

रजिस्टर्ड डाक ए.डी. द्वारा

: आयुक्त (अपील -I) का कार्यालय, केन्द्रीय उत्पाद शुल्क, :
: सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास, :
: आंबावाडी, अहमदाबाद- 380015. :

क फाइल संख्या : File No : V2(72)60 /Ahd-III/2015-16/Appeal-I

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-019-16-17

दिनांक Date : 25.05.2016 जारी करने की तारीख Date of Issue

श्री उमाशंकर आयुक्त (अपील-I) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals-I) Ahmedabad

ग _____ आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-I आयुक्तालय द्वारा जारी मूल
आदेश सं _____ दिनांक : _____ से सृजित

Arising out of Order-in-Original: AHM-CEX-003-DC-10-2015 Date: 28.08.2015
Issued by: Deputy Commissioner, Central Excise, Din: Kalol, A'bad-III.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Shah Alloys Ltd.,

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे
बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as
the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में
पूवोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार,
वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को
की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision
Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building,
Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the
following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने
में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में
चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur 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.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क
कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित
है।

(b) 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.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया
माल हो।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of
duty.



ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) 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 and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी 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.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35- षोबी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

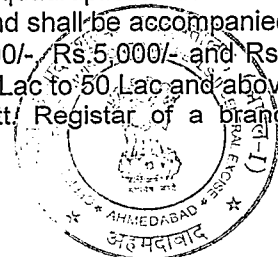
(a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

(ख) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

(b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

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.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / 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 Asstt. Registrar of a branch of any



nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number 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 filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१४(२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "माँग किए गए शुल्क" में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होंगे।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, 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 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) 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.

(6)(i) इस संदर्भ में, इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

(6)(i) In view of above, 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."

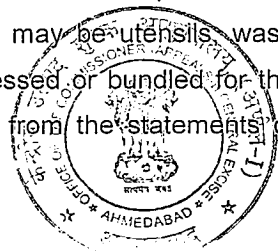


ORDER-IN-APPEAL

This appeal has been filed by M/s Shah Alloys Ltd., Block No.2221/2222, Shah Industrial Estate, Sola Kalol Highway, Santej, Taluka Kalol, Dist. Gandhinagar (hereinafter referred to as "the appellant") and Shri Sujal Shah, the President of the appellant, jointly against Order-in-Original No.AHM-CEX-003-DC-10-2015 dated 28.08.2015 (hereinafter referred to as "the impugned order") passed by the Deputy Commissioner of Central Excise, Kalol Division, Ahmedabad-III (hereinafter referred to as "the adjudicating authority").

2. The appellant is engaged in the manufacture of M.S & S.S.Billets/ingots falling under chapter 72 of the Central Excise Tariff Act, 1985. The appellant's premises, on the basis intelligence gathered, were visited by the officers of Directorate General of Central Excise Intelligence, Vapi Unit (DGCEI) on 18.12.2013 and had conducted search operation and further investigation by withdrawing various documents/records. The outcome of investigation revealed that (a) the appellant has indulged in large scale evasion of the central excise duty by way of fraudulent availment of Cenvat credit on the invoices issued by the registered dealers without receiving the corresponding goods in the unit and in lieu of this, they procured non duty paid local S.S. Scrap purchased through such dealers/scrap traders, (b) they procured cenvatable invoice bearing NO.58 dated 11.11.2013 from M/s Narayana Metal Corporation, wherein the description of goods mentioned as 'S.S.C.R. Def. Sheet' but the goods physically found at the premises of the appellant were S.S.Cold & Used Utencils Scrap. The said goods weighing 11000 kgs found physically were seized under the panchnama dated 18.12.2013 as the said goods are in offending nature and liable for confiscation. A show cause notice dated 12.06.2014 with regard to confiscation of above referred seized goods and demand of cenvat credit amounting to Rs.1,55,717/- involved in the said seized goods and proposing penalty was issued to the appellant as well as to the Registered dealer who had supplied the goods. The adjudicating authority, vide the impugned order, has decided the said show cause notice by (i) confirming the demand of Cenvat credit amounting to Rs.1,55,717/- with interest, (ii) imposed penalty of Rs.1,55,717/- under Rule 25 of Cenvat Excise Rules, 2002 (CER) read with Section 11 AC of the Act on the appellant and Rs.1,55,717/- under Rule 26(2) of CER on Shri Sujal Shah, President of the appellant as well as M/s Nayana Metal Corporation (Authorized dealer) and (iii) ordered for confiscation of seized old and used steel utensils scrap. The adjudicating authority has given option to the appellant to redeem the said confiscated goods on payment of Rs.1,55,717/-.

