



:: 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

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सत्यमेव जयते

रजिस्टर्ड टैक्स ए.डी. द्वारा :-

DIN-20220764SX0000666AFC

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / OIONo.	दिनांक / Date
	V2/140/RAJ/2021	19/AC/MR/2020-21	24-03-2021

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

RAJ-EXCUS-000-APP-182 -2022

आदेश का दिनांक / Date of Order:	30.06.2022	जारी करने की तारीख / Date of issue:	04.07.2022
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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 / 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 Neon Poly Pack, Survey No.210, Plot No.12-BE Everest Industrial Estate, Veraval (Shapar)-
360021 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 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 मामलों में 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 में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण
(सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असाबा अहमदाबाद- 380016 को की जानी चाहिए।/
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor,
Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित
नियम 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, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये से अधिक है तो क्रमशः
1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित
अपीलीय न्यायाधिकरण की शाखा के सहायक 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। स्वयं आदेश (स्टे
ऑर्डर) के लिए अविद्वान-पत्र के साथ 500/- रुपये 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, रुपये
5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये
अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के
सहायक 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। स्वयं आदेश (स्टे ऑर्डर) के लिए अविद्वान-पत्र के साथ
500/- रुपये 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. 1,000/- 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 the Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

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. 1,000/- 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 the Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.



- (ii) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमबाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रथम S.T.-7 में की जा सकेगी एवं उसके साथ आवृत्त, केन्द्रीय उत्पाद शुल्क अध्यादेश (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आवृत्त द्वारा सहायक आवृत्त अध्यादेश (अपील) के तहत निर्धारित प्रथम S.T.-7 में की जा सकेगी एवं उसके साथ आवृत्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आदेश 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 of 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.
- (iii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो। केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
- धारा 11 की के अंतर्गत रकम
 - सेनबेट जमा की ली गई गलत राशि
 - सेनबेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं-2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थान नहीं एवं अपील को नामू 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 :
- amount determined under Section 11 D;
 - amount of erroneous Cenvat Credit taken;
 - amount payable under Rule 6 of the Cenvat Credit Rules
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.
- (C) भारत सरकार को पुनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षणार्थिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, बीकन 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 subsection (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 छूट (रिवेट) 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) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो छूटी केडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश को आवृत्त (अपील) के द्वारा वित्त अधिनियम (नं-2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायावधि 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 प्रतियाँ प्रथम 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 प्रतियाँ संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साथ-साथ 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 निम्ना 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 filed 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 नवी 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 बर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की और भी ध्यान आकर्षित किया जाता है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.
- (G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। / For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in



:: ORDER-IN-APPEAL ::

M/s. Neon Poly Pack, Veraval (Shapar), Rajkot (hereinafter referred to as "the Appellant") has filed present appeal against Order-in-Original No. 19/AC/MR/2020-21 dated 24.03.2021 (hereinafter referred to as the 'impugned order') passed by the Assistant Commissioner, Central GST, Division -II, Rajkot (hereinafter referred to as the 'adjudicating authority'). The appellant is engaged in manufacture of excisable goods i.e., Plastic Multilayer Roll falling under CETH 39201092.

2. The facts of the case, in brief, are that audit of the records of the Appellant was conducted by the officers of the Central Goods and Service Tax, Audit, Rajkot for the period October, 2014 to June, 2017. It was observed by the audit officers that the Appellant had booked "Job work Income" under the head "Sales Account" in the Financial Audit Report for the F.Y. 2014-15 & 2015-16 as under:-

Financial Year	Income under head "Sales Accounts"	Description
F.Y. 2014-15 (From October, 2014)	8,71,969/-	Job work income
2015-16	9,46,350/-	Job work income

The appellant could not explain the nature of job work activity with the documentary evidences.

