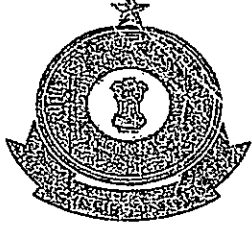
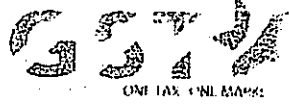


<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद -उत्तर, कस्टम हॉउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST &amp; CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1<sup>ST</sup> FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
<p>फ़ोन नंबर/ PHONE No.: 079-27544599 FAX: 079-27544463 E-mail:- <a href="mailto:commr-cexamd2@nic.in">commr-cexamd2@nic.in</a></p>		

निबन्धि / By R.P.A.D

फा.सं./ F. No. V.39/15-50/O&A/2016

आदेश की तारीख/Date of Order:- 14.07.2017

जारी करने की तारीख/Date of Issue:- 17.07.2017

द्वारा पारित/Passed by:-

आर एम गौतम / *R. M. Gautam*

अपर आयुक्त / *Additional Commissioner*

मूल आदेश संख्या / Order-In-Original No. 03/ADC/2017/RMG

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/ Show Cause Notice bearing SCN V.39/15-50/O&A/2016 dated 14.07.2017 issued to M/s Rainbow Packaging Pvt. Plot No 15-B, Changodar industrial Estate, Sarkhej Bavla Highway Changodar Sanand, Ahmedabad-382213, stands disposed of.

**Brief facts of the case:**

M/s. Rainbow Packaging Pvt. Ltd., Plot No. 15-B, Changodar Industrial Estate, Sarkhej Bavlva Highway, Changodar, Sanand, Ahmedabad (hereinafter referred to as 'the assessee') are engaged in the manufacture of LDPE, HDPE Compounds, Polythene Films falling under chapter 39 of the First Schedule to the Central Excise Tariff and cleared polythene films, plastic strips/foils and re-processed plastic granules. On inquiry it was learnt that the re-processed plastic granules were manufactured after re-processing the scrap generated during the manufacturing process of HDPE, LDPE Compounds and Polythene films in their plant. The re-processed plastic granules were cleared on payment of excise duty @ 12.36% *ad valorem* (upto Feb 2016) and @12.5% thereafter. It further transpired that though the product is unconditionally exempted under Sr.No.147 of Notification No. 12/2012-CE dated 17.03.2012, the assessee cleared the same on payment of duty which they were not required to pay.

2. In terms of Sr.No.147 of Notification No. 12/2012-CE dated 17.03.2012 as amended, plastic materials re-processed in India out of the scrap or the waste of goods falling within Chapters 39, 54, 56, 59, 64, 84, 85, 86, 87, 90, 91, 92, 93, 94, 95 and 96 are exempt from duty of excise. Thus the re-processed granules manufactured and cleared by the assessee classifiable under the Chapter 39011090 of the First Schedule to the Central Excise Tariff Act, 1985 are unconditionally exempted attracting 'NIL' rate of duty of excise as per Serial No. 147 of the table of the Notification No. 12/2012-CE dated 17.03.2012. Relevant portion of the notification is reproduced below:-

**TABLE**

Sl. No.	Chapter or heading or sub-heading or tariff item of the First Schedule	Description of excisable goods	Rate	Condition No.
(1)	(2)	(3)	(4)	(5)
147	3901 to 3914	Plastic materials reprocessed in India out of the scrap or the waste of goods falling within Chapters 39, 54, 56, 59, 64, 84, 85, 86, 87, 90, 91, 92, 93, 94, 95 and 96  <i>Explanation.</i> - For the removal of doubts, it is hereby clarified that nothing contained in this exemption shall apply to plastic materials reprocessed in an export-oriented undertaking and brought to any other place in India.	Nil	-

3. It is alleged that the assessee were not required to pay excise duty on exempted re-processed granules in terms of Section 5A (1A) of the Central Excise Act, 1944, wherein it is provided that where an exemption granted to any excisable goods under sub-section (1) is an absolute exemption, the manufacturer of such excisable goods shall not pay duty of excise on such goods. Extract of Section 5A is re-produced below:

**SECTION [5A] Power to grant exemption from duty of excise. —**

*(1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette exempt generally either absolutely or subject to such conditions (to be fulfilled before or after removal) as may be specified in the notification, excisable goods of any specified description from the whole or any part of the duty of excise leviable thereon:*

