रजिस्टर्ड डाक ए.डी. द्वारा

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

	1
क	फाइल संख्या : File No : V2(MISC)47/STC-III/2016/Appeal-I
ख	अपील आदेश संख्या : Order-In-Appeal No.: <u>AHM-EXCUS-003-APP-272-16-17</u> दिनाँक Date <u>23.03.2017</u> जारी करने की तारीख Date of Issue <u>27 21 1</u>
	<u>श्री उमाशंकर</u> , आयुक्त (अपील-I) केन्द्रीय उत्पाद शुल्क अहमदाबाद द्वारा पारित
	Passed by <u>Shri Uma Shankar</u> Commissioner (Appeals-I) Central Excise Ahmedabad
ग	आयुक्त केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश सं दिनाँक : से सृजित
	Arising out of Order-in-Original No <u>GNR-STX-DEM-DC-13/2016</u> dated <u>19.07.2016</u> Issued by: Assistant Commissioner, Central Excise, Din: Gandhinagar, A'bad-III.

अपीलकर्ता / प्रतिवादी का नाम एवं पता Name & Address of The Appellants /Respondents

M/s. Morakhia Copper & Alloy Pvt. Ltd. Unit-II

इस अपील आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित प्रकार से कर सकता है:— Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way:-

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील:--Appeal to Customs Central Excise And Service Tax Appellate Tribunal :-

वित्तीय अधिनियम,1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:— Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ.20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेधाणी नगर, अहमदाबाद—380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20, Meghani Nagar, New Mental Hospital Compound, Ahmedabad – 380 016.

- (ii) अपीलीय न्यायाधिकरण को वित्तीय अधिनियम, 1994 की धारा 86 (1) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9(1)के अंतर्गत निर्धारित फार्म एस.टी— 5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और साथ में जिस स्थान में न्यायाधिकरण का न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रिजस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/— फीस भेजनी होगी। जहाँ सेवाकर की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/— फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/— फीस भेजनी होगी।
- (ii) The appeal under sub section (1) of Section 86 of the Finance Act 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules 1994 and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated.



- (iii) वित्तीय अधिनियम,1994 की धारा 86 की उप—धारा (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फार्म एस.टी.7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क/ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (उसमें से प्रमाणित प्रति होगीं) और आयुक्त/सहायक आयुक्त अथवा उप आयुक्त, केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए सीमा एवं केन्द्रीय उत्पाद शुल्क बोर्ड/ आयुक्त, केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रति भेजनी होगी।
- (iii) The appeal under sub section and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 & (2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Central Board of Excise & Customs / Commissioner or Dy. Commissioner of Central Excise to apply to the Appellate Tribunal.
- 2. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तो पर अनुसूची—1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रू 6.50/— पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।
- 2. One copy of application or O.I.O. as the case may be, and the order of the adjuration authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.
- 3. सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में चर्चित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।
- 3. Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.
- 4. सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) 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 अर्ज़ी एवं अपील को लागू नहीं होगे।
 - 4. 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.

- (4)(i) 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% भ्गतान पर की जा सकती है।
- (4)(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

M/s Morakhia Copper & Alloys Pvt. Ltd., Unit-II, Plot No. 3464 to 3467, GIDC, Phase-IV, Chhatral, District-Gandhinagar (hereinafter referred to as 'the appellant') is holding Central Excise registration No.AAACM3439JXM002 and Service Tax Registration No.AAACM3439JST001 and is engaged in the manufacture of Copper Rod, Copper Bar, Copper Flat falling under Chapter sub-heading No. 74071020, 74072110 & 74072100 of the First Schedule to the Central Excise Tariff Act, 1985 (CETA, 1985). The appellant is also discharging Service Tax liability under reverse charge mechanism and is availing the benefit of CENVAT credit scheme as envisaged in Cenvat Credit Rules, 2004 (hereinafter referred to as CCR, 2004).

- During the course of audit it was observed that the appellant had not paid 2. Service Tax under reverse charge mechanism amounting to Rs.5,065/- on legal consultancy charges received during the period 2012-13, 2013-14 and 2014-15, payable w.e.f. 01/07/2012 in terms of Notification No.30/2012-ST dated 20/06/2012, as amended. Similarly, it was also observed that the appellant had failed pay Service Tax liability amounting to Rs.56,937/- under partial reverse charge mechanism on Security and Detective Agency charges received during 2012-13, payable w.e.f. 07/08/2012 to 31/03/2015 in terms of Notification No.30/2012-ST dated 20/06/2012, as amended. It was further observed that the appellant had not paid Service Tax amounting to Rs.665/under reverse charge mechanism on Goods Transport Agency service charges, after admissible abatement, received during May-2016 and June-2016, payable w.e.f. 01/07/2012 in terms of Notification No.30/2012-ST dated 20/06/2012. Therefore, a Show Cause Notice F.No.VI/1(b)377/IA/14-15/C-I/AP-2 dated 02/03/2016 (hereinafter referred to as 'the SCN') was issued to the appellant demanding the total amount of Rs.62,667/- under proviso to Section 73(1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994 and proposing to impose penalty on the appellant under Section 78 of the Finance Act, 1994. This SCN was adjudicated vide O.I.O.No.GNR-STX-DEM-DC-13/2016 dated 19/07/2016 (hereinafter referred to as 'the impugned order') issued by the Assistant Commissioner, Service Tax Division, Gandhinagar, Ahmedabad-III (hereinafter referred to as 'the adjudicating authority'), confirming the proposals in the SCN.
- 3. Being aggrieved by the impugned order, the appellant has filed the instant appeal, inter alia, on the following grounds:
 - The impugned order has confirmed demand of Service Tax of Rs.62,667/- along with interest and equivalent penalty, whereas the SCN was pertaining to denial of CENVAT credit of Rs.11,406/- on capital goods. The adjudicating authority had travelled beyond the scope of the SCN.



- 2) The impugned order has been passed in violation of the principles of natural justice because the adjudicating authority has clearly mentioned in the impugned order that there was mismatch in the SCN and the reply.
- Personal hearing in the appeal was held on 17/02/2017. Shri P.G. Mehta, 4. Advocate appeared for personal hearing and reiterating the grounds of appeal, informed that there are apparently two SCNs of the same number and requested for remand.
- I have carefully gone through the show cause notice, the impugned order as well 5. as the grounds of appeal. In paragraph 10 of the impugned order, the defense reply filed by the appellant has been reproduced and the adjudicating authority has concluded that the said reply had no relevance with the SCN under adjudication since it was in context to another SCN for denial of CENVAT credit wrongly availed and not in reference to demand of Service Tax covered in the SCN under adjudication. It is also evident from the impugned order that the appellant had not availed the opportunities granted for personal hearing to present its case before the adjudicating authority. Thus, during the adjudication proceedings, the appellant could not put forth its defence submissions with regard to the matter decided in the impugned order. Therefore, in the interest of natural justice, the case is remanded back to the adjudicating authority for a fresh decision after granting the appellant adequate opportunity to present its case in the form defence reply and personal hearing. The appeal is allowed by way of remand.
- 6. अपीलकर्ता द्वारा दर्ज अपील का निपटारा उपरोक्त तरीके से किया जाता हैं.

The appeal filed by the appellant stands disposed of in the above terms.

(उमा शंकर)

आयुक्त (अपील्स-१)

Date: 23/03/2017

Attested

Jacob) Superintendent (Appeals-I) Central Excise, Ahmedabad.

By R.P.A.D.

M/sMorakhia Copper & Alloys Pvt. Ltd. (Unit-II), Plot No.3464 to 3467, G.I.D.C. Estate, Phase-IV, Chhatral Taluka: Kalol, District: Gandhinagar – 382 729.

Copy to:

- 1. The Chief Commissioner of Central Excise, Ahmedabad.
- 2. The Commissioner of Central Excise, Ahmedabad-III.
- The Additional Commissioner, Central Excise (System), Ahmedabad-III.
- The Assistant Commissioner, Service Tax Division, -Gandhinagar.
- Guard File
- 6. P.A.