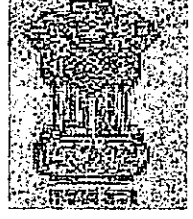
	<p>आयुक्त का कार्यालय, केंद्रीय उत्पाद शुल्क, अहमदाबाद- II 'सीमा शुल्क सदन', नवरंगपुरा, अहमदाबाद - 380009 दूरभाष सं. 079-27544599 फैक्स .27544463 Email- oaahmedabad2@yahoo.co.in</p>	
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निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./ F.No. V.39/15-10/2011-Denovo

आदेश की तारीख/Date of Order: - 29.06.2017

जारी करने की तारीख/Date of Issue: - 29.06.2017

द्वारा पारित/Passed by:-

जी. सी. जैन / **G. C. Jain**

अपर आयुक्त / *Joint Commissioner*

मूल आदेश संख्या / Order-In-Original No. 02/JC/2017/GCJ

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।

This copy is granted free of charge for private use of the person(s) to whom it is sent.

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद-380015 को प्रारूप संख्या इ.ए-1 (EA-1) में दाखिल कर सकता है। इस अपील पर रु. 2.00(दो रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner(Appeals), Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 2.00 only.

इस आदेश के विरुद्ध आयुक्त में अपील करने से पहले मांगे गये शुल्क के (अपील)7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है।

An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. (as per amendment in Section 35F of Central Excise Act,1944 dated 06.08.2014)

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या इ.ए.-1 में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील), नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

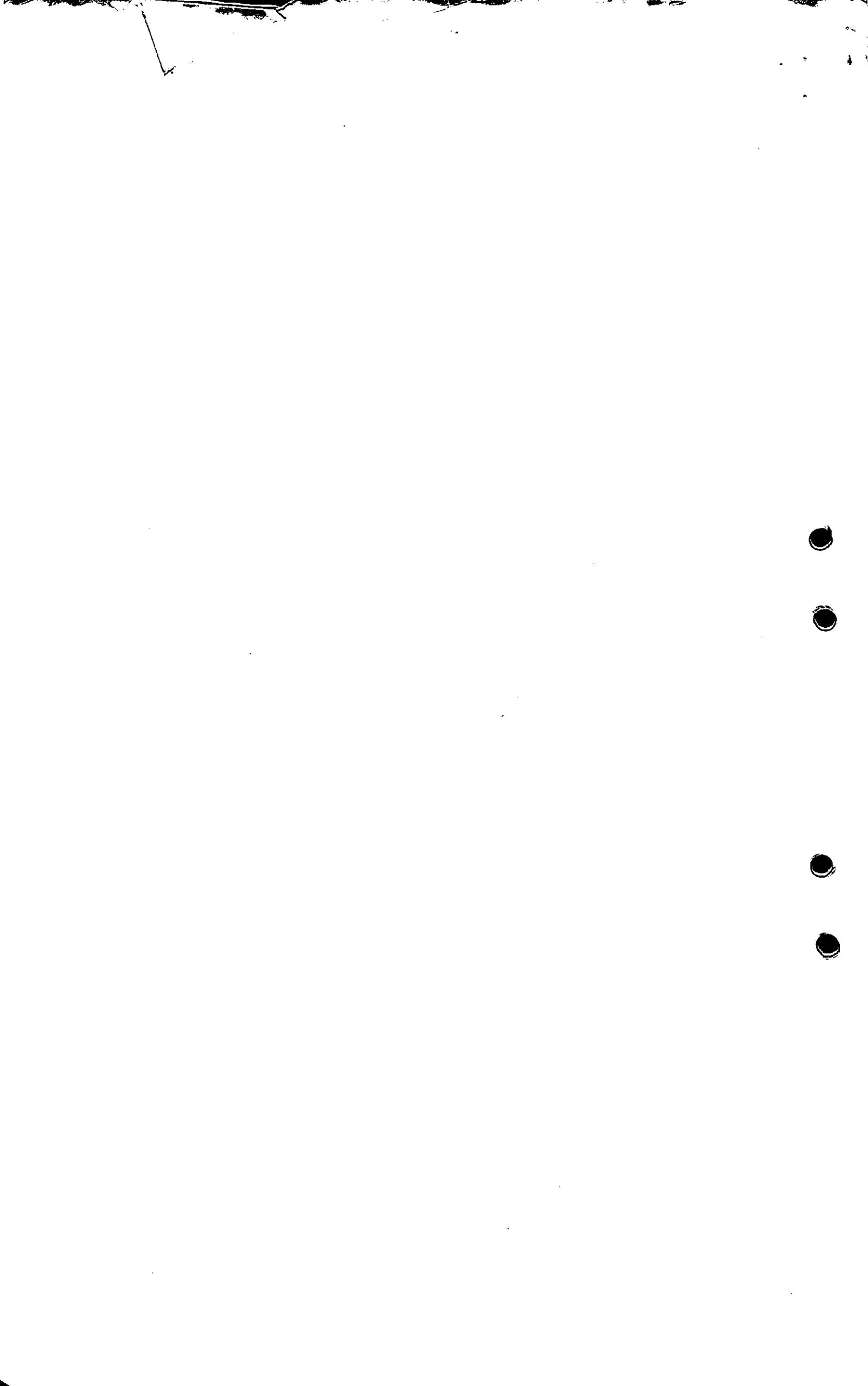
- (1) उक्त अपील की प्रति।
- (2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु. 2.00 (दो रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form EA-1 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

- (1) Copy of accompanied Appeal.
- (2) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.2.00.

विषय:- कारण बताओ सूचना/

(a) Show Cause Notice F.No. V.39/15-10/2011 dated 23.03.2011 issued by the Additional Commissioner, Central Excise, Ahmadabad-II & Denovo proceeding in respect of OIO No.50/ADC/2012/MRM dated 07.08.12 issued by the Additional Commissioner, Central Excise, Ahmadabad-II to M/s. Prakash Plastic Packaging, Plot No. 174/7, Calam Pump, Naroda, Ahmedabad-382330 stand disposed off.



The present adjudication proceedings arose out of Final Order No.A/11630-11631/2016 dated 01.12.2016 passed by the Hon'ble CESTAT, WZB, Ahmedabad (received on 17.01.2017) on the appeal No.E/12100-12101/2013 filed by M/s Prakash Plastic Packaging, Ahmedabad & others against Order-in-Appeal No.126/2013/Ahd-II/CE/AK/Commr-A/Ahd dated 19.06.2013. Following Final Order was passed by the Hon'ble Tribunal remanding the matter back to the adjudication as under:-

5. *Heard both sides and perused the records. The Ld. AR for the Revenue took me through the findings of the adjudicating authority. In the remand proceeding, all the evidences produced by the appellant were considered at length while recomputing the demand. The evidences now produced by the appellant, in my opinion, is repetition of the same and no new facts have been brought on record, whereby the demand could further be reduced. Hence, their request for remand of the case again in my view, would not resolve the dispute but increase the life of litigation. However, I do find merit in the contention of the Id. advocate for the appellant that they would be eligible to discharge 25% of the penalty imposed under Section 11AC of Central Excise Act, 1944, subject to fulfillment of the conditions laid down therein, in view of the judgment of the Hon'ble Gujarat High Court in Santosh Textile Mills (supra). Further, I find force in their contention that penalty cannot be imposed both on partnership firm as well as on the partner in view, of the judgment of the Hon'ble Gujarat High Court in Aravin N. Shah's case's (supra). Consequently, the appeal filed by Shree Manuphai D Patel is allowed and the appeal filed by the company is partly allowed to the extent of allowing the benefit of discharging 25% penalty imposed subject to fulfillment of the conditions laid down under Section 11 AC of CEA, 1944. Accordingly, the matter is remanded to the adjudicating authority for the limited purpose of extending the benefit of discharging 25% of penalty, subject to fulfillment of the conditions. Appeals disposed of on the above terms.*

Hence this order:-

2. BRIEF FACTS OF CASE

2.1 A SCN bearing F.No.V.39/15-10/OA/2011 dated 23.03.2011 was issued to M/s. Prakash Plastic Packaging which was adjudicated vide OIO No.44/ADC/2011/MRM dated 27.11.2011 confirming the Central Excise duty of Rs.12,64,783/- under section 11A(1) of the Central Excise Act, 1944 along with interest, imposed equal penalty under Rule 25(1) of Central Excise Rules, 2002 read with Section 11AC of Central Excise Act,1944 and imposed Redemption Fine of Rs.5,00,000/- in lieu of confiscation under the provision of Section 34 of the Central Excise Act'1944. A penalty of Rs.2,50,000/- was also imposed on Sh. Manubhai D. Patel, Partner under Rule 26(1) of Central Excise Rules, 2002.

2.2 Being aggrieved the noticee filed an appeal with the Commissioner (Appeals) against said OIO. The Commissioner (Appeals-I), Central Excise, Ahmedabad vide OIA No.105 to 106/2012(Ahd-II)CE/MMC/Commr.(A)/Ahd. dated 26.03.2012 remanded the case for fresh adjudication.

2.3 The issue was adjudicated afresh vide OIO No.50/ADC/2012/MRM dated 07.08.2012 wherein adjudicating authority scaled down demand of Central Excise Duty to Rs.11,79,685/- from Rs.12,27,946/- under Section 11A(1) of the Central Excise Act,1944 as well as reduced the penalty imposed under Rule 25(1) of Central Excise Rules, 2002 read with Section 11 AC of the Central Excise Act, 1944 to Rs.11,79,685/-. Except this, no modification was done by the adjudicating authority in his OIO No.44/ ADC/2011/MKM dated 27.11.2011.

2.4 Being aggrieved by the OIO No.50/ADC/2012/MRM dated 07.08.2012 the noticee again filed an appeal with the Commissioner (Appeals). The Commissioner (Appeals -I), Central Excise, Ahmedabad vide OIA No.126/2013 (Ahd-II)CE/AK/ Commr.(A)/Ahd, dated 19.06.2013 upheld the OIO No.50/ADC/2012/MRM dated 07.08.2012 and rejected the appeal filed by the noticee.

2.5 Being aggrieved by the Order In Appeal No.126/2013 (Ahd-II)CE/AK/ Commr.(A)/Ahd. dated 19.06.2013 the noticee filed appeal with Hon'ble CESTAT. Vide Order No.A/11630-11631/2016 dated 01.12.2016 the Hon'ble CESTAT has passed order cited above in para (1) above.

3. PERSONAL HEARING

3.1 Personal hearing opportunity to the noticee was granted on 16-02-2017, 27-03-2017 & 22-05-2017 however no one appeared on behalf of noticee to attend the personal hearing. In their defence reply dated 22-05-2017 they submitted & stated that nothing remains to be done on their part since they have already paid the required amount of penalty as per Tribunal's order therefore the required order may be passed.

4. DEFENCE REPLY

4.1 On 22-05-2017 the notice submitted a defence for the remand proceedings in the matter. In their defence reply they stated as under:-

4.2 The noticee submitted that the facts in brief are that the Preventive Officers searched the factory premises and residential premises of one of the Partner Shri Manubhai D. Patel and collected various chits in loose form from his residential premises; that Shri Manubhai D. Patel was looking after the business of M/s Prakash Plastic Packaging, M/s Geeta Packaging, M/s Packing Traders and M/s Packwell Industries; that the Preventive officers recorded the statement of several persons including the statement of Shri. Manubhai Patel, Partner of M/s. Prakash Plastic Packaging; that during the investigation Shri Manubhai D. Patel was puzzled and not in a position to explain each and every item and details shown in the loose chits withdrawn by the officers and so during the investigation he deposited Rs.9,73,058/- vide GAR-7 dated 22-10-2009; that thereafter as a result of investigation by the Preventive Officers, a Show Cause Notice No.V/39/15-10/0A/2011 dated 23-03-2011 proposing recovery of duty for Rs.12,64,783/- along

with interest and penalty u/S 11AC and confiscation of goods valued Rs.90,72,991/- under Rule 25(1) of Central Excise Rules issued by the Additional Commissioner of Central Excise, Ahmedabad-II; that the notices were also issued to Shri Manubhai D. Patel as Partner of M/s. Prakash Plastic Packaging, and other parties for penal action; that a show cause notice issued by the Additional Commissioner was adjudicated by the Adjudicating Officer under OIO No.44/ADC/2011 dated 27-12-2011, in which duty demanded under SCN was confirmed and also imposed equal penalty of duty and fine in lieu of confiscation of the goods and penalty on other persons including partner of the company; that in the decision of the appeal the case was remanded back with specific direction to take a fresh decision after considering the evidences produced by us vide OIA No.105 to 106/2012 dated 26.3.12.

4.3 The noticee further submitted that in re-adjudication in the remand case they requested to verify the documents lying with the Preventive officers and to discuss the matter in presence of Preventive officer to ascertain the correct amount of duty liability; that however, the adjudicating officer obtained report from the Preventive officer and without granting an opportunity to defend the case properly he took an arbitrary and illegal decision by taking the same views taken in the first Adjudication order and passed an OIO No.50/ADC/2012 dated 07.08.12.

4.4 The noticee further submitted that they filed an appeal against the said order before the Commissioner (Appeals) with a specific request to remand the case back on the grounds of violation of principals of natural justice in as much as that no proper and effective opportunity has been given to the Appellant to verify the records and to produce the evidence about the correctness of the confirmed demand; that in principle the Hon'ble Commissioner (Appeals) during hearing agreed to remand the case back however, after a lapse of period of about 6 months he took the decision vide his OIA No.126/2013(Ahd-II)/ CE/AK/Commr(A)/Ahd dated 20.6.13; that in which instead of remanding the case back dismissed the appeal filed by the Appellant; that he has also not taken any decision on fine imposed by the Adjudicating Officer.

4.5 The noticee further submitted that they filed an appeal before the Hon'ble CESTAT Ahmedabad and their main grounds for consideration by the Tribunal were as under:-

- (i) Request for re-quantification of the correct duty liability
- (ii) Imposition of fine and penalties on the company and the Partner of the Company.

4.5.1 That in the decision of the Hon'ble Bench of the Tribunal as opposed by the Departmental representative our request for remand of the case for re-determination of correct duty liability was rejected and request for reduced penalty was considered and remanded the case back by holding that benefit of penalty @25% is allowed subject to fulfillment of condition laid down therein and penalty on partner of the company is set aside and to pass an order in remand case.

4.5.2 That however, the Hon'ble Tribunal upheld the duty liability for Rs.11,79,685/-, out of this we have already deposited an amount of Rs.9,73,058/- under challan dated 22-10-2009 and

balance amount of Rs.2,06,627/- deposited by them under challan dated 11-01-2017 along with interest amount of Rs.2,48,083/-; that similarly, as per order of the Tribunal, they were required to deposit penalty amount @25%; that accordingly they have deposited the penalty amount for Rs.2,94,921/- on 11-01-2017 under the aforesaid challans.

4.5.3 From this it is clear that amount of fine imposed on company and amount of penalty imposed on partner are set aside by the Tribunal. Therefore, the case for re-adjudication by your goodself is restricted only to the imposition of penalty at the reduced rate @25% of total penalty imposed earlier. We now state that since we have already deposited penalty amount of Rs.2,94,921/- and balance amount of duty for Rs.2,06,627/- along with interest amount of Rs.2,48,083/- (total 294921 + 206627 + 248083 = 749631/-) on 11.01.2017. Since we have complied with the directions given by the Tribunal nothing remains to be done except to take a decision in remand case by the Hon'ble Tribunal and that they therefore request to pass a speaking order and oblige.

5. DISCUSSION & FINDINGS

5.1 I have gone through the brief facts of case as well as reply submitted by the noticee vide letter dated 22-05-2017.

5.2 As transpired from the brief facts of case vide OIO No.44/ADC/2011/MRM dated 27-12-2011 following liabilities were confirmed on noticees:-

- (i) Central Excise Duty of Rs.12,64,783/- under section 11A(1) of the Central Excise Act, 1944 along with interest,
- (ii) Imposed equal penalty under Rule 25(1) of Central Excise Rules, 2002 read with Section 11AC of Central Excise Act,1944
- (iii) and imposed Redemption Fine of Rs.5,00,000/- in lieu of confiscation under the provision of Section 34 of the Central Excise Act'1944.
- (iv) A penalty of Rs.2,50,000/- was also imposed on Sh. Manubhai D. Patel, Partner under Rule 26(1) of Central Excise Rules, 2002.