*Provided that, unless ..... brought to any place in India].*

**Explanation. —** *In this proviso ..... to sub-section (1) of section 3. [(1A) For the removal of doubts, it is hereby declared that where an exemption under sub-section (1) in respect of any excisable goods from the whole of the duty of excise leviable thereon has been granted absolutely, the manufacturer of such excisable goods shall not pay the duty of excise on such goods.]*

4. On scrutiny of the details of total clearance of re-processed granules furnished by the assessee vide their letter dated 8.1.2016, for the period 17.03.2012 to 30.10.2015 they cleared exempted re-processed granules on payment of Central Excise duty of Rs.62,20,928/-. They collected this amount from their customers by representing them as duty of excise which they are required to credit to the Central Government in terms of Section 11D(1A) of Central Excise Act, 1944 along with interest under Section 11DD.

5. Therefore a Show Cause Notice dated 27.04.2017 was issued to M/s. Rainbow Packaging Pvt. Ltd., proposing demand of **Rs.62,20,928/-** collected from the customer representing it as Central Excise duty on the exempted goods, under Section 11D (1A) of the Central Excise Act, 1944 read with Section 11D(2) of the Central Excise Act, 1944 and also proposing appropriation of said amount already paid and interest under the provisions of Section 11DD of the Central Excise Act, 1944.

6. **Defence Reply:**

In response to the above mentioned Show Cause Notice dated 27.04.2017, the assessee vide their letter dated 18.05.2017, stated *inter*

*alia* that;

- The re-processed granules are not manufactured out of waste and scrap. Waste & scrap by definition are discarded material not usable in particular industry whereas the scrap generated during the manufacture of LLDPE, HDPE, LDPE compounds and polythene films etc is recycled and is work in progress hence cannot be treated as waste or scrap.
- They placed reliance on the decision of Hon'ble Ahmedabad Tribunal passed in the case of Sanghvi Shoe Accessories Pvt. Ltd. (2012(279)ELT70) wherein it was held that Flakes & Shavings arising in the process of manufacture of plastic shoe lasts is recycle and is work in process and cannot be considered as waste and scrap. Thus the benefit of exemption under Notif.no.4/2006 cannot be extended to the reprocessed granules generated in the appellant's factory using virgin plastic materials as input. Tribunal further held that benefit of exemption is available where inputs are waste and scrap of goods i.e. which are used and discarded goods assorted and collected as waste and scrap, it does not apply to the reprocessed granules generated in the appellant's factory.
- They claim that the granules reprocessed are the same as those originally brought in the factory. Since no manufacturing is involved as no new product came into existence, the reprocessed granules cleared should be treated as input cleared as such. Therefore they are only required to reverse the amount of CENVAT credit availed on granules brought on payment of duty. As the duty discharged is at higher price and more than the proposed demand, the provisions of Section 11D shall not attract, instead are eligible for refund of the excess duty paid.
- They also requested for a personal hearing in the matter .

7. Accordingly, a personal hearing was granted to the assessee on 06.07.2017 at 1030 hrs. Shri R.S.Dinkar, Advocate and Shri S.J.Lall, Advocate, appeared on behalf of the assessee. They reiterated the submissions made in written reply dated 19.05.2017 and stated that the exemption under Notif.No.12/2012-CE dated 17.03.2017 is not applicable in their case as the goods were

not manufactured from waste & scrap hence the demand itself is not justifiable. Thus the question of interest and appropriation does not arise.

**DISCUSSION AND FINDINGS:**

8. I have very carefully gone through the Show Cause Notice as well as the written submissions filed by the assessee. I find that the primary issue to be decided is whether the re-processed plastic granules manufactured from the scrap generated during the manufacturing process of HDPE, LDPE Compounds and Polythene films, in their plant should be treated as exempted goods or otherwise.

9. In terms of Notifi.No.12/2012-CE dated 17.3.2012, plastic material re-processed out of scrap or the waste of goods falling within Chapter 39, 54, 56, 59, 64, 84, 85, 86, 87, 90, 91, 92, 93, 94, 95 and 96 are exempt from duty of excise. The assessee purchased duty paid LLDPE, HDPE, LDPE plastic granules from the market and used in the manufacture of LLDPE, HDPE, LDPE compounds, films etc. During the manufacturing process, waste and scrap is generated which is further used to manufacture plastic granules which they claim is same as the original material i.e. virgin plastic granules obtained from market. Their claim is that re-processed plastic granules are not manufactured from waste and scrap (as waste & scrap are discarded material not usable in particular industry), but generated during the manufacture of LLDPE, HDPE, LDPE compounds and polythene films etc which is further recycled hence should be treated as work in progress and not as waste or scrap. In support of their argument they placed reliance on the decision of Hon'ble Ahmedabad Tribunal in the case of Sanghvi Shoe Accessories Pvt. Ltd. (2012(279)ELT70) wherein Hon' Tribunal held that Flakes & Shavings arising in the process of manufacture of plastic shoe lasts is recycle and is work in progress and cannot be considered as waste and scrap. Hence the benefit of exemption under Notif.no.4/2006 cannot be extended to the reprocessed granules generated in the appellant's factory using virgin plastic materials as input. Tribunal further held that benefit of exemption is available where inputs are waste and scrap of goods i.e. which are used and discarded goods assorted and collected as waste and scrap, it does not apply to the reprocessed granules generated in the appellant's factory.

9.1 I have gone through the above citation. I find that the issue decided by Hon'ble Tribunal is whether the assessee is required to discharge duty liability on the plastic flakes which arise during the course of manufacture of their final products and which is not marketable one, as these products are used by them for manufacturing of shoes. However, the facts in the present case are different as the plastic waste or scrap generated while manufacturing LLDPE, HDPE, LDPE Compounds, films etc are marketable and are converted into granules. Hence the case law cannot be made applicable to the present case.

10. The assessee's claim that the reprocessed granules cleared should be treated as input cleared as such since they are same as those originally brought in the factory, is also unacceptable because the re-processed granules have undergone a manufacturing process hence cannot be considered as a virgin plastic granules obtained from the market. I place reliance on the decision passed by Hon'ble Tribunal, Mumbai in the case of Rotomatic Containers Pvt. Ltd. 2004 (175) E.L.T. 328, wherein it was held that *waste and scrap of plastic granules sent to job worker and returned as re-usable plastic granules to appellant factory for further manufacturing process are partially processed inputs and removal of such inputs to job worker for manufacturing intermediate products, requires no payment of duty. Tribunal also held that, even though the material may be termed as "waste and scrap," the same being a material derived after subjecting the virgin plastic granules to the process of moulding, the said material is undoubtedly input which is obtained by subjecting the input to a manufacturing process. Therefore, the waste material under removal does qualify to be an input, which is partially processed. It is an admitted position that finished final goods viz., containers, had been obtained by subjecting the plastic granules to the process of the moulding. The plastic waste under dispute therefore, will be the plastic material, which is "partially processed input".*

11. Another contention put forth by the assessee is that since the granules reprocessed are the same as the original granules procured from the market, the clearance should be treated as clearance of inputs as such; that they are required to reverse the amount of CENVAT Credit availed on duty paid granules procured from the market and the excess duty paid on such re-processed granules should be refunded to them. I do not find merit in the above argument mainly because manufacture of re-processed plastic granules is being done from waste/scrap/discarded/ obsolete plastic items so these cannot be considered as new/virgin plastic granules as the waste & scrap

of plastic has undergone some process. This fact is also mentioned in their written submission. Hon'ble Tribunal in the case of *Supreme Industries Ltd. - 2015 (318) E.L.T. A265 (Mad.)* held that exemption from payment of duty will be allowed in respect of goods viz. plastic materials re-processed out of scrap and waste under Notification No. 15/94-C.E. as amended by Notification No. 111/95-C.E. Since, both Notification No. 111/95-C.E & Notification No. 04/2006 dated 1.3.2006 are issued under sub-section (1) of Section 5A grants exemption to plastic material re-processed from scrap or the waste of goods falling under Chapter 39, 54, 55 or 59, I find that the above case law can be made applicable to the present case.

12. Notification 04/2006 dtd 1.3.2006 exempts plastic materials reprocessed in India out of the scrap or the waste of goods falling within Chapter 39, 54, 55, 56, 59, 64, 84, 85, 86, 87, 90, 91, 92, 93, 94, 95 & 96. This notification was rescinded by Notif.No.12/2012 dt 17.03.12 which also exempted plastic materials reprocessed in India out of the scrap or the waste of goods falling within Chapter 39, 54, 55, 56, 59, 64, 84, 85, 86, 87, 90, 91, 92, 93, 94, 95 & 96. Thus, plastic granules re-processed from the scrap generated during the manufacturing process of HDPE, LDPE Compounds and Polythene films were exempted under both the aforesaid notification during the relevant period. In view of above, there remains no ambiguity that the plastic granules if re-processed out of scrap or the waste has been granted absolute exempted by virtue of Notif.No.12/2012 and the assessee had no discretion to pay duty on such exempted products in terms of Section 11D.

