
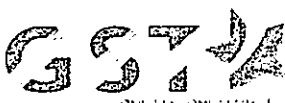


<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
<p>फ़ोन नंबर./ PHONE No.: 079-27544557</p>	<p>फैक्स/ FAX : 079-27544463</p>	<p>E-mail:- oaahmedabad2@gmail.com</p>

निबन्धित पावती डाक द्वारा/By R.P.A.D

DIN-20210364WT0000777CEA

फा.सं./F.No. V.39/15-57/OA/2019-Denovo

आदेश की तारीख/Date of Order :- 22.03.2021

जारी करने की तारीख/Date of Issue :- 23.03.2021

द्वारा पारित/Passed by:-

मारुत त्रिपाठी / Marut Tripathi

संयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 63/JC/ MT /2020-21

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 वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद 380015-को प्रारूप संख्या इ.ए.-1 (E.A.-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 GST & 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 के शुल्क गये मांगे पहले से करने अपील में (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/ Proceeding initiated against Show Cause Notice No. V.39/15-79/OA/07 dated 30.11.2007 issued to M/s. J & J Plast, Nr. Jay Farm, Opp. Gokul Hotel, Nr. Gota Chowkdi, Sarkhej Gandhinagar Highway, Ahmedabad.

Brief facts of the Case

1. M/s. J & J Plast, Nr. Jay Farm, Opp. Gokul Hotel, Nr. Gota Chowkdi, Sarkhej - Gandhinagar Highway, Ahmedabad (here in after referred to as "the said unit") was engaged in the manufacture of Jerry Cans and Pet Bottles falling under Ch. No. 39 of Central Excise Tariff Act, 1985. Intelligence was gathered that the said unit was indulging in evasion of Central Excise duty by not getting itself registered with the Central Excise Department after crossing the exemption limit of Rs. 1 crore. That the goods manufactured were supplied to M/s. Ankur Oil Industries, Rakanpur and M/s. Ankur Protein Industries Ltd., Changodar only, without preparation of any invoices and without payment of any Central Excise Duty. The said goods manufactured by M/s. J & J Plast were meant for packing of edible oils by M/s. Ankur Oil Industries, Rakanpur and M/s. Ankur Protein Industries Ltd., Changodar.

2. Based on the said intelligence, the Officers of Central Excise (Prev.), Ahmedabad-II, visited the factory premises of the said unit situated at Nr. Jay Farm, Opp. Gokul Hotel, Nr. Gota Chowkdi, Sarkhej-Gandhinagar Highway, Ahmedabad on 09.10.2006 and during the course of search of the said premises, it was found that in the said premises, one unit was operating in the name and style as M/s. Raj Plastics, since August 2006. It was also found that in the same premises, one other firm in the name and style as M/s. Balaji Plast was operating from April 2006 to August 2006. Further it was found that in the same premise, M/s. J & J Plast was operating prior to April 2006. Further all the said units were engaged in the manufacture of jerry cans and pet bottles and all had cleared their goods without preparation of any invoices and without payment of any Central Excise Duty to M/s. Ankur Oil Industries, Rakanpur and M/s. Ankur Protein Industries Ltd., Changodar, only. In the instant case, the investigation limited to transactions of M/s. J & J Plast only will be discussed.

3. During investigation, it was revealed that the raw materials viz. HDPE Granules and Pet Preforms were supplied by M/s. Ankur Oil Industries, Rakanpur, Taluka: Kaloi, Dist. Gandhinagar and M/s. Ankur Protein Industries Ltd., Panchratna Industrial Estate, SarkhejBavla Highway, Changodar, Taluka: Sanand, Ahmedabad to M/s. J & J Plast who had used them for manufacture of Jerry Cans and Pet Bottles. The said goods manufactured by M/s. J & J Plast were supplied to M/s. Ankur Oil Industries and M/s. Ankur Protein Ind. Ltd.

