flbw Tech Power (2001(130)ELT 541(Tri.Chennai)
- (5)Elgi Ultra Appliances Ltd (2001(134)ELT 245(Tri.Chennai)
- (6)Hallmark Industries 2001(134)ELT 245(Tri.Chennai)
- (7)Indian Plastics and Laminates Ltd (2004(169)ELT51(Tri.Del.)



- (m) From the foregoing facts, discussions, various judicial citations and Board's Circular, it is evident that the goods supplied to GAICL i.e., HDPE pipes for use in sprinkler irrigation system alongwith relevant fittings such as "connecting nipple", HDPE bend" and "End stop" are appropriately classifiable under CETSH 84249000 only and duty of central excise is not required to be paid in terms of exemption Notification No. 03/2005-CE dated 24.02.2005;
- (n) Dispute was regarding appropriate classification of goods, and it is well settled legal position that no penalty can be imposed for the reasons involving classification dispute. The reliance is placed upon the following case laws  
 (a) Automotive Coaches & Components (2011(264)ELT 518(Tri.Chennai))  
 (b) Holostick India Ltd -(2004(167)ELT 301(Tri.Del))  
 (c) Precision stationary P. Ltd (1997(94)ELT 389(Tribunal))
- (o) For proposing penalty u/s 11AC of the Act it is indispensable to establish that short payment of duty must be by reason of fraud, collusion, or any willful mis-statement or suppression of facts or contravention of any of the provisions of law. None of such ingredients are present in the present case. The reliance also placed upon following judgments.  
 (a) Bharat Wagon & Eng Co. Ltd Vs. CCE Patna 146ELT 118(Tri.Kolkata)  
 (b) Goenka Wollan Mills Ltd Vs. CCE Shilong (2001(135)ELT873)  
 (c) Bhilwara Spinner Ltd VS. CCE , Jaipur (2001(129)ELT458(Tri.Delhi))

Appellant No.2:-

- (i) All reasonable steps were taken by the Appellant before removal of goods. There is no intention on the part of the Appellant to evade central excise duty. There is no clandestine removal by the Appellant;
- (ii) The adjudicating authority has mainly stated that the goods is cleared without payment of duty by wrongly classifying and wrongly claiming exemption. The matter has already been clarified before investigating officer that the goods cleared by the Appellant is not the goods used by general public. The goods cleared by the Appellant is mechanical appliance to be used in sprinkler irrigation systems which is classifiable under Chapter 84 and exempted under Notification No. 3/2005-CE;
- (iii) There was no intention on part of Appellant to clear clandestinely and with intent to evade payment of duty. Hence, order of imposition of personal penalty Rs. 535912/- under Rule 26 of CER, 2002 on director is very harsh and required to be set aside;

4. Personal Hearing in the matter was held on 28.01.2022 in virtual mode through video conferencing. Shri Rushi Upadhyay, Chartered Accountant, appeared on behalf of both Appellants. He reiterated the submissions made in appeal memorandum.

5. I have carefully gone through the facts of the case, the impugned order, the appeal memoranda and oral submissions made by the Appellants. The issue to be decided in the case is whether the impugned order, classifying the "HDPE Pipes and Fittings" cleared by Appellant No. 1 under CESTSH No. 39172190 instead of 84242100, and confirming demand on Appellant No. 1 along with interest and imposing penalty on Appellant Nos. 1 & 2 is correct, legal and proper or not.

6. On perusal of records, I find that based on the intelligence that Appellant No. 1 had wrongly claimed benefit of Exemption Notification No. 3/2005-CE dated 24.02.2005 and cleared HDPE Pipe & fittings without payment of duty by classifying them under CETSH 84248100 instead of 39172190, an inquiry was carried out by the officers of the department. On the basis of statements recorded and documents obtained during the course of the inquiry, it appeared to the officers that the goods cleared by Appellant No.1 to M/s. Gujarat Agro Industries Corporation Ltd (GAICL) should have been classified under CETSH 39172190 and hence, the benefit of Notification No. 3/2005-CE dated 24.02.2005 was not available to them. The investigation culminated in to issuance of SCN dated 17.02.2015 to the Appellants proposing reclassification of impugned goods and also recovery of duty involved therein along with interest and penalties.

6.1. The above SCN was kept in call book as on similar issue, an appeal filed by the department against OIA No. RAJ-EXCUS-000-APP-14-15 dated 26.09.2014 in the case of M/s. Captain Polyplast Ltd, was pending before the Hon'ble Tribunal. Since the said appeal was withdrawn on monetary grounds vide Hon'ble Tribunal's Order dated 24.10.2018, the SCN was retrieved from the call book for disposal by the adjudicating authority.

6.2 I find that issue involved in present proceedings and in M/s. Captain Polyplast case supra is identical. I further find that Shri Biren Ramanbhai Patel, Authorized signatory of GAICL, has also confirmed that the agreement and goods supplied by the Appellant No.1 and M/s. Captain Polyplast Ltd were same. (Para 2.4 of the impugned order). Thus, the facts and circumstances of these cases are admittedly identical.

6.3 I find that the Commissioner (Appeals), in the above OIA, while deciding the classification of the goods cleared by M/s. Captain Polyplast to GAICL has observed as under:

15. *In view of the above facts, discussions and findings, I find that there is substantial force in the arguments put forth by the appellant that they had correctly classified the impugned goods under CETSH No. 84249000 of the first schedule to the CETA, 1985 and correctly availed the exemption under Noti.No.03/2005-CE dated 24.12.2005 as amended. Thus, the same is required to be accepted in light of discussion held in para(s) supra.*

Thus, the Commissioner (A), vide above OIA, have classified the impugned goods under CETSH No. 84249000 (Parts of mechanical appliances of a kind used in agricultural or horticulture) and held that benefit of Exemption Notification No. 03/2005-CE dated 24.12.2005 was rightly availed by the Appellant concerned.