2.1. On verification of the job work invoices, it was observed by the audit officers that the Appellant had cleared Plastic Rolls to various customers in the name of job work, but could not submit any documents showing receipt of raw material or semi-finished goods nor followed Job Work procedure as prescribed under Notification No. 214/86-CE dated 25.03.1986 as amended. It was further observed that the job work invoices were not showing address or registration numbers of any party, therefore, it appeared that the Appellant had prepared the job work invoices with an intention to clear the excisable goods under the guise of job work and thereby evade payment of central excise duty. It further appeared that the Appellant was required to pay central excise duty on the value of the goods to be determined in terms of Rule 4 of the Central Excise Valuation (Determination of Price of Excisable goods) Rules, 2000 ("the valuation rules") i.e., based on the value of such goods sold by the Appellant for delivery at any other time nearest to the time of removal of the goods in the guise of job work. Based on the audit observations, SCN dated 30.10.2019 was issued to the Appellant proposing to demand and recover the central excise duty amounting to Rs. 18,25,860/- under Section 11A of the Central Excise Act, 1944 ('the Act') along with interest. It was also propose to impose penalty under Section 11AC of the Act.

3. The above said Show Cause Notice was adjudicated vide the impugned order the adjudicating authority has confirmed the demand of Central Excise duty



amounting to Rs.18,25,860/- under Section 11A (4) along with interest under Section 11AA of the Act. Penalty of Rs. 18,25,860/- was also imposed under Section 11AC of the Act with option of reduced penalty as envisaged under provisions of Section 11AC of the Act.

4. Being aggrieved by the impugned order, Appellant has filed the present appeal, *inter alia*, contending that:-

- (i) The small manufacturers not having facilities to manufacture such goods i.e., Plastic Multilayer Roll, had approached the Appellant for job work. The job work income declared in the financial statements is nothing but conversion charges received from such small manufactures.
- (ii) The allegation of clandestine removal is baseless and without any supporting evidences. In so many decisions pronounced by various appellate authorities, it is held that the allegation of clandestine removal must have concrete corroborative evidences. In this case the department has not produced any corroborative evidence in support of their allegation of clandestine clearance. The Appellant rely upon following decisions:-
 - (a) 2015(325)ELT 116(Tri.-Ahmd.)- Hingora Industries Pvt. Ltd.
 - (b)2014(311)ELT 593(Tri.-Ahmd.)- Chandan Tobacco Company Vs. Commissioner of Central Excise, Vapi
 - (c)2014(309)ELT 411(All.) -Continental Cement Company Vs. Inion of India
 - (d)2015(322)ELT 542(Tri.-Del.)- Albright Steel Industries Ltd Vs. Commissioner of Central Excise, Raipur
 - (e) Kuber Tobacco Products Vs. CCE -2013(290)ELT 545(Tri.-Del.)
 - (f) Aswani & Co. Vs. CCE- 2015(327)ELT 81(Tri.-Del.)
 - (g) Aum Aluminum Pvt Ltd Vs. CCE 2014(311)ELT 354(Tri.Ahmd.)
 - (h) Mahesh Silk Mills Vs. CCE, Mumbai – 2014(304)ELT 703(Tri.Ahmd.)
 - (i) CCE Vs. Dhanvilas (Madras) Snuff Co.- 2003 (153) ELT 437(Tri. Chennai)
 - (j) Mahalaxmi Dyeing Mill Vs. CCE – 2016 (343) ELT 453(Tri. Ahmd)
 - (k) Shanbroc Chemicals Vs. CCE – 2002(149)ELT 1020 (Tri.Del.)
- (iii) The adjudicating authority alleged that Appellant has not produced any record, such as name, registration number and address of the goods supplier and challans and therefore, the benefits of job work clearance without payment of central excise duty is not allowed under Notification No. 214/86-CE dated 25.03.1986. Whereas, from the provisions of the Notification No. 214/86-CE dated 25.03.1986.it is observed that the conditions have been casted upon the manufacturer and not upon the job worker. Any demand for the goods cleared from the job worker's premises is required to be raised from the principal manufacturer and not from the job worker.
- (iv) Only due to procedural lapse at the job worker's end or at principal manufacturer's end, it cannot be presumed or alleged that the goods were



cleared clandestinely. The demand has been raised only on presumption and assumption basis and law does not support such presumption and assumption for demand. The Appellant rely upon following case laws:-
 (a) 2017(345)ELT 566(Tri.Mumbai)- Commissioner of Customs Vs. Yasha Overseas

(b) 2017(347) ELT 570(Tri.Kolkata) – Golden Steel Corporation Ltd Vs. CCE

(c) 2016(337)ELT 119(Tri.Kolkata) CCE Kolkata-IV Vs. Birla NGK Insulators Pvt Ltd. (d) 2011(271)ELT 450(Tri.Del.) – Prabhu Lala Ram Ratan Das (P) Ltd Vs. CCE

(v) As it is evident from SCN itself that the value to compute the duty has been taken from the Balance sheet/ Profit & Loss Account where it is declared as “job work income”. Since the amount is already declared under one of the statutory record the allegation of suppression cannot be made and extended period cannot be invoked. The Appellant rely upon following case laws:-

(a) Mega Trends Advertising Ltd Vs. CCE

(b) GAC Shipping (India) P. Ltd Vs. CCE -2017(49)STR 242(Tri.Bang.)