3. Being aggrieved, the appellant has filed the present appeal, wherein, they inter-ali, submitted that at the time of search by DGCEI, there was a stock of about 312.314 MTs of SS Scrap in the factory, out of which the DGCEI picked and chose selective bundles of scrap weighing 11 MTs and seized on the basis that they were old and used steel utensils scrap; that proper verification of the nature of the goods was not undertaken by the authority; that the appellant buys various kinds of scrap viz. CRC Scrap, Bundle Scrap, Alang Scrap, Imported scrap etc and it may be utensils, wash basin, furniture of any other kind of scrap but when it is processed or bundled for the appellant it is a melting scrap only. The case was made out from the statements of



various persons and the appellant had requested cross examination of the said person which was denied by the adjudicating authority. The serious allegations of defrauding the revenue cannot be made against the appellant only because a registered dealer supplied scrap of a different variety, which was not corresponding to the description of scrap shown in their invoice; that the appellant had placed order for supplying SS CR Sheet Scraps and had never instructed the registered dealer to supply and deliver a different kind of scrap as against their purchase order; that it must be a slip on dealer's part and supply of bundled (compressed) steel utensils scrap was an inadvertent error. Therefore, the action for confiscation, recovery of cenvat credit and imposition of penalty on appellant and Shri Sujan Shah, President of the appellant are not attracted in the instant in the case and required to be set aside.

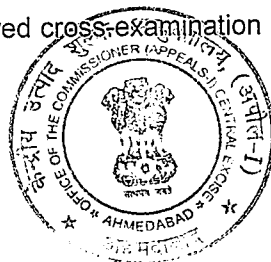
3. A personal hearing in the matter was granted on 18.03.2016 and Smt Shilpa P Dave, Advocate appeared for the same. The Ld. Advocate requested that the appellant have not taken provisional release of the goods, therefore, some officers should be deputed to verify the same and submit a factual report in presence of chartered engineer.

4. I have carefully gone through the facts of the case on record and submissions made by the appellant in the appeal memorandum as well as during the course of personal hearing. The matter is relating to confiscation of 11 MT old and used steel utensils scrap in bundle, valued at Rs.5,50,500/-, penalty imposed thereof and recovery of Cenvat credit taken on the said goods .

4.1 At the outset, I find that the entire case is based on (i) nature of seized goods; description found to be different than appeared in invoice and (ii) statements of four persons of appellants and supplier of seized goods.

4.2 I find on record that the DGCEI officer had seized the disputed goods during the course of search conducted at the factory premises of the appellant on the grounds that the said goods received under the cover of Cenvatable invoice is not as per the description mentioned as 'Defective S.S.C.R Sheets' but it is 'old and used steel utensil scrap'. The department contended that the appellant has intentionally received the replaced goods i.e Old and used steel utensils scrap from the registered dealer to take fraudulent cenvat credit thereon. On other hand, the appellant argued that they buys various kinds of scrap and such scrap may be utensils, wash basin and furniture etc but for the appellant it is a melting scrap only.

4.3 I find merit consideration in the above argument of the appellant. I find that the entire case is based on the statements of four persons of the appellant and statement of the authorized person of the registered dealer who supplied the materials. The appellant has requested cross examination of said persons before the adjudicating authority to bring the nature of seized materials lying in the factory. However, the same was denied. Since the nature of goods in question was not verified by the DGCEI authorities while making seizure and also the adjudicating authority has not allowed cross-examination of

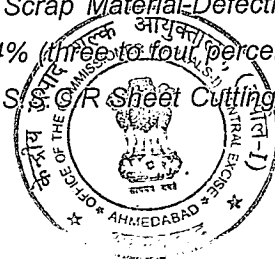


the persons who have given statements on the basis of which the entire case was framed. Party has contended that:

- (i) *There was a stock of about 312.314 MTs of S.S. Scrap in the factory. Out of such a huge quantity of scarp, the DGCEI authorities picked and chose selective bundles of scrap and segregated such bundles by using Crans; and scrap so selectively segregated totally weighing 11,000 Kgs. was seized on the basis that they were old and used steel utensils scrap in bundled (compressed) condition. However, selectively segregating a few specific bundles of S.S. Scrap from a huge quantity of 312.214 MTs lying in the factory was unreasonable and arbitrary.*
- (ii) *The appellant therefore submits that proper verification of this scrap is also necessary in the peculiar facts of this case in as much as the goods are still lying under seizure because they have not been released in the appellant's favour, and verification of the actual nature of the seized goods is not undertaken by the Revenue authorities.*
- (iii) *The appellant company requested of cross examination of various witness including the panch witness but the adjudicating authority has unreasonably denied the same.*

4.4 I further find that the appellant has requested cross-examination of four persons before the adjudicating authority which was denied. Cross-examination of the said persons, whose statements were recorded by the DGCEI officers, was necessary to prove adequately their case. Cross-examination is one part of principles of natural justice. The entire case of seizure and denial of central credit was only based on the statements of above said four persons. In the circumstances, it is incumbent upon the adjudicating authority to extend cross examination of the relied persons. In this regard, I relied on case laws in the case of M/s Veetrag Enterprises reported in 2015 (33) ELT 74-Mad, M/s H. R. Enterprises reported in 2015(33)ELT 957-P&H and M/s. A.P. Electricals (P) Ltd. reported in 2016 (331)ELT 136-Tri. Kolkata.

4.5 In view of the above, I feel that the goods in question require a further physical verification. Accordingly, in view of power vested under Section 35 A (3) of Central Excise Act, 1994, vide letter dated 18.03.2016 the jurisdictional Deputy Commissioner was directed to make further inquiry by spot verification of seized goods in question in presence of Chartered Engineer. The jurisdictional Deputy Commissioner has conducted verification of the goods in dispute, in presence of authorized Chartered Engineer on 28.04.2016 and submitted Chartered Engineer certificate. The certificate issued by the Chartered Engineer states that *"the goods S.S.Scrap Material-Defective S.S.C.R sheets in compressed does not have more than 3 to 4% (three to four percent) amount of S.S.Utensil Scrap. The material is used & defective S.S.C/R Sheet Cutting in*



bundle (Compressed form)". The photograph of the said scrap is also furnished which is placed herein below:



As per description given in the above said certificate, the goods in dispute are used & defective S.S.C.R sheet in bundle (compressed form). Further, as per the Chartered Engineer Certificate, I find that the said scrap material – Defective S.S.C.R sheets in compressed condition does not have more than 3 to 4%. Out of 11 MTs of S.S.Scrap seized; Defective S.S.C.R sheet in compressed condition is only 3 to 4 % which appears as very negligible.

4.3 As mentioned above, the entire case is based on the statement of four persons i.e employees of the appellant and authorized person of registered dealer who supplied the materials in dispute. The authorized person of registered dealer stated that they had supplied S.S.Scrap instead of S.S.Sec/Def. sheets and pipes and the employees of the appellant stated that the appellant has ordered for the goods S.S.Sec/Def. sheets and pipes, however, they were received goods viz. S.S.Scrap. However, it is neither deposed by any persons of the appellant that the registered dealer has supplied the materials in question as per the appellant's direction or it is not proved by the DGCEI during the investigation that the said materials supplied by the registered dealer was as per direction of the appellant so as to avail inadmissible Cenvat. In the circumstances, I do not agree with the conclusion arrived by the DGCEI authority that the appellant have intentionally received the replaced goods to take fraudulent Cenvat Credit. Therefore, looking into the report of the Chartered Engineer regarding nature of seized goods and other factual circumstances of the case as discussed above, I find that out of total of 312.314 tonnes of S.S. Scrap lying in the stock, only 11 tonnes were seized on the ground that these were not S.S. Sheets but S.S. used Utensils. However, Chartered Engineer on examination has found that there are not more than 4% (of 11 tonnes under seizure) S.S. Utensils. In the back ground of 312 tonnes of Scrap found lying in the stock; mere 0.44 tonnes of "so called misdeclared S.S. Utensils" (i.e. 4% of 11 tonnes under seizure) is miniscule. More so, when it is not the department's case that these were not Scrap for melting. Therefore, I do not find any merit in seizure of the



goods by the DGCEI authority and confiscation thereof by the adjudicating authority. Therefore, I set aside same.

4.4 Further, I find that the adjudicating authority has denied Cenvat credit availed by the appellant in respect of seized goods on the grounds that the said goods received by the appellant is non duty paid scrap in guise of the goods mentioned in the Cenvatable goods. Since it is found that the seized goods are not liable for confiscation in view of above discussion and the same is set aside, denial of Cenvat Credit involved in the said goods is also legally not correct. Further, the appellant had received the scrap along with duty paying documents for using the same for manufacturing of final goods and in the circumstances it is not their concern that whether such materials supplied by the registered dealer are duty paid or non- paid. The appellants were supposed to know about the existence of the firm and about having registration from the Central Excise Department. The appellant cannot be faulted in case of fraudulent action of the supplier, if any involved. In view of above discussion, I am of the opinion that the appellant have rightly availed the cenvat credit. There are catena of judicial decision in this regard.

4.5 Since the confiscation and recovery of duty is set aside, the question of imposition of penalty on the appellant does not arise.

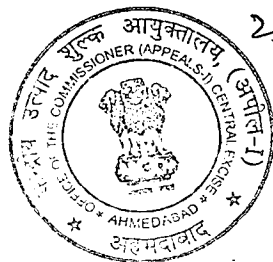
4.6 Further, in the appeal memorandum, I find that Shri Sujal Shah, President of the appellant has also requested to set aside penalty imposed on him. As per Section 35 of the Central Excise Act, 1944, any person, aggrieved by any decision or order should file an appeal before the appellate authority. The Adjudicating authority, in the impugned order, has confirmed demand and also imposed penalty on the appellant and also on Shri Sujal Shah, President of the Appellant separately. Therefore, as per the Section ibid, a separate appeal is required to file by the appellant and Shri Sujal Shah. However, a common appeal has been filed in this case which is not maintainable as per the said section. Therefore, it is not considered for discussion and treated as non maintainable.

4.7 In view of above discussion, I allow the appeal filed by M/s Shah Alloys Ltd by setting aside the order passed by the adjudicating authority with respect to M/s Shah Alloys Ltd. The appeal in respect of Shri Sujal Shah, President of M/s Shah Alloys Ltd treated as non maintainable.

Uma Shanker
UMA SHANKER)
COMMISSIONER (APPEALS-I)
CENTRAL EXCISE,
AHMEDABAD

Attested

Mohan V.V
(Mohan V.V)
Superintendent (Appeals-I)
Central Excise, Ahmedabad



25/05/2016

By R.P.A.D.

To
M/s Shah Alloys Ltd.,
Block No.2221/2222, Shah Industrial Estate,
Sola Kalol Highway, Santej,
Taluka Kalol, Dist. Gandhinagar

Shri Sujal Shah, President of M/s Shah Alloys Ltd.,
Block No.2221/2222, Shah Industrial Estate,
Sola Kalol Highway, Santej,
Taluka Kalol, Dist. Gandhinagar

Copy to:

1. ✓ The Chief Commissioner, Central Excise Zone, Ahmedabad.
2. ✓ The Commissioner, Central Excise, Ahmedabad-III
3. The Addl./Joint Commissioner, (Systems), Central Excise, Ahmedabad-III
4. The Dy. / Asstt. Commissioner, Central Excise, Division- Kalol, Ahmedabad-III
5. ✓ Guard file.
6. P.A (Commissioner-Appeals-I) file.



