



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

द्वितीय तल, जी एस टी भवन / 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-20220364SX0000818111

क	अपील / फाइल नम्बर / Appeal / File No.	मूल आदेश नम्बर / OIONo.	दिनांक / Date
	V2/103/RAJ/2021	02 to 03/DC/KG/2020-21	10-02-2021
	V2/104/RAJ/2021	02 to 03/DC/KG/2020-21	10-02-2021
ख	अपील आदेश संख्या (Order-In-Appeal No.):		

**RAJ-EXCUS-000-APP-117 TO 118-2021-22**

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 Balson Polyplast Pvt Ltd, Survey no.270, Plot no.2-3 National Highway 8B, Shapar (Veraval)  
Rajkot.**

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

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत  
एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है। /

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section  
86 of the Finance Act, 1994 an appeal lies to:-

(i) बर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पाद 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  
(मिस्ट्रेट) 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 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/- 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 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 (स्ट ऑर्डर) के लिए आवेदन-पत्र के  
संघ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

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

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर 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, 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/- 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 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 (स्ट ऑर्डर) के लिए आवेदन-पत्र के संघ 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 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 दम करोड़ रुपए से अधिक न हो।  
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है  
(i) धारा 11 डी के अंतर्गत रकम  
(ii) सेनवेट जमा की ली गई गलत राशि  
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम  
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं 2) अधिनियम 2014 के अर्ब से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगा।  
For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,  
Under Central Excise and Service Tax, "Duty Demanded" shall include :  
(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 की पुनरीक्षणयाचिका निम्नलिखित मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गतअवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। / A revision application lies to the Under Secretary to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:  
(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। / In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse  
(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। / In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.  
(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.  
(iv) मुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो छुट्टी 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 समायाचिधि 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 चाहिए। इस तथ्य के होते हुए भी की लिखा पट्टी कार्य से बचने के लिए यथास्थिति अपीलीय नयाधिकरण 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 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-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-1 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](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. 02 to 03/DC/KG/2020-21 dated 10.02.2021 (*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.	V2/103/RAJ/2021	Appellant No. 1	M/s Balson Polyplast Pvt. Ltd, Survey No. 270, Plot NO. 2-3, National Highway 8B, Shapar (Veraval), Dist. Rajkot.
2.	V2/104/RAJ/2021	Appellant No. 2	Shri Jamanbhai V. Baldha Director of M/s Balson Polyplast Pvt. Ltd, Survey No. 270, Plot NO. 2-3, National Highway 8B, Shapar (Veraval), 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 24.09.2014 to the Appellant No. 1 & 2 calling them to show cause as to why

- (1) Central Excise duty amounting to Rs. 21,14,803/- 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;
- (2) Interest at appropriate rate should not be recovered from them under Section 11AA of the Act;
- (3) 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").
- (4) 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 classification of "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.21,41,803/- 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.21,41,803/- 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. 21,41,803/- 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 that :-

Appellant No. 1:-

- (i) If the complete system is supplied then same merit classification under 8424 8100 but when parts of such system supplied it is merit classifiable under tariff item 84249000 only, especially when it is principally and solely used as parts of such systems.
- (ii) the provisions of clause (a) of the Rule 3 of the Interpretative Rules for interpretation of the First Schedule to the Central Excise Tariff Act, 1985 very specifically says that when two or more headings each refer to part only of the material or .....or to part only of the items in a set up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
- (iii) Even the said CBEC Circular No.380/13/98-CX dated 16.03.1998 also clarifies as above as per the details discussed in para infra but the said vital paragraph is ignored while issue of impugned order.
- (iv) The entire notice is based on misconceived classification of HDPE pipes and fitting sold to M/s. Gujarat Agro Industries Corporation Ltd (GAIC). The investigation, while alleging that HDPE pipes and fittings supplied to GAIC are classifiable under heading 3917 and that benefit of Notification No. 3/2005-CE (E. No.70) was wrongly availed by it, had overlooked the fact that the Appellant had not supplied bare HDPE pipes but had supplied HDPE sprinkler pipes of different diameters along with its fittings. It further submits that even the allegation part of the notice says that what was supplied to GAIC by it was 'pipes and fittings'. However, while raising issue of classification, investigation has conveniently overlooked to discuss various fittings accompanying such HDPE pipes. It's Managing Director had clarified to the officers during the course of enquiry that it was registered with central excise department and was paying central excise duty on HDPE pipes/Rigid PVC pipes which were classifiable under Chapter sub-heading no.3917 21 90 and on the waste & scrap arising out of such pipes at the time of removal of the said goods. This fact can also be verified from the relevant invoices and returns filed with the department from time to time.
- (v) It was specifically clarified by the Appellant that it did not pay central excise duty on HDPE sprinkler pipe and fitting supplied to GAIC for the reason that the same were specially manufactured as HDPE pipes for use in sprinkler irrigation system and were supplied along