(vi) The adjudicating authority has also imposed penalty under Section 11AC of the Act for evasion of central excise duty. The action for imposition of penalty is not proper and legal. As discussed in para supra, the Appellant has not made any clandestine removal. Further, Appellant has not suppressed anything from the department which was required to be disclosed under law. If Appellant's intention was to make clandestine removal, then, the same amount would have not been declared in the financial statement. The Appellant was under strong and reasonable belief that it was not liable for payment of central excise duty. The Appellant was under belief that exemption under Notification No. 214/86-CE dated 25.03.1986, was available to them. There was no malafide intention or suppression and therefore penalty under 11AC of the Act is not imposable. The Appellant rely upon the decision given in the case of Usha Udyog Vs. CCE -2001(136)ELT 1031(Tri.Del.)

5. Personal Hearing in the matter was scheduled in virtual mode on 08.06.2022. Shri Moiz M. Dhangot, Chartered Accountant, appeared on behalf of the Appellant. He reiterated submission made in appeal memorandum. He further stated that he would make additional written submission as part of hearing.

5.1 The Appellant filed additional submission vide email/letter dated 09.06.2022 *inter-alia* contending that

(i) The adjudicating authority has held that the job work income mentioned in the financial statement of the appellant is nothing but clandestine removal of goods made by the appellant. The allegation of clandestine clearance removal is baseless and without any supporting any evidences. The department has not brought any evidence regarding transportation of alleged clandestine clearance of goods,



purchase of excess raw material, payment for such clandestinely cleared goods, detail regarding such purchases. In absence of such corroborative evidences the allegation of clandestine clearance is baseless.

(ii) In so many decisions pronounced by various appellant authorities it is already held that clandestine removal must have concrete corroborative evidences. The Appellant relies upon various case laws as submitted in written reply. The demand has been raised only on presumption and assumption basis and law does not support such presumption and assumption for demand. The Appellant rely upon following case laws:-

- (a) Sri Durga Cables Pvt Ltd Vs. CCE-2020(374)ELT459(Tri.Kolkata)
- (b) Trikoot Iron and Steel Casting Ltd Vs. CCE, -2015(315)ELT 65(Tri.Del.)

6. I have carefully gone through the facts of the case, the impugned order, the appeal memoranda and written as well as oral submissions made by the Appellant. The issue to be decided in the case is whether the impugned order, in the facts of this case, confirming demand of the central excise duty from the Appellant along with interest and imposition of penalty is correct, legal and proper or not.

6.1 On perusal of records, I find that during the course of audit of records of the appellant, it came to the notice of the audit officers that the Appellant had shown "Job Work Income" in its financial statements, but could not provide the names and details of the parties who entrusted the job work to the Appellant. It was further observed that the Appellant had cleared Plastic Rolls under Job Work invoices, but did not mention name and address of the parties to whom the said goods were cleared. As the Appellant could not furnish any documentary evidences such as receipt of raw materials / semi finished goods for job work, name of the parties who entrusted the job work and the name of the parties to whom the finished goods i.e., Plastic Rolls were cleared under job work invoices, it appeared that the Appellant had cleared the finished goods without payment of central excise duty in the guise of job work. Accordingly, a SCN was issued to the Appellant demanding duty along with interest and imposition of penalty in respect of the finished goods cleared under the said job work invoices. The proposal made in the SCN was confirmed by the adjudicating authority vide impugned order.

7. The first contention of the Appellant is that small manufacturers, not having facilities to manufacture such goods i.e., Plastic Multilayer Roll, had approached the Appellant for job work and the job work income declared in the financial statements is nothing but such conversion charges received from such small manufacture.