5.3 However, this OIO (OIO No.44/ADC/2011/MRM dated 27-12-2011) was remanded back for fresh adjudication.

5.4 On fresh adjudication after remand back OIO No.50/ADC/2012/MRM dated 07.08.12 specifically ordered as under:-

12.Therefore, I confirm the total demand of Central Excise duty of Rs.11,79,685/- instead of Rs.12,27,946/- under Section 11A(1) of Central Excise Act, 1944. Likewise, I reduce the penalty of equivalent amount from Rs.12,64,783/- imposed under Rule 25(1) of Central Excise Rules, 2002 read with Section 11AC of Central Excise Act, 1944 to Rs.11,79,685/-.

13. Except the above the OIO No.44/ADC/2011/MRM dated 27-11-2011 requires no further medication and the present proceedings conducted in compliance of the orders of Appellate Commissioner vide OIA No.105 to 106/2012(Ahd-II)CE/MMC/Commr.(A)/Ahd. dated 26.03.2012 stands concluded.

5.5 As per last OIO dated 07-08-2012 (order portion reproduced above in para 5.4) there was no modification in OIO No.44/ADC/2011/MRM dated 27-12-2011 except amount of duty confirmed. Therefore, I find that following liabilities stood towards the noticee:-

- (i) Central Excise Duty of Rs.11,79,685/- under section 11A(1) of the Central Excise Act, 1944 along with interest,
- (ii) Equal penalty under Rule 25(1) of Central Excise Rules, 2002 read with Section 11AC of Central Excise Act,1944.
- (iii) Redemption Fine of Rs.5,00,000/- in lieu of confiscation under the provision of Section 34 of the Central Excise Act'1944.
- (iv) A penalty of Rs.2,50,000/- was also imposed on Sh.Manubhai D. Patel, Partner under Rule 26(1) of Central Excise Rules, 2002.

5.6 This last OIO No.50/ADC/2012/MRM dated 07.08.12 has been remanded back by Hon'ble Tribunal vide order dated 01.12.2016 with limited purpose wherein appeal of Sh.Manubhai D. Patel, Partner against personal penalty has been allowed and adjudicating authority has been directed to extend benefit of discharging 25% penalty.

6. Therefore, in view of Hon'ble Tribunal's Order dated 01.12.2016 & facts discussed above, I pass the following order:-

ORDER

1. In terms of first proviso to Section 11AC of Central Excise Act, 1944 the penalty imposed of Rs.11,79,685/- (Rupees Eleven Lakh Seventy Nine Thousand Six Hundred Eighty Five Only) under Section 11AC of Central Excise Act, 1944 vide OIO No.50/ADC/2012/MRM dated 07.08.12 shall be reduced to 25% of duty determined if duty determined, interest and penalty is paid within 30 days of date of the communication of this order.
2. I order to appropriate the penalty of Rs.2,94,921/- (Rupees Two Lakhs Ninety Four Thousand Nine Hundred Twenty One Only) paid vide challan No.05100041101201750457 dated 11-01-2017.
3. I order to recover differential duty of Rs.2,06,627/- (Rupees Two Lakhs Six Thousand Six Hundred Twenty Seven Only) under section 11A(1) of the Central Excise Act, 1944.
I order to appropriate the duty of Rs.2,06,627/- (Rupees Two Lakhs Six Thousand Six Hundred Twenty Seven Only) paid vide challan No.05100041101201750457 dated 11-01-2017.

4. I order to recover applicable interest on differential duty recoverable from M/s Prakash Plastic Packaging, Ahmedabad under Section 11AA/11AB of Central Excise Act, 1944. I order to appropriate interest of Rs.2,48,083/- (Rupees Two Lakhs Forty Eight Thousand Eighty Three Only) paid vide challan No.05100041101201750457 dated 11-01-2017.



(Gyan Chand Jain)
Joint Commissioner
Central Excise, Ahmedabad-II

F.No.V.39/15-10/OA/2011-Denovo

Dated: 27-06-2017

By Hand/Regd. AD

To

M/s Prakash Plastic Packaging,
174/7, GIDC Estate, B/h Calam Pump,
Naroda, Ahmedabad- 382330

Copy to:-

- 1) The Commissioner, Central Excise, Ahmedabad-II
- 2) The Dy./Asst. Commissioner, Division-I, Central Excise, Ahmedabad-II
- 3) The Superintendent, Central Excise, AR-IV, Division-I, Ahmedabad-II

✓ 4) Guard file.