



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

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



सायबेव जयते

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रजिस्टर्ड डाक ए.डी.द्वारा

DIN-20220264SX0000119500

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/22/GDM/2021	28/AC/Anjar Bhachau/20-21	20-01-2021

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

KCH-EXCUS-000-APP-270-2021-22

आदेश का दिनांक / Date of Order:	31.01.2022	जारी करने की तारीख / Date of issue:	07.02.2022
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श्री अखिलेश कुमार, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri Akhilesh Kumar, Commissioner (Appeals), Rajkot.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ महायुक्त, 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. Sun Packaging (Survey no. 262, Plot no. 42 Meghpur Borichi, Anjar, Kutch-370110)

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) सामान्य शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलार्थी न्यायाधिकरण के प्रांत अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 का धारा 35B का अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है। /

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

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलार्थी 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 अपीलार्थी के अलावा शेष सभी अपीलार्थी सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलार्थी न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को की जानी चाहिए। /

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलार्थी न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलार्थी 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 अपीलार्थी न्यायाधिकरण की शाखा स्थित है। म्यगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

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

(B) अपीलार्थी न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती 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/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलार्थी 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 अपीलार्थी न्यायाधिकरण की शाखा स्थित है। म्यगन 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 fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is 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/-



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(1) 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 सकती है 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 अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपय 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 समझ विचाराधीन स्थगन अर्जी 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 अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, 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, जहाँ 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 an excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

- (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

- (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो छूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश को 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 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 प्रतियाँ प्रयत्न 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 प्रतियाँ 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 O.I.O 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।

यहाँ 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 न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various umbers 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) 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 टिकट 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 बर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। /

Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

- (G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। /

For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in.

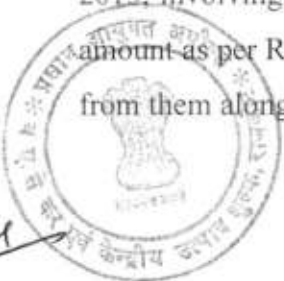


:: ORDER-IN-APPEAL ::

M/s. Sun Packaging, Survey No. 262, Plot No. 42, Meghpar Borichi, Anjar, Kutch-370110 (hereinafter referred to as the 'appellant') has filed Appeal No. V2/22/GDM/2021 against Order – in – Original No. 28/AC/Anjar Bhachau/20-21 dated 20.01.2021 (hereinafter referred as the impugned order) passed by the Deputy Commissioner, CGST Division, Anjar Bhachau, Kutch (hereinafter referred as the adjudicating authority). The appellant was holding Central Excise Registration No. ABAFS2852BEM002 for manufacture of Excisable goods namely HDPE Jars, Pet Bottles and Caps falling under Central Excise Tariff Heading 39233090, 39229090, 39225090 of the Central Excise Tariff Act, 1985.

2. Inquiry was initiated against the appellant by the officers of the Preventive Section of the Central GST, Gandhidham and statement of Shri Srinivasa Rao Surpaneni, Partner of appellant firm, was recorded under Section 70 of the CGST Act, 2017 read with Section 14 of the Central Excise Act, 1944 on 11.12.2018 and on 06.06.2019. He, inter-alia, stated that they had cleared jars with cap to M/s Adani Wilmer Ltd., M/s. Bunge India Private Limited, M/s. Ruchi Soya Industries Ltd. and M/s. Genus Electrotech Limited under job work without payment of Central Excise duty. It was observed by the investigating team that the Appellant had received raw materials from their clients such as M/s Adani Wilmar Limited, M/s. Bunge India Private Limited, Genus Electrotech Limited, Gandhidham and cleared the finished goods i.e. 'Jars' and 'caps' under invoices without payment of duty claiming that they have undertaken only job work and have received only conversion charge. However, they had neither received the raw materials under challan, nor cleared the finished goods under challan. Hence, they have not undertaken job work but appeared to have manufactured finished goods out of raw material supplied by different suppliers. Further, they had not even followed the procedure for job work and therefore, the exemption under Notification No. 214/86-CE dated 25.03.1986, as amended, is not available to them and they were required to pay the appropriate Central Excise duty on clearance of such goods i.e. 'Jars' and 'caps' on actual value of such goods. The preventive team determined the total Central Excise duty liability at Rs. 5,25,979/- which the Appellant was required to pay under Section 11A(4) of the Central Excise Act, 1944 along with interest under Section 11AA of the Central Excise Act, 1944.

2.1. The preventive team also observed that the appellant had purchased spare parts for air compressor but failed to produce the relevant Invoice Nos. ET-1749 to ET-1754 all dated 30-03-2015, involving cenvat credit of Rs. 1,648/-. Hence, they were not eligible for credit of the duty amount as per Rule 9 of the Cenvat Credit Rules, 2004 and the same was required to be recovered from them along with interest under Rule 14 of Cenvat Credit Rules, 2004.



3. On conclusion of investigation, the appellant was issued SCN No. SCN/40/CEP/Kutch/2019-20 dated 04-02-2020 by the Assistant Commissioner (AE), Central Goods and Service Tax, HQ, Gandhidham, seeking to recover an amount of Rs. 5,25,979/- as Central Excise duty along with interest under Section 11A(4) and Section 11 AA of the Central Excise Act, 1944 respectively. It was also proposed to impose penalty under Section 11AC of the Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002. The SCN also proposed recovery of wrongly availed CENAVT Credit amounting to Rs. 1,648/- under Rule 14 of the Cenvat Credit Rules, 2002 along with interest. The SCN also proposed imposition of penalty under Rule 15 of the said Rules.

4. The Show Cause Notice was adjudicated by the adjudicating authority whereby he has confirmed the demand along with interest as proposed in the notice. He also imposed penalties upon the appellant.

5. Being aggrieved by the impugned order, the appellant has preferred the present appeal on the following grounds:

- i) It ought to be appreciated that before CED can be imposed on any article, two basic conditions must be satisfied (i) the article in question should have come into existence as a result of an activity of "manufacture" and (ii) the articles in question should be excisable goods, and, if any of these two conditions is not satisfied, CED cannot be levied. Reference in this regard is made to Section 3, Section 2(d) and Section 2(f) of the Excise Act which provide as follows:

"3. Duties specified in the First Schedule and the Second Schedule] to the Central Excise Tariff Act, 1985] to be levied. — (1) There shall be levied and collected in such manner as may be prescribed, -

"2 (d) "excisable goods" means goods specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) as being subject to a duty of excise and includes Salt;

- ii) On perusal of the above, it is clear that, as a pre-requisite for levy of CED, it is imperative to establish that the process undertaken on the excisable goods in dispute, amounts to manufacture. The term 'manufacture' has been defined in an inclusive manner under Section 2(f) of the Excise Act and therefore has always been a subject matter of discussion in catena of judicial precedents including in the case of Union of India Vs. Delhi Cloth & General Mills Co. Ltd. [1977 (1) ELT



J199 (SC)] wherein the Constitution Bench of Hon'ble Supreme Court has held that, "The word "manufacture" used as a verb is generally understood to mean as "bringing into existence a new substance" and does not mean merely "to produce some change in a substance,". This proposition has been followed in a series of judgments including in the case of Union of India Vs. Delhi Cloth & General Mills Co. Ltd. [1997 (92) ELT 315 (SC)].

- iii) Similarly, the Hon'ble Apex Court in the case of Moti Laminates Pvt. Ltd v. Commissioner of Central Excise [1995 (76) ELT 241 (SC)] held that CED can be levied only upon manufacture of a distinct commodity. In terms of the settled law, as set out above, it is clear that levy of CED is attracted on manufacture of a new and distinct commodity which is known as such in trade parlance for purpose of buying and selling and whenever a commodity undergoes a change or a series of changes such that commercially it can no longer be regarded as the original commodity but instead is recognized as a new and distinct article. 'manufacture' can be said to have taken place. Thus, 'manufacture' implies a change, but every change is not 'manufacture', and yet every change of an article is the result of treatment, labour and manipulation, and something more is necessary and there must be transformation. It is essential that a new and different article must emerge, having a distinctive name, character or use. Reliance in this regard is also placed on the decision of the Hon'ble Supreme Court In Collector of Central Excise v. Kutty Flush Door and Furniture Co. (P) Ltd., [(1988) Supp. SCC 239] and the decision of the Hon'ble Delhi High Court in Metalite Industries v. CST [2012 (275) ELT 543]. Further, the Hon'ble Supreme Court, in the case of Empire Industries Ltd. v. Union of India, [(1986) 162 ITR 846 (SC)] has held that the transformation into something else 'is a question of degree, whether that something else is a different commercial commodity having its distinct character, use and name and commercially known as such from that point of view, is a question depending upon the facts and circumstances of the case.'
- iv) Vide the Impugned it has been confirmed that the Appellant is not a job-worker merely on the erroneous basis that the raw materials were brought to premises without a job work challan and were cleared without a job work challan. In the present case, based on entirely peripheral aspects and without appreciating the law as regards the legal meaning and ambit of the term 'job-work' and that the activities undertaken by Appellant essentially fell within the four corners of the definition of 'job-worker' as laid down vide the provisions under the Excise laws and several case laws setting out the meaning of the said term 'job-worker' as per the Excise laws.