7.1 I find that the above contention of the Appellant is vague and unsubstantiated. The



Appellant was not able to give even the names of the so called small manufacturers, who entrusted the job work to it. It is also on record that the Appellant has shown such job work income/ conversion charges as cash receipts without the names of the party by whom such cash payment was made. The Appellant has also not mentioned the names of the parties to whom the finished goods after so called job work were cleared. Thus, the contention of the Appellant in this regard lacks factual corroboration and is legally unsustainable.

8. The Appellant has further contended that in many decisions pronounced by higher judicial authorities, it is held that the allegation of clandestine removal must have concrete corroborative evidences. It is further argued by the Appellant that the department has not brought on any evidences regarding transportation, purchase of excess raw materials payment for such clandestine clearance of goods. Thus, it is the contention of the Appellant that the department has not produced any corroborative evidence in support of their allegation of clandestine clearance of goods. The Appellant has also relied upon several judgments in support of its argument.

8.1 I find that the job work invoices issued by the Appellant are themselves the concrete evidences showing the clearance of dutiable goods i.e. Plastic Rolls manufactured by the Appellant. The Appellant has not denied the contents of these job work invoices which have been relied upon in the SCN. It is not the case that the goods mentioned in the job work invoices were not manufactured and cleared by the Appellant. It is also not the case that central excise duty on these goods had been paid by the Appellant or any other person at any stage. It is also on record that the Appellant has not been able to establish that these goods were manufactured on job work basis for some other parties. Thus, these job work invoices made available by the Appellant itself, clearly establish the clearance of finished goods without payment of central excise duty under the guise of job work.

8.2 I find the argument of the Appellant regarding non furnishing of the evidence of transportation, purchase of excess raw material, payment for such clandestine clearance by the department, contradictory and devoid of merits. On one hand, the Appellant is trying to contest the issue on the ground that impugned goods mentioned in the job work invoices were manufactured on behalf of small manufacturers and cleared to them on job work basis, whereas, on the other hand, it has been argued that evidences for transportation, purchase of excess raw material and payment for such goods have not been furnished by the department. When the Appellant has never denied the manufacture and clearance of impugned goods under the job work invoices, and also, as these transactions have been duly recorded in its financial records, no further evidence of transportation, purchase of excess raw materials, payment etc. is required. Accordingly, the argument made by the Appellant in this regard is also unsustainable.



8.3 The Appellant has relied upon several judgments in support of its above argument. I have gone through these judgments and find that facts and circumstances in none of these judgments are similar to the present case. In majority of these cases, the clandestine clearance was alleged on the basis of third-party documents, transporter's documents, kachha challans, loose sheets etc. recovered during the search proceedings. In some of the cases, it was observed by the Appellate Authorities that the clandestine manufacture of the goods could not be proved by the department. Whereas, in the present case, for demanding duty, the department has mainly relied upon the job work invoices prepared by Appellant itself and duly recorded in its financial statements, and, not on any other documents recovered from third party or transporters or any other person. Accordingly, I find that ratio of the case laws relied upon by the Appellant is not squarely applicable in the present case and is distinguished.

9. It is contended by the Appellant that as per the provisions of Notification No. 214/86-CE dated 25.03.1986, the demand is required to be raised from the principal manufacturer and not from the job worker. It is also the contention of the Appellant that only due to procedural lapse at the job worker's end or at principal manufacturer's end, it cannot be presumed or alleged that the goods were cleared clandestinely. The Appellant further argued that the demand has been raised only on presumption and assumption basis and law does not support such presumption and assumption for demand. It was further contended that due to procedural lapse at the job worker's end or at principal manufacturer's end, it cannot be presumed or alleged that the goods were cleared clandestinely. The Appellant has also relied upon various judgments in its support.

9.1 As already discussed, the Appellant has not been able to provide details of any party who entrusted the job work to it. Further, the Appellant has not furnished name of the party to whom the goods were cleared after the so-called job work. Despite sufficient opportunities provided, while during the course of audit, adjudication of the SCN or during the present proceedings, the Appellant has failed to substantiate its claim that the goods mentioned in the job work invoices were manufactured on behalf of other parties on job work basis. Thus, the Appellant has not been able to prove even the existence of any principal manufacturer in the case. The contentions made in this regard is devoid of merit. The only conclusion that could be derived from the act of the Appellant i.e. issuance of job work invoices showing clearance of dutiable finished goods without payment of duty and not providing any documents in support of such clearances on job work basis, is that it had cleared finished goods in the guise of job work and evaded the payment of central excise duty. Accordingly, I find the contention of the Appellant that the demand is raised on presumption and assumption basis is also devoid of merits.

9.2 As there is no presumption and assumption by the department while demanding



duty from the Appellant, the ratio of the judgments relied upon by the Appellant is not applicable in the facts and circumstances of the present case.

10. It is further contended by the Appellant that the value to compute the duty has been taken from the Balance Sheet/ Profit & Loss Account where it is declared as "job work income" and, since the amount is already declared under one of the statutory record, the allegation of suppression cannot be made and extended period cannot be invoked. The Appellant has relied upon following case laws:-

(a) Mega Trends Advertising Ltd Vs. CCE

(b) GAC Shipping (India) P. Ltd Vs. CCE -2017(49)STR 242(Tri.Bang.).

10.1. I find that the argument made by the Appellant is factually incorrect. As evident from the SCN and impugned order, the Appellant has not been able to prove that the transactions recorded as "job work income" in its financial records, were pertaining to any legitimate job work activities, carried out on behalf of other parties. Accordingly, the value for calculation of duty was determined in terms of provisions of Rule 4 of the valuation rules" i.e., based on the value of such goods sold by the Appellant for delivery at any other time nearest to the time of removal of the goods cleared in the guise of job work. Since the entry made in the relevant financial records was misleading, it was a clear case of suppression with intent to evade payment duty and hence, the extended period has been rightly invoked in the present case. I also find that the judgments relied upon by the Appellant are also distinguishable from the facts and circumstances of the present case.

10.2. In view of the above, I find that the central excise duty has been rightly demanded and confirmed along with interest from the Appellant.

11. The Appellant has contended that penalty under Section 11AC of the Act was not imposable as it was under strong and reasonable belief that exemption under Notification No. 214/86-CE dated 25.03.1986, was available to it and there was no malafide intention or suppression on its part. Reliance was placed on the decisions given in the case of Usha Udyog Vs. CCE -2001(136) ELT 1031(Tri. Del.).

11.1 In the present case, since invocation of extended period of limitation on the grounds of suppression of facts has been upheld in para supra, penalty under Section 11AC of the Act is mandatory, as has been held by the Hon'ble Supreme Court in the case of Rajasthan Spinning & Weaving Mills reported as 2009 (238) E.L.T. 3 (S.C.), wherein it is held that when there are ingredients for invoking extended period of limitation for demand of duty, imposition of penalty under Section 11AC is mandatory. The ratio of the said judgment applies to the facts of the present case. I, therefore, uphold penalty of Rs. 18,25,800/- imposed under Section 11AC of the Act.

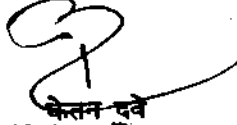


12. In view of above, I uphold the impugned order and reject the appeal filed by the Appellant.

13. अपीलकर्ता द्वारा दर्जकी गई अपील का निपटारा उपरोक्त तरीकेसे किया जाता है।

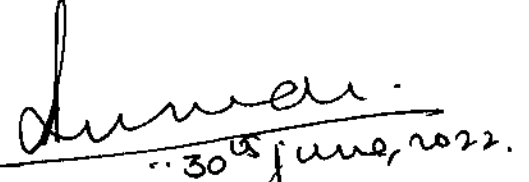
13. The appeal filed by the Appellant is disposed off as above.

सत्यापित / Attested



केतन दवे
Ketan Dave
अधीक्षक (अपील)

Superintendent (Appeal)



30th June, 2022.
(AKHILESH KUMAR)
Commissioner (Appeals)

By R.P.A.D.

To M/s. Neon Poly Pack, Survey No.210, Plot No. 12-B, Everest Industrial Estate, Veraval(Shapar) Rajkot -360021.	सेवा में M/s. नियॉन पॉली पैक, सर्वे नंबर 210, प्लॉट नंबर 12-बी, एवरेस्ट इंडस्ट्रियल एस्टेट, वेरावल (शापर) राजकोट -3600211
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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) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, मंडल-II, राजकोट, राजकोट को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फ़ाइल।