4. During investigation, searches were also carried out at the office premises of M/s. Ankur Oil Industries, 417/1, Chokha Bazar, Kalupur, Ahmedabad and factory premises of M/s. Ankur Proteins Ind. Ltd., Panchratna Industrial Estate, Sarkhej-Bavla Highway, Changodar, Taluka: Sanand, Ahmedabad on 12.10.2006. It was found that M/s. Ankur Oil Industries was engaged in the manufacture of Double Filtered Ground Nut Oil (exempted from Central Excise duty) and packed the same in 15 kgs. Tins, 2 Ltr. and 5 Ltr. Jerry cans, 500 ml and 1 Ltr. Pet Bottles etc. at their factory situated at Opp. Manpasand Weigh Bridge, Rakanpur, Kaloi Dist. Gandhinagar. Further it was found that they had purchased HDPE granules, pet preforms, plastic films, master batch etc. and sent the same for manufacture of jerry cans and pet bottles to said M/s. J & J Plast without preparing any challans. It was also found that M/s. Ankur Protein Ind. Ltd. was engaged in the manufacture of Double Filtered Cotton Seed Oil (exempted from Central Excise duty w.e.f. 01.03.2005) and packed the same in 15 kgs. Tin,

2 Ltr. and 5 Ltr. Jerry cans etc. at their factory situated at Panchratna Industrial Estate, Sarkhej-Bavla Highway, Changodar, Taluka: Sanand, Ahmedabad. It was also found that they had purchased HDPE granules, plastic films, master batch etc. and sent the same for manufacture of jerry cans to said M/s. J & J Plast without preparing any challans after 01.03.2005. Prior to that period he was following job work procedure and sent the raw materials to M/s. J & J Plast under challans.

5. It appeared that the Double Filtered Ground Nut Oil manufactured by M/s. Ankur Oil Industries, Rakanpur was exempted from levy of Central Excise Duty as per Entry No. 244 of Notification No. 6/2002 dated 01.03.2002 as amended and Refined Cotton Seed Oil manufactured by M/s. Ankur Proteins Ind. Ltd., Changodar was exempted from levy of Central Excise duty w.e.f. 01.03.2005 vide Notification No. 4/2005-CE dated 01.03.2005 as amended.

6. Since the Plastic Jerry Cans and Pet Bottles manufactured by M/s. J & J Plast and cleared to above said two units were finally used as packing material for packing of Edible Oil - Double Filtered Groundnut Oil and Double Filtered Cotton Seed Oil- by M/s. Ankur Oil Industries, Rakanpur and M/s. Ankur Proteins Ind. Ltd., Changodar, respectively and which were exempted from payment of Central Excise duty as discussed above, the Central Excise duty was required to be demanded on the said Plastic Jerry Cans and Pet Bottles manufactured by M/s. J & J Plast. It also appeared that M/s. J & J Plast should not be considered as a job worker as claimed by them and should be considered as a manufacturer of Excisable goods namely Plastic Jerry cans and Pet Bottles falling under Ch 39 of Central Excise Tariff Act, 1985.

7. It appeared that there were three Notifications (i) Notification 214/86-CE dated 25/03/86 (ii) Notification 83/94-CE dated 11/04/94 and (iii) Notification 84/94-CE dated 11/04/94, in respect of job work activity. It appeared that M/s. J & J Plast was not merely a job worker as they did not follow the said notifications but a manufacturer only and accordingly the responsibility of payment of duty was completely on M/s. J & J Plast, Gota, Ahmedabad. Now, it was to be ascertained as to at what stage M/s. J & J Plast was required to pay duty. It appeared that M/s. J & J Plast had not taken any Cenvat Credit in respect of raw material received by them therefore they were entitled to avail the benefit of SSI exemption Notification No. 8/2002 dated 1.3.2002 as amended. Therefore after crossing the exemption limit of Rs. 1 Crore if any, as per the said notification, they were required to obtain Central Excise Registration and pay the C.Ex. duty at the appropriate rate.

8. It appeared from scrutiny of the records submitted by M/s. J & J Plast, that they had cleared their goods under delivery challans and had issued job charge bills to M/s. Ankur Oil Industries, Rakanpur and M/s. Ankur Protein Industries Ltd., Changodar. The job charge bills reflected the amount of job charge but did not reflect value of goods manufactured by M/s. J & J Plast as the raw material was supplied by M/s. Ankur Oil Industries and M/s. Ankur Protein Industries Ltd. It appeared that to calculate the value in such cases, reliance may be placed on CBEC Circular No. 619/10/2002-CX dated 19.02.2002 from F. No. 6/47/2001-CX.1 in respect of the decision of the Hon'ble Supreme Court, where in it had been clarified that " in respect of the goods manufactured on job work basis, assessable value would be the job charges (including the profit of the job worker if not already included in the job charges) plus the cost of the materials used in the manufacture of the item (including the cost of materials supplied free of cost to the job worker)." Thus the value of clearance of M/s. J & J Plast was

arrived at by adding the cost of the raw material, supplied by M/s Ankur Oil Industries, Rakanpur and M/s. Ankur Protein Ind. Ltd. Changodar and the job charges paid by the above said two firms to M/s. J & J Plast.

9. The total value of clearance for each year of M/s. J & J Plast was calculated by adding cost of raw material sent by M/s. Ankur Oil Industries, Rakanpur and M/s. Ankur Protein Industries Ltd., Changodar to M/s. J & J Plast and job charges received by M/s. J & J Plast from these two firms and duty calculation was as under

	PERIOD	2002-03	2003-04	2004-05	2005-06
1	TOTAL(A+B) (CRM + JOB CHARGES)	10432009	14076746	20553338	21783080
2	LESS EXEMPTION OF Rs. 1CR ORE AVAILABLE AS PER NOTIFICATION NO. 08/2003	10000000	10000000	10000000	10000000
3	NET ASSESSABLE VALUE ON WHICH DUTY IS PAYABLE	432009	4076746	10553338	11783080
4	BED @ 16%	69121	652279	1688534	1885293
5	EDUCATION CESS @ 2% OF BED	1382	13046	33770	37706
6	TOTAL DUTY	70503	665325	1722304	1922999
	TOTAL BED PAYABLE	4295227			
	TOTAL Ed. CESS PAYABLE	85904			
	TOTAL DUTY PAYABLE	4381131			

10. All these acts of contravention on their part appeared to have been committed by them by way of suppression of facts with intent to evade payment of C. Ex. Duty, by not registering themselves with the Central Excise department after crossing the exemption limit of Rs 1 Crore in above said financial year, by not maintaining proper records on daily basis and by not filing/submitting the periodical returns. Also, they failed to issue any C. Ex. Invoices in respect of said finished goods cleared from their factory and pay the duty on the goods removed in the prescribed manner and therefore the said duty of Rs. 43,81,131/- (Rs. 42,95,227/- + Edu. Cess of Rs. 85,904/-) for the period from 2002-03 to 2005-06, not paid was required to be demanded and recovered from them under proviso to section 11 A (1) by invoking the extended period of five years along with interest at the prescribed rate under the provisions of Section 11 AB of the C. Ex. Act, 1944. All these acts of contravention appeared to constitute offences of the nature and type as described in Rule 25 of C. Ex. Rules, 2002 read with Section 11 AC of C. Ex. Act, 1944. That Rs. 4,00,000/- (Rupees four lakhs only) vide TR-6 Challan no. 1/06-07 dated 21.11.2006 being the central Excise duty payable as per panchanama dated 09.10.2006, under protest, was required to be adjusted against the said demand.

11. Therefore, M/s. J & J Plast, Nr, Jay Farm, Opp. Gokul Hotel, Nr. Gota Chowkdi, Sarkhej-Gandhinagar Highway, Ahmedabad was called upon to show cause to the Additional Commissioner of Central Excise, Ahmedabad-II having his office at "Customs House", 1st Floor, Near All India radio, Navrangpura, Ahmedabad, as to why:

(i) an amount of Rs. 43,81,131/- (Rs. 42,95,227/- + Edu. Cess of Rs. 85,904/-) in respect of the finished goods i.e. Jerry cans and pet bottles of plastic cleared illicitly by them from

their factory as discussed above during the year 2002-03 to 2005-06 should not be recovered from them under proviso to Section 11A (1) of Central Excise Act, 1944 invoking extended period of 5 years and why the duty amount of Rs. 4,00,000/- paid under protest vide TR 6 Challan no. 01/2006-07 dt. 21/11/06 by them should not be confirmed and adjusted against this demand.

(ii) why Penalty should not be imposed upon them under Section 11 AC of the Central Excise Act, 1944 read with Rule 25 of the C. Ex. Rules, 2002.

(iii) why Interest at the prescribed rate should not be levied and recovered from them under proviso to Section 11 AB of the said Act.

(iv) why the goods which have been already cleared without payment of duty should not be confiscated under the provisions of Rule 25 of Central Excise Rules, 2002.

