केंद्रीय कर आयुक्त (अपील)
O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,
GST Building, 7th Floor,,
Near Polytechnic,
Ambavadi, Ahmedabad-380015
वस्तु एवं सेवा कर भवन
सातवीं मंजिल,पोलिटेकनिक के पास,
आम्बावाडी, अहमदाबाद-380015
सत्यमेव जयते
079-26305065
टेलेफैक्स : 079 - 26305136

क फाइल संख्या : File No : V2(28)8/ GNR/17-18 & V2(28)10/GNR/17-18/1585 to 1591

ख अपील आदेश संख्या :Order-In-Appeal No.: **AHM-EXCUS-003-APP-0125 to 126-17-18**

दिनाँक Date :**26.09.2017** जारी करने की तारीख Date of Issue: 12-10-17

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

G. file

Passed by **Shri Uma Shanker** Commissioner (Appeals)Ahmedabad

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश : **06/D/208-09** दिनाँक : **26.05.2009**से सृजित

Arising out of Order-in-Original: **06/D/2008-09,** Date: **26.05.2009** Issued by: Deputy Commissioner, Central Excise, Div:Gandhinagar, Ahmedabad-III.

ध अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the **Appellant** & Respondent

M/s. Coppmett & Chemicals & M/s. Shri Navratan Lal Sharma

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 पूर्वोक्त 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 मामलें 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 डयूटी केडिट 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 दिनाँक 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 रूपये या उससे कम हो तो रूपये 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 अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35– ण्0बी/35–इ के अंतर्गतः–

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

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, मेघाणी नगर, अहमदाबाद–380016.

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 इ.ए–3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणें की गई अपील के विरूद्व 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 वहां 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 वहां रूपए 10000/– फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखाकिंत 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. Registar 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 ओदश 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 हैं।

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 not withstanding 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 अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.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 beer a court fee stamp of Rs.6.50 paisa 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 in 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 (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 निश्धित 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।

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 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

Following two appeals have been filed by the appellant mentioned below against Order-in-Original No.06/D/2008-09 dated 26.05.2009 [*impugned order*] passed by the Deputy Commissioner, Central Excise, Kalol Division, Ahmedabad-III [*adjudicating authority*].

S No	Appeal No	Name of appellant	Amount involved
1	08/GNR/17-18 (204/Ahd-III/09)	M/s COMPPMETT & Chemicals, Block No.716, Village Vadsar, Tal-Kalol, Dist. Gandhinagar [*appellant-1*]	Rs.2,04,598/- duty Rs.4,09,196/- Penalty
2	10/GNR/17-18 (222/Ahd-III/09)	Shri Navratan Lal Sharma, Prop. Of Singal Road Carriers, Plot No.1, Motikhan, Opp. DESU, Delhi-55 [*appellant-2*]	Rs.2,04,598/- Penalty

2. Briefly stated, the fact of the case is that the appellant-1, a proprietorship company is engaged in manufacturing of excisable goods viz. Cuprous Chloride, Cupric Chloride and were availing facility of Cenvat Credit under Cenvat Credit Rules. The investigation carried out by Directorate General of Central Excise Intelligence [DGCEI] revealed that the manufacturer/dealers based at Jammu/Delhi who were selling copper scrap/ingots did not physically dispatch and it was not received by the registered dealer/s Pranav Metal Mart, Nadiad; that M/s Pranav Metal Mart have passed Cenvat Credit on inputs namely consignment of copper only on the strength of invoices of Jammu based units as well as registered dealers of Delhi and bogus lorry receipt without actual receipt and supply of the said goods to the appellant-1. The investigation concluded that the appellant-1 had fraudulently availed Cenvat credit of Rs. 2,04,598/-on the said inputs during the period July 2006 to October 2006 only on the basis of invoices of M/s Pranav Metal Mart without receipt of inputs without utilizing it in manufacturing of their final products; that the final products manufactured by them were actually cleared without payment of duty. The DGCEI issued a show cause notice No.INV/DGCEI/VRU/22/2007 dated 03.01.2008 accordingly for recovery/demand of Cenvat Credit wrongly availed with interest and imposition of penalty under Central Excise Act/Cenvat Credit Rules to appellant-1 and penalty to appellant-2 in violation of Central Excise Act and Rules. Later on the said show cause notice was decided by the adjudicating authority, by ordering recovery of Cenvat Credit amounting to Rs. 2,04,598/- wrongly availed with interest and also imposed penalty of Rs. 2,04,598/- under Rule 15 of Cenvat Credit Rules 2004 for wrong availment of Cenvat credit and Rs. 2,04,598/- under Rule 25 of Cenvat Credit Rules, 2002 for clearance of final products that were cleared by debit of duty from the inadmissible Credit against appellant-1. He also imposed penalty of Rs. 2,04,598/- on appellant-2 who was actively involved in this fraudulent case.

3. Being aggrieved, that appellant-1 has filed the present appeals on the grounds that:

- The entire documentary evidence namely RG 23D register of M/s Pranav Metal Mart, invoice issued by them to the appellant-1, Cenvat Register, RG 1 and Monthly returns of the appellant-1 and accounts documents like payment particulars, entries in the ledger established beyond a shred of doubt that the appellant-1 had received the inputs in question;
- The records/reports of the Commercial Tax Department could not have been considered to be a conclusive evidence to hold that M/s Pranav Metal did not receive any materials from their suppliers; that the reports of the Commercial Tax Department did not cover all such routes and entry points in the State of Rajasthan and Gujarat and it is also possible that vehicle may jus sneaked in the state by avoiding entry tax at a particular check post.
- The appellant-1 have paid price of the material by cheques and where there is no evidence showing that such huge amounts paid by cheques were never return to the appellant-1s, it stood established that there were transaction of purchase and sale between them and M/s Pranav Metal.
- Use of materials and manufacture of excisable goods there from is also not disputed by the department, the adjudicating authority has no jurisdiction to hold that the appellant-1s had not received any material physically in their factory from M/s Pranav Metal.
- The proceedings initiated against the appellant-1s were unauthorized as they were ex-facie barred by limitation.
- Penalty imposed on the appellant-1 and Shri Rajamjal Bhavarlal Shah, Prop. Of the appellant- is not correct and not sustainable.

4. The appellant-2 has filed the instant appeal on the grounds that:

- The impugned goods transported by Truck under lorry receipts were fully received by M/s Pranav Metal Mart, Nadiad and entered in their RG 23D register; that the register maintained at Ahmedabad office was only for goods delivered at Ahmedabad office and the not contain the reference of goods delivered directly or door delivery; that being a transporter, they were concerned with the freight which was paid through regular banking channels and without evidence, the adjudicating authority has stated that the amounts were returned in cash
- Since they were not indulged into any malpractice and not contravened provisions of Central Excise Rules, the penalty imposed on them is not correct and sustainable.

4. Personal hearing in the matter of appellant-1 was granted on 23.08.2017 and 14.09.2017. However, they have not appeared or sought any adjournments for the same. Since the issue involved in the matter has already been decided on similar issue, the instant case is taken for decision ex-parte. Personal hearing in the matