

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

**EXCISE Appeal No. 11208 of 2016**

(Arising out of Order No. VLD-EXCUS-000-COM-0033-15-16 dated 15.03.2016 passed by Commissioner of Central Excise, Customs and Service Tax-VALSAD)

**MODERN PACKAGING COMPANY**

A-1/36, 37, 38, 39 AND 57,GIDC,  
KILLA PARDI,VALSAD,GUJARAT

**...Appellant**

*VERSUS*

**C.C.E. & S.T.-VALSAD**

THIRD FLOOR, ADARASHDHAM BUILDING,  
VAPI-DAMAN ROAD, VAPI, GUJARAT-396191

**...Respondent**

**APPEARANCE:**

Shri P.K. Shetty, Accounts Advocate appeared for the Appellant  
Shri A.K. Samota, Superintendent (Authorized Representative) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR  
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

**Final Order No. 12188/2023**

DATE OF HEARING: 22.09.2023

DATE OF DECISION: 04.10.2023

**RAMESH NAIR**

The brief facts of the case are that the appellant are engaged in the manufacture of packaging material falling under Chapter heading 39 and 48 of Central Excise Tariff Act, 1985. They have procured printing cylinder falling under Chapter heading No. 84425010, required for the production of packing material from Accuprint Systems, Mumbai. The supplier-manufacturer have cleared the said cylinder on payment of duty. The department's contention is that the printing cylinders are falling under Chapter heading No. 844250 and exempted under Notification No. 49/2006-CE dated 31.12.2006. Accordingly, they are chargeable to 2% duty without cenvat or 5% with cenvatw.e.f. 01.03.2011 as per Notification No. 2/2011-CE dated 01.03.2011. Hence the duty paid by the supplier which was not supposed to be paid under

the aforesaid Notification, the appellant is not entitled for cenvat credit of such duty.

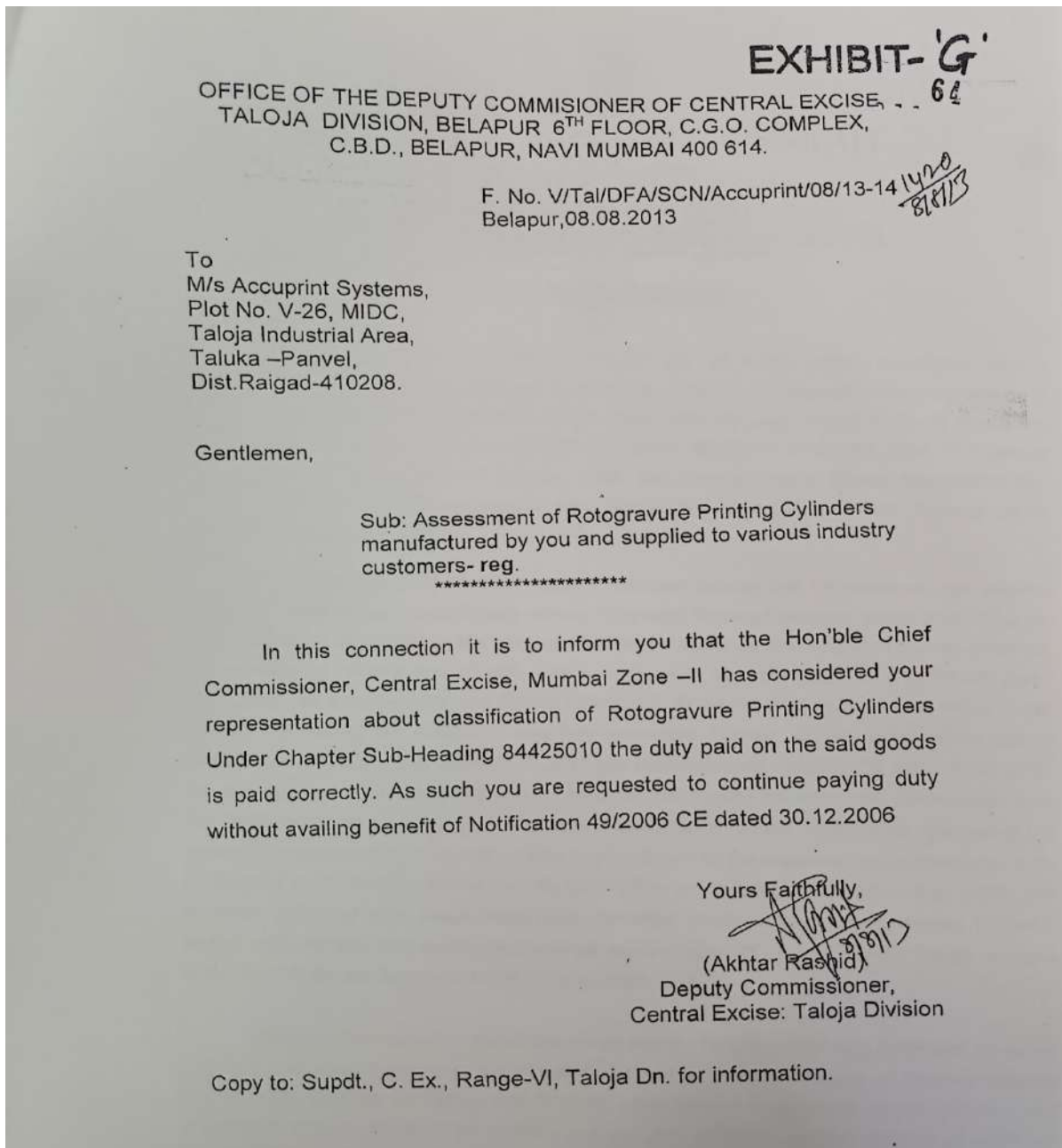
2. Shri P.K. Shetty, learned counsel appearing on behalf of the appellant submits that the entire basis of the denial of cenvat credit that the supplier unit was supposed to avail the Exemption Notification No. 49/2006-CE is incorrect on the face of clarification issued by the suppliers' jurisdictional Chief Commissioner whereby it was clarified that the goods manufactured by the supplier manufacturer have paid the duty correctly and also directed to continue paying duty without availing benefit of Notification No. 49/2006-CE, therefore, the suppliers have paid the duty correctly and legally. Accordingly, the credit of the appellant, who being a recipient of the goods, cannot be questioned. He further submits that in the appellant's own case for the subsequent period the cenvat credit was allowed by the learned Commissioner (Appeals) in two orders-in appeal on the same issue and the same were accepted by the department. He placed reliance on the following judgments:

- OIA No. CCESA-SRT(APPEALS)/PS-579/2018-19 dated 27.11.2018 and CCESA-SRT(APPEALS)/PS-245/2019-20 dated 29.07/2019
- CCE vs Nahar Granites Ltd. 2014 (305) ELT 9 (Guj.)
- Agro Pack 2012 (278) ELT 359 (T- Ahd)
- BalajiMultiflex P Ltd. 2019 (370) ELT 773 (T-Ahd)
- Sarvesh Refractories P Ltd. 2002 (139) ELT 431 (T) upheld be SC in 2007 (218) ELT 488 (SC)
- CCE vs MDS Switchgear Ltd. 2008 (229) ELT 485 (SC)

3. Shri A.K. Samota, learned Superintendent (AR) appearing on behalf of the revenue reiterates the findings of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the records. We find that the sole ground for denial of cenvat credit to the appellant is that the supplier of printing cylinder was not supposed to pay the duty as the same were exempted under Notification No. 49/2006-CE dated 31.12.2006, therefore, the duty was

wrongly paid by the supplier and consequently the appellant is not eligible for cenvat credit of such duty wrongly paid. Without going into much detail of the case, we find that the department itself is of the view that the supplier was supposed to pay the duty and on a query made by the supplier to their jurisdictional officers they have clarified vide letter F. No. V/Tal/DFA/SCN/Accuprint/08-13-14 dated 08.08.2003, the said letter wherein the matter was considered by the Chief Commissioner Central Excise-Mumbai Zone-II communicated by the Deputy Commissioner Central Excise-Taloja Division to the supplier is scanned below:



From the above clarification given to the supplier of the Rotogravure Printing Cylinder, there is no ambiguity that the supplier have correctly paid the duty without availing the Exemption Notification 49/2006-CE dated 30.12.2006. The entire basis for denial of the credit is on the view which was completely contrary to the clarification given in the above letter dated 08.08.2013. We find that it is the supplier's Jurisdictional Officers who have to assess whether duty was correctly paid or otherwise and the same has been clarified by the supplier's jurisdictional officer. The jurisdictional officer of the appellant has no jurisdiction to question the assessment or correctness of the payment of duty. Accordingly, we are of the view that the appellant have correctly availed the cenvat credit on the Rotogravure Printing Cylinder supplied by M/s Accuprints System. Hence the demand is not sustainable. Accordingly, the impugned order is set aside. Appeal is allowed.

(Pronounced in the open court on **04.10.2023**)

**(RAMESH NAIR)**  
**MEMBER (JUDICIAL)**

**(RAJU)**  
**MEMBER (TECHNICAL)**

Neha