12. The aforesaid Show Cause Notice V.39/15-79/OA/07 dated 30.11.2007 was adjudicated vide Order in original No. 93/JC/2008/JN dated 29.08.2008, by the Joint Commissioner, Central Excise, Ahmedabad-II, wherein, adjudicating authority has confirmed the demand, appropriated Rs.4,00,000/- /- paid under protest vide TR 6 Challan No.01/2006-07 dated 21.11.2006 by J.&J Plast., Ordered to recover interest, imposed a penalty of Rs.43,81,131/- under Section 11AC of the CEA, 1944 read with Rule 25 of the CER, 2002, imposed a Redemption fine of Rs.5,00,000/-, in lieu of confiscation, imposed a penalty of Rs.2,00,000/- on Shri Jayprakash J.Vachhani, Partner of M/s.J & J Plast, imposed a penalty of Rs.1,00,000/- on Shri Pradeepbhai Chunilal Khetani, Partner of M/s.Ankur Oil Industries and imposed a penalty of Rs.1,00,000/- on Shri Dineshbhai B.Khetani, Director of M/s.Ankur Protein Industries Ltd. Being aggrieved with the Order in original the said unit preferred to file an appeal before Commissioner(A-1), Central Excise, Ahmedabad. The said appeal was dismissed and Order in original was upheld by Order-in-Appeal No. 58 to 61/2009(Ahd-II)CE/ID/Commr.(A)/Ahd. Dated 20.02.2009 by the Commissioner (Appeals-1) Central Excise, Ahmedabad.

13. The said unit had challenged Order-in-Appeal No. 58 to 61/2009(Ahd-II)CE/ID/Commr.(A)/Ahd. Dated 20.02.2009 and filed an appeal before the Hon'ble CESTAT, Ahmedabad. The Hon'ble CESTAT vide their final Order No. A/11707-11714/2019 dated 06.09.2019 decided the Appeal and remanded the matter to adjudicating authority for re-quantification of the demand. Hence this order in original.

Personal Hearing

14. Personal Hearing in the matter was fixed on 27.01.2021 before the undersigned. In response to the personal hearing scheduled, the said unit vide their letter dated 27.01.2021 reiterated the facts as discussed in Hon'ble CESTAT order. The noticee did not appear on the said date and requested to conclude the proceedings in view of CESTAT Order. Therefore, I am taking up the matter for adjudication.

Defence Reply:

15. The said unit vide their letter dated 27.01.2021 submitted that the demand was raised for the period 2002-2003 to 2005-2006 and SCN was issued on 30.11.2007. They submitted that time limit to issue SCN for normal period ended in April 2007 that is beyond normal period of limitation. They added that CESTAT, Ahmedabad vide their final order No. A/11707-11714/2019 dated 06.09.2019 set aside the demand for extended period and remanded to re-quantify the

demand for normal period. It has been further submitted that, since, the entire demand in the present case was for extended period, no demand sustains and they are not liable for any duty demand, interest and penalty. They requested to drop the proceedings initiated against them.

Discussion and Findings:

16. I have carefully gone through the records of the case, documents available on record and the submission of the assessee. I have gone through the Hon'ble CESTAT final order No. A/11707-11714/2019 dated 06.09.2019 and para 8 of the said CESTAT order is reproduced as below: .

"8. As per our above discussion, the appeals related to the demand of extended period are allowed and in respect of demand for the normal period it is remanded to the adjudicating authority for re-quantification of the demand. It is made clear that since we have held that there was no malafide on the part of the appellants in respect of any duty liability arise after re-quantification. The Appeals are disposed of in above terms."

17. In view of the above, I find that the Hon'ble CESTAT set aside the demand for extended period and directed to re-quantify the demand for normal period. Further, it has been directed that if, any demand arise for normal period, the same needs to be re-quantified by giving benefit of Cenvat Credit for the purpose of valuation of job work goods. As per the direction given in the said CESTAT order, it is to be decided

(i) whether, any demand lies within normal period.

(ii) If, any demand exists for normal period, re-quantification of the same by giving benefit of Cenvat Credit for the purpose of valuation of job work goods

18. Firstly I take up the matter whether, any demand lies with in normal period or otherwise. I find that the demand was raised for the period 2002-2003 to 2005-2006 and SCN was issued on 30.11.2007. During the relevant period, the normal period for issuance of SCN has been mentioned under section 11A(1) of CEA,1944 which is reproduced as under

SECTION [Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. 11A. —

(1) Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, for any reason, other than the reason of fraud or collusion or any wilful mis-statement or suppression of facts or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty,—

*(a) the Central Excise Officer shall, within *[two years] from the relevant date, serve notice on the person chargeable with the duty which has not been so levied or paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice;*

(b) the person chargeable with duty may, before service of notice under clause (a), pay on the basis of,—

(i) his own ascertainment of such duty; or

(ii) the duty ascertained by the Central Excise Officer,

the amount of duty along with interest payable thereon under section 11AA.

* Substituted (w.e.f. 14-05-2016 for the word "one year" by section 143 of the Finance Act,2016 (28 of 2016)

The amendment came w.e.f. 14.05.2016 where in "one year" was substituted by "two year" but the instant case covers the period prior to 14.05.2016, therefore, normal period for raising demand is one year from the relevant date in the instant case. Relevant date is described in explanation provided under section 16 of CEA,1944, which are as under :

(b) "relevant date" means,—

(i) *in the case of excisable goods on which duty of excise has not been levied or paid or has been short-levied or short-paid, and no periodical return as required by the provisions of this Act has been filed, the last date on which such return is required to be filed under this Act and the rules made thereunder;*

ii) *in the case of excisable goods on which duty of excise has not been levied or paid or has been short-levied or short-paid and the return has been filed, the date on which such return has been filed;*

(iii) *in any other case, the date on which duty of excise is required to be paid under this Act or the rules made thereunder;*

(iv) *in a case where duty of excise is provisionally assessed under this Act or the rules made thereunder, the date of adjustment of duty after the final assessment thereof;*

(v) *in the case of excisable goods on which duty of excise has been erroneously refunded, the date of such refund;*

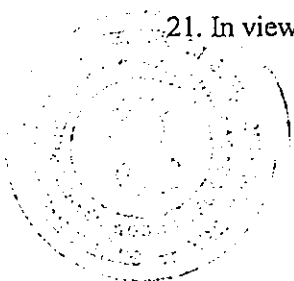
[(vi) in the case where only interest is to be recovered, the date of payment of duty to which such interest relates.]

19. In view of the above, the relevant date is the date on which duty of excise was required to be paid under this Act. The last period for which demand raised was March-2006 and duty for this period was required to pay on or before 31.03.2006. As discussed, the relevant date is 31.03.2006 and demand for normal period shall be raised within one year from this date. I find that in the present case demand for normal period shall be raised before 01.04.2007, however, the show cause notice was issued on 30.11.2007 i.e. after expiry of one year from the relevant date. I find that no demand lies within normal period, therefore, no re-quantification of demand is required in view of CESTAT final order No. A/11707-11714/2019 dated 06.09.2019. Further, the Assistant Commissioner (RRA) vide their letter dated 31.12.2019 that the CESTAT final order No. A/11707-11714/2019 dated 06.09.2019 was accepted by the department on monetary grounds.

20. Therefore, by following judicial discipline, I am bound to follow the order of Hon'ble CESTAT. Accordingly I find that there is no point of demanding excise duty as Hon'ble CESTAT has set aside the duty demand beyond normal period and as per my findings no demand lies within normal period.

21. In view of the my findings above, I pass the following orders:

ORDER



22. I drop the proceedings initiated in the Show cause Notice F. No. V.39/15-79/OA/07 dated 30.11.2007 issued against M/s. J & J Plast, Ahmedabad.

23. The Show Cause Notice F. No. V.39/15-79/OA/07 dated 30.11.2007 is disposed-off in the above manner.



(M. P. V. Sathi)
Joint Commissioner,
CGST & C. Excise,
Ahmedabad North

F.No. V39/15-57/OA/2019-Denovo

Date: 23.03.2021

To,

M/s. J & J Plast, Nr, Jay Farm, Opp. Gokul Hotel,
Nr. Gota Chowkdi,
Sarkhej-Gandhinagar Highway,
Ahmedabad
Copy To:

1. The Commissioner, Central GST & Central Excise, Ahmedabad North.
2. The Dy. /Assistant Commissioner, Division-VII, CGST & CX, Ahmedabad North.
3. The Superintendent, Range-I, Division-VII, CGST & CX, Ahmedabad North
4. Guard File.