with related fittings such as 'connecting nipple', 'HDPE bend', 'end stop' etc. and such pipes used for sprinkler irrigation system were classifiable under Chapter sub heading no. 8424 8100; that it attracts NIL rate of duty, so no duty was being paid on such goods. Section note 4 of Section XVI of Central Excise Tariff specifically mentions that- "Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or Chapter 85, then the whole falls to be classified in the heading appropriate to that function. Therefore, when it had sold specially manufactured HDPE pipes for use in sprinkler irrigation system along with related fittings such as 'connecting nipple', 'HDPE bend' and 'end stop', these goods would merit classifiable only under CETSH 84248100 of Section XVI.

- (vi) Appellant also submitted that it can be seen from tender documents i.e., 14151-Part-II IS - 14151-1 (1999): Irrigation Equipment - Sprinkler Pipes Part 1 Polyethylene Pipes and IS - 14151 - 2 (2008) Irrigation Equipment - Sprinkler Pipes - Part -2 Quick Coupled Polyethylene Pipes and Fittings that it has manufactured and cleared goods with said IS specification only. It means all the pipes and fittings having said IS specification were supplied as parts of Sprinkler Irrigation systems as per the contracts/tenders and cannot be used for any other purpose. Therefore, same were correctly classified under tariff sub-heading 8424 90 00 and cleared under claim of benefit of Notification No.3/2005-CE without payment of duty.
- (vii) Appellant submits that it has been concluded that as per the said rule, HDPE pipes and fitting falls under heading No. 39172190 which is most specific description for the same. This is a misconceived conception as Rule 3(a) is not applicable but Rule 3(b) is more appropriate in the present case. The goods sold by the Appellant to GAIC can be said to be composite goods consisting of different materials or made up of different components as it is not a single item but set of different pipe/fittings. Therefore, in terms of Rule 3(b) of the Interpretative Rules for interpretation of the First Schedule to the Central Excise Tariff Act, 1985, the same is required to be classified under heading 84249000 which gives them it's essential character.
- (viii) That in terms of Rule 3(c) of the General Rules for interpretation of the first schedule to the Central Excise Tariff, when the goods cannot be classified by reference to Rule 3(a) or Rule 3(b) referred above, they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration. Applying this rule also, the goods cleared by it will be classified under 84249000, as it comes last in the numerical order.
- (ix) The notice and impugned order states that similar goods were supplied by M/s. GAICL, Ahmedabad by other manufacturer including M/s. Captain Polyplast Ltd.. and similar show cause notice was issued to them. The Hon'ble Commissioner (Appeals)

while passing OIA No.RJT-EXCUS-000-APP-198-14-15 dated 26.09.2014 allowed the appeal of the said M/s. Captain Polyplast Ltd.