- a) Recognizing that the obligation to pay CED lies on the manufacturer, even where it operates in capacity of a job-worker, Notification 214/86CE dated 25 March 1986, conditionally exempts from levy of CED, goods manufactured on job-work basis, provided the supplier of raw materials undertakes to discharge CED thereon. The said Notification defines the term job work as 'processing or working upon of raw materials or semi-finished goods supplied to the job worker, so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for the aforesaid process'
- b) Further, rule 2(n) of the Cenvat Credit Rules, 2004 ('CCR'), defines 'job-work' as 'processing or working upon of raw material or semifinished goods supplied to the job worker, so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for aforesaid process and the expression "job worker" shall be construed accordingly'.
- c) Explanation to Rule 10A of the Central Excise Valuation (Determination of Price of excisable goods) Rules, 2000 ('Valuation Rules'), defines the term 'job worker' as a 'person engaged in the manufacture or production of goods on behalf of a principal manufacturer, from any inputs or goods supplied by the said principal manufacturer or by any other person authorised by him.'
- v) Thus, in terms of the above definitions, the only relevant criteria for the purpose of characterizing a transaction as one of job work is that the job worker should be working upon inputs/raw materials provided by the supplier (principal manufacturer). Further, in terms of the available jurisprudence, for a transaction to qualify as job-work, it is only essential that the job-worker should carry out the manufacturing activity independently. In other words, the manufacturing activity, per se, should not be subject to any supervision or control of the principal manufacturer.
- vi) The entire premise of the demand raised by the Respondent vide the Impugned Order is based on the allegation that the Appellant has not followed the procedure prescribed under the Notification and that the goods have not moved under a challan. In this regard, it is pertinent to note that the procedure under the Notification is to be followed by the supplier of raw material i.e. the principal manufacturer and not by the job-worker, therefore, the Appellant cannot be held liable for any lapse on part of the principal manufacturer.



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- vii) Further, in the present case it is an admitted and undisputed fact that the raw materials were supplied by the principal manufacturer i.e. Adani Wilmar, Bunge India Pvt. Ltd, Ruchi Soya Limited etc., and that the goods being HDPE jars, caps and pet bottles were supplied by the Appellant to the principal manufacturer after undertaking necessary processes. Further, the Appellant has only charged conversion charges in relation to the process undertaken. Therefore, the Appellant was merely a job-worker in the present case. This is also substantiated on the basis of challans provided at Annexure D. Even though the challans are not in the format under Rule 54F of erstwhile Central Excise Rules, 1944, the substantive benefit cannot be denied to the Appellant as it is merely a minor procedural lapse. Reliance in this regard is placed on the decision of the Hon'ble Tribunal in CCE v. Helios India P Ltd [2008 (321) ELT 502] and CEC v. Malavika Metals [2008 (230) ELT 469]
- viii) In relation to spare parts purchased for the air compressor, while the Appellant was not able to provide the Invoices, it has not been disputed that such Inputs were infact procured by the Appellant, based on any evidence. Demand cannot be raised based on mere surmises and premises and on basis of suspicion. It is a settled law that suspicion, however grave cannot take place of evidence. The Appellant craves leave to produce the invoices during the course of the hearing.
- ix) The Adjudicating Authority has erred in arriving at the impugned findings that the extended period of limitation is invocable under Section 11A (4) of the CEA. The Adjudicating Authority ought to have appreciated that the Appellant had not made any misstatement, suppressed any facts or made any willful misstatement, with an intention to evade the payment of duty. As the conditions for invoking extended period of limitation in terms of the Section 11A (4) of the CEA were nonexistent, the Impugned Order invoking extended period of limitation is unsustainable and deserves to be set aside. Consequently, to that extent the demand of CED is also unsustainable.
- x) The Adjudicating Authority has erred in invoking extended period of limitation on the basis that the Appellant suppressed the fact that it was undertaking manufacturing activity. It is submitted that the Appellant was under a bona fide belief that the activity of job work undertaken by it was a service and hence has discharged Service tax on the same. Therefore, the Impugned Order which holds that the Appellant has suppressed the facts with wilful Intention to evade CED is unsustainable.



6. Personal hearing was held on 01-12-2021 in virtual mode. The appellant was represented by Shri Rushi Upadhyay, Authorised Representative. He re-iterated submissions made in appeal memorandum.