13. Relevant provisions of Section 11D of Central Excise Act, 1944 is reproduced as under:

*"1) Notwithstanding anything to the contrary contained in any order or direction of the Appellate Tribunal or any Court or in any other provision of this Act or the rules made thereunder, every person who is liable to pay duty under this Act or the rules made thereunder, and has collected any amount in excess of the duty assessed or determined and paid on any excisable goods under this Act or the rules made thereunder from the buyer of such goods in any manner as representing duty of excise, shall forthwith pay the amount so collected to the credit of the Central Government.*

*(1A) Every person, who has collected any amount in excess of duty assessed or determined and paid on any excisable goods or has collected any amount as representing duty of excise on any excisable goods which are wholly exempt or*

*chargeable to nil rate of duty from any person in any manner, shall forthwith pay the amount so collected to the credit of the Central Government."*

14. Section 11D stipulates that every person who has collected any amount representing duty of excise on any excisable goods which are wholly exempt or chargeable to nil rate of duty shall pay the amount so collected to the Central Govt. Therefore the manufacturer cannot opt to pay the duty in respect of unconditionally fully exempted goods. The Board vide Circular No. 940/1/2011-CX dated 14.01.2011 also clarified that the manufacturer cannot opt to pay the duty in respect of unconditionally fully exempted goods and they cannot avail the CENVAT credit of the duty paid on inputs. Board further clarified that in case the assessee pays any amount as Excise duty on such exempted goods, the same cannot be allowed as "CENVAT Credit" to the downstream units, as the amount paid by the assessee cannot be termed as "duty of excise" under Rule 3 of the Cenvat Credit Rules, 2004. The amount so paid by the assessee on exempted goods and collected from the buyers by representing it as "duty of excise" will have to be deposited with the Central Government in terms of Section 11D of the Central Excise Act, 1944. Applying the above analogy, the assessee having cleared the exempted re-processed granules on payment of duty, the amount so paid and collected from their buyers by representing it as "duty of excise" on the exempted goods is required to be deposited with Central Government in terms of Section 11D of the Central Excise Act, 1944.

15. In light of above findings, I am of the view that the demand of Rs.62,20,928/- under Section 11D is required to be confirmed . Further, having informed by the jurisdictional Deputy Commissioner vide letter dated 15.5.2017 that there was no delay in payment of amount representing duty, I find that the interest liability does not accrue on the assessee.

16. In view of above findings, I pass the following order.

**ORDER**

(i) I confirm the demand of **Rs.62,20,928/-** (*Rupees Sixty Two Lakh Twenty Thousand Nine Hundred Twenty Eight only*) covering the period from 2011 to 2015 (17<sup>th</sup> March, 2012 to Oct, 2015) under Section 11D(1A) of the Central Excise Act, 1944.



(ii) I order appropriation of amount **Rs.62,20,928/-** already deposited representing as duty of excise on the said exempted goods, against the demand confirmed under clause (i).

(iii) I drop the recovery of interest proposed in the SCN under Section 11DD of Central Excise Act, 1944;

17. The Show Cause Notice issued vide F. No. V.39/15-50/OA/2016 dated 27.04.2017 to M/s.Rainbow Packaging Pvt. Ltd, Plot No. 15-B, Changodar Industrial Estate, Sarkhej Bavla Highway, Changodar- Sanand, Ahmedabad-382213 stands disposed of in above manner.

  
[ R.M.GAUTAM ]

Additional Commissioner  
Central GST & Central Excise  
Ahmedabad-North

F.No: V.39/15-50/OA/2016

Date: 14 .07.2017

**By Regd. Post A. D./Hand Delivery**

To,  
M/s. Rainbow Packaging Pvt. Ltd.  
Plot No. 15-B, Changodar Industrial Estate,  
Sarkhej Bavla Highway, Changodar- Sanand,  
Ahmedabad-382213.

**Copy to:**

1. The Commissioner, Central GST & Central Excise, Ahmedabad-North.
2. The Assistant Commissioner, Central GST & Central Excise, Division-IV, Ahmedabad-North.
3. The Asstt Commissioner (RRA), Central GST & Central Excise, Ahmedabad-North.
4. The Superintendent, Central Excise, AR-II, Division-IV, Central GST & Central Excise, Ahmedabad-North.
5. Guard File.