- (x) Apart from the above, Appellant further refers and relies upon such other following judgments.
1. PHOEL INDUSTRIES Vs. COMMISSIONER OF CENTRAL EXCISE, JAIPUR-I-2005 (1S3) E.L.T. 192 (Tri. - del)
  2. RUNGTA IRRIGATION LTD. Versus COMMISSIONER OF C. EX., CHADIGARH- 2004 (174) E.L.T. 250 (Tri. - Del.)
  3. FLOW TECH POWER Versus COMMISSIONER OF C. EX., COIMBATORE- 2001 EL.T. 541 tri - Chennai)
  4. ELGI ULTRA APPLIANCES LTD. Versus COMMISSIONER OF C. EX. COLMBATORE-I- 2001 (134) E.L.T. 245 (Tri. - Chennai)
  5. HALLMARK INDUSTRIES Versus COMMISSIONER OF CL EX, CALCLT1A4WJ (122) ELT. 540 (Tribunal).
- (xi) Appellant submits that from the foregoing facts, discussions, various judicial citations and the Board's circular, that the goods supplied to M/s GAIC i.e. HDPE pipes for use in sprinkler irrigation system along with related fittings such as 'connecting nipple'/ 'HDPE bend' and 'end stop' are appropriately classifiable under Chapter sub heading no.8424 9100 only and no duty of central excise is required to be paid on such goods in terms of exemption granted under Notification No. 3/2005-CE dated 24.02.2005 as amended.
- (xii) That while demanding duty on disputed goods, the notice itself has also not asked it to show cause as to why the said goods should not be classified under CETSH 39372190 of the Central Excise Tariff Act, 1985. It means that there is no proposal to reclassify the disputed goods in the notice. Therefore, without proposal to classify the disputed goods under CETSH 3937 21 90 in the notice, the classification of the same cannot be changed arbitrarily by the department and no demand can be confirmed without deciding classification of goods.
- (xiii) Appellant further submits that when duty demanded under Section 11A of the Central Excise Act, 1944 in the impugned notice is not sustainable under the law, question of payment of interest on the same under Section 11AB ibid also does not arise.
- (xiv) That the 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))
- (xv) that the notice demanding central excise duty worth Rs.21,41,803/- is time barred. The issued raised in the notice is relating to classification of excisable goods manufactured and sold by it to GAIC (i.e. State Govt. Body). There was no willful intention to evade payment

of duty. It is on record that Appellant was registered under the Central Excise Rules with the department and were filing all required reports and returns from time to time and their manufacturing/clearance procedure of all the goods was well within the knowledge of the department. Since *mens rea* to evade duty does not exist, extended period for demanding alleged short-paid duty cannot be invoked under first proviso to Section 11AC of the Central Excise Act 1944. The reliance is placed upon the following case laws

CHAMUNDI DIE CAST (P) LTD. Versus COMMISSIONER OF C EX BANGALORE:  
2007 (215) E.L.T. 169 (S.C.)

Appellant No.2:-

- (i) Appellant without admitting anything and without prejudice to above, it further submits that there is no question of reason to believe on his part that goods were liable to confiscation. On the contrary it was clearly deposed by him that no duty of excise was payable on the goods as goods merit classifiable under 8424 and exempted by virtue of notification No.3/2005-CE hence goods are not liable for confiscation, no penalty can be imposed under Rule 26 of the Central Excise Rules, 2002.
- (ii) Appellant submits based on the above submissions held that goods are liable for confiscation by travelling beyond the scope of show cause notice. As submitted and discussed in detailed in the appeal filed by his company, it clearly reveals that there was no knowledge on his part about the goods liable to confiscation. Thereby, reliance placed on the decision of Sanjay Vimalbhai Deora - 2014 (309) ELT A 131(SC) is totally erroneous.

4. Personal Hearing in the matter was held on 28.01.2022 in virtual mode through video conferencing. Shri P.D.Rachchh, Advocate, 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 24.09.2014 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 4.2 of the impugned order). Thus, the facts and circumstances of these cases are admittedly identical.

6.3 I find that the Commissioner (Appeals), in 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 the fact that the above order passed by the Commissioner (Appeals), in identical matter has attained finality (Para 15.3 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 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.