7. I have carefully gone through the facts of the case, the impugned order and the written submission/documents submitted by the appellant. The issue to be decided in the present appeal is whether in the facts and circumstances of the case the impugned order confirming the demand of Central Excise duty of Rs.5,25,979/- and reversal of the Cenvat Credit of Rs.1,648/- along with interest and penalty is legal and proper or otherwise.

8. It is observed from the case records that the appellant had received raw materials from their clients such as M/s Adani Wilmar Limited, M/s. Bunge India Private Limited, Genus Electrotech Limited, Gandhidham and cleared the finished goods i.e. 'Jars' and 'caps' under invoices without payment of duty claiming that they have undertaken only job work on the material supplied by the clients for which they had received only conversion charges. On the other hand, the department has alleged that the goods were received without following the procedures prescribed under relevant Notification No. 214/86 – CE dated 25.03.1986 and that the goods were cleared under invoice and hence they were liable to pay Central Excise duty on such clearances.

9. It is the contention of the appellant that for levy of Central Excise duty on any product, two basic conditions must be satisfied (i) the article in question should have come into existence as a result of an activity of "manufacture" and (ii) the articles in question should be excisable goods. They have relied upon judicial pronouncements in the case of Union of India Vs. Delhi Cloth & General Mills Co. Ltd. [1977 (1) ELT J199 (SC)]. It is observed in this regard that the appellant has taken this plea for the first time in the appeal memorandum. It is observed from Para 12 of the impugned order that the adjudicating authority has held that since the assessee could not prove that he was actually engaged in job work, and as per the statement, they accepted the fact the clearance of goods was done under invoices and not under job work challans. I come to conclude that the assessee was providing manufacturing services to its clients. I find that the findings of the adjudicating authority are contradictory in as much as he has on the one hand referred the activities to be manufacture and on the other hand referred it to be service which is altogether different taxable activity and both are also mutually exclusive. I have gone through Challan No. 1275 dated 3.2.2015 issued in respect of M/s Adani Wilmar Limited which is for "3 ltr Pet Bottle with Yellow Cap184 bags*32nos." which clearly mentions Job Work on its face. Similar, is the case with Challan No. 1739 dated 04.05.2015 in respect of clearance made to M/s Genus Electrotech Limited. Hence, it would be prudent that the contention of the appellant is



examined by the adjudicating authority with the records of the case so as to conclude that the activities undertaken by the appellant amounted to manufacture so as to be leviable to excise duty. The applicability of Notification No. 214/86-CE needs to be analyzed in this backdrop only.


10. As regard the demand in respect of Cenvat Credit amounting to Rs. 1,648/-, it is observed that the appellant had availed the Cenvat Credit on the spare parts for air compressor on the basis of invoices issued by M/s. P. Prabhuds Engineering Pvt. Ltd which was not produced before the investigation as well as before the adjudicating authority. The same was not produced during appeal proceedings as well. Hence, I do not find any merit in the contention of the appellant that the demand was raised in mere surmises and the demand confirmed by the adjudicating authority along with interest and penalty is upheld.

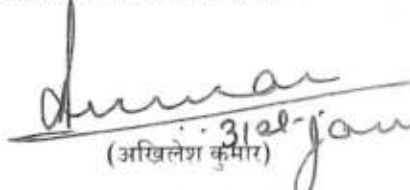
11. In view of the discussions made above, I set aside the impugned order and remand the matter relating to demand of Central Excise duty amounting to Rs.5,25,979/- to examine it afresh in light of directions contained in Para 9 above. Further, the impugned order confirming the demand in respect of CENVAT Credit is upheld.

१२. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

12. The appeal filed by the appellant stands disposed off in above terms.

सत्यापित / Attested


एम. एन. सागठीया
M. M. Sagathiya
अधीक्षक
Superintendent


31st January, 2022.
(अखिलेश कुमार)
आयुक्त (अपील्स)

By R.P.A.D.

To,

1	M/s. Sun Packaging, Survey No. 262, Plot No. 42 Meghpar Borichi, Anjar, Kutch 370110	मेसर्स सन पैकेजिंग, सर्वे नंबर 262, प्लॉट नंबर 42. मेघपर बोरीची, अंजार कच्छ, 370 110
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Copy submitted to:-

- 1) The Chief Commissioner, CGST & Central Excise, Ahmedabad.
- 2) The Principal Commissioner, CGST & Central Excise, Rajkot.
- 3) The Deputy Commissioner, CGST & Central Excise Division, Anjar Bhachau Division, Gandhidham.

4) The Superintendent, CGST & C.Ex., Range-II, Anjar Bhachau Division.

5) Guard File