6.4. Despite observing that the above order passed by the Commissioner (Appeals), in identical matter, which has attained finality (Para 8.2 of the impugned order), the adjudicating authority, instead of following the said order, has reopened the issue of classification of impugned goods and taken contrary stand. In doing so, the adjudicating authority observed that since the department has withdrawn the appeal against the OIA on monetary grounds only, the discussion on merit is still open.

6.5 I find that the above reasoning adopted by the adjudicating authority is legally incorrect. In my considered view, though the issue is certainly open on merit for the competent authority to agitate before the higher Appellate forum, but the adjudicating authority, who is subordinate to the Commissioner (Appeals), cannot take a different stand and reopen the issue of classification which has already been decided by the Commissioner (Appeals). The order passed by the Higher Appellate Authority i.e., Commissioner (Appeals), in absence of any rulings to the contrary by authorities higher in judicial tiers, is binding on the adjudicating authority. In the present case, no such rulings contrary to the above order passed by the Commissioner (Appeals) is available on records.

6.6 I further find that by not following the order of the Commissioner (Appeals), which has attained finality, the adjudicating authority has acted against the principles of judicial discipline. The Hon'ble Supreme Court in the case of UOI Vs. Kamlakshi Finance Corporation (1991(55)ELT 433(SC) has made it clear that *the principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities*. Further, the Hon'ble High Court of Karnataka in the case of C.C.E. & S.T., MANGALORE Vs. MANGALORE REFINERY & PETROCHEMICALS LTD. 2016 (42) S.T.R. 6 (Kar.) has observed as under:-

*7. However, we are surprised to notice the argument advanced by learned counsel for the appellant that in view of the policy decision taken by the Central Government that for the reasons of monetary value the judgment of M/s. Stanzen Toyotetsu India (P) Ltd. (supra) is not challenged thus, the said judgment has no value as a precedent in the subsequent cases. This argument is totally misconceived. The decision of the Central Government to challenge a judgment or not is within its wisdom and reason. Such decision is not binding on the Courts. On the other hand, the judgment passed by the co-ordinate Bench of this Court has binding value and this Court is bound by the said judgment, unless it is disagreed and referred to a Larger Bench.*

In view of the above, I find that the adjudicating authority has committed judicial indiscipline in not following the decision of higher appellate forum and the impugned order is liable to be set aside on this ground alone.

6.7 Since the OIA dated 26.09.2014, involving classification of identical goods has attained finality, in my opinion, the issue of classification of the impugned goods is also not open on merit in the present proceedings. Accordingly, following the findings recorded in





the said OIA dated 26.09.2014 in the case of M/s. Captain Polyplast Ltd., I hold that the impugned goods supplied by the Appellant No.1 to GAICL is appropriately classifiable under CETSH No. 84249000(Parts of mechanical appliances of a kind used in agricultural or horticulture) of the First Schedule to the CETA, 1985 and benefit of exemption under Notification No. 03/2005-CE dated 24.02.2005 (Sr. No. 70) was rightly availed by the Appellant No.1.

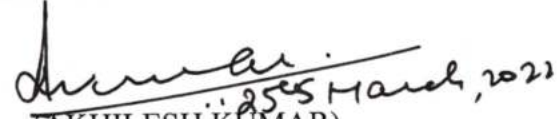
6.8 I find that since the demand made vide the impugned SCN is not legally sustainable, the question of interest and imposition of penalty from them also does not arise.

7. I also find that since the demand of duty itself does not survive on merit, there is no question of imposition of penalty upon the Appellant No.2, who is a Director of Appellant No.1.

8. Accordingly, I set aside the impugned order being not legal and proper and allow the appeal filed by the Appellant Nos. 1 & 2.

9. अपीलकर्ताओ द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है।

9. The appeals filed by the Appellants are disposed off as above.

  
(AKHILESH KUMAR)  
Commissioner (Appeals)

By R.P.A.D.

<p>To</p> <p>1. M/s Bhumi Polymers Pvt. Ltd(erstwhile Bhumi Polymers), Survey No. 236, Plot NO. 11/B, Behind Hotel Pitru Kurpa, Krishna Industrial Estate, National Highway 8-B, Veraval(Shapar), Dist. Rajkot.</p>	<p>सेवा में</p> <p>M/s Bhumi Polymers Pvt. Ltd ( erstwhile Bhumi Polymers), सर्वेक्षण संख्या 236, प्लॉट नं 11/बी, होटल पितृ कुर्पा के पीछे, कृष्णा औद्योगिक एस्टेट, राष्ट्रीय राजमार्ग 8-बी, वेरावल (शापर), जिला राजकोट</p>
<p>2. Shri Ashokbhai Khimjibhai, Baldha, Director of M/s Bhumi Polymers Pvt. Ltd Survey No. 236, Plot NO. 11/B, Behind Hotel Pitru Kurpa, Krishna Industrial Estate, National Highway 8-B, Veraval(Shapar), Dist. Rajkot.</p>	<p>श्री अशोकभाई खिमजीभाई, बलधा, निदेशक M/s Bhumi Polymers Pvt. Ltd सर्वे नंबर 236, प्लॉट नं 11/बी, होटल पितृ कुर्पा के पीछे, कृष्णा औद्योगिक एस्टेट, राष्ट्रीय राजमार्ग 8-बी, वेरावल (शापर), जिला राजकोट।</p>

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) उपायुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, डिवीजन II राजकोट राजकोट को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फ़ाइल।