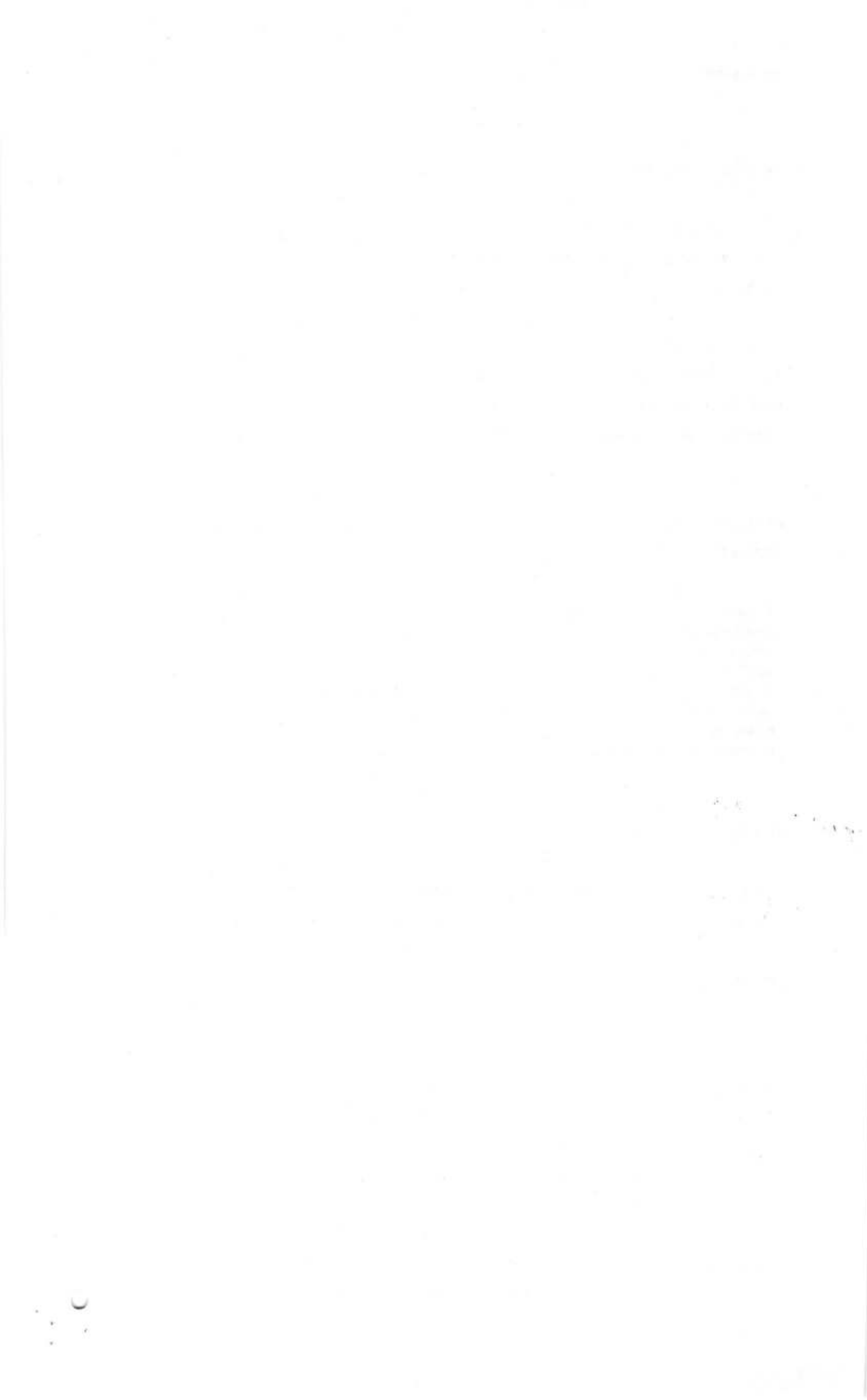
6.6 I further find that by not following the order of the Commissioner (Appeals), which has attained finality, the adjudicating authority has acted against the principles of judicial discipline. The Hon'ble Supreme Court in the case of UOI Vs. Kamlakshi Finance Corporation (1991(55)ELT 433(SC) has made 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 of duty itself does not survive on merit, there is no question of interest and imposition of penalty from them also does not arise.

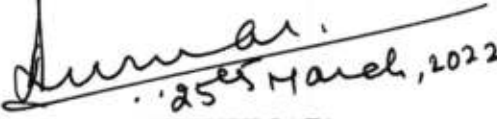


7. I also find that since the demand of duty itself does not survive on merit, there is no question of imposition of penalty upon the Appellant No.2, who is a Director of Appellant No.1.

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.

  
25<sup>th</sup> March, 2022..  
(AKHILESH KUMAR)  
Commissioner (Appeals)

By R.P.A.D.

1. M/s Balson Polyplast Pvt. Ltd, Survey No. 270, Plot NO. 2-3, National Highway 8B, Shapar (Veraval), Dist. Rajkot.	मेसर्स बालसन पोलिप्लास्ट प्रा लि सर्वे नं 270 प्लॉट नं 2 - 3 नेशनल हाइवे 8B शापर ( वेरावल) डिस्ट्रिक्ट राजकोट
2. Shri Jamanbhai V.Baldha, Director of M/s Balson Polyplast Pvt. Ltd, Survey No. 270, Plot NO. 2-3, National Highway 8B, Shapar (Veraval), Dist. Rajkot.	श्री जमनभाइ वी बल्धा डाइरेक्टर मेसर्स बालसन पोलिप्लास्ट प्रा लि सर्वे नं 270 प्लॉट नं 2 - 3 नेशनल हाइवे 8B शापर ( वेरावल) डिस्ट्रिक्ट राजकोट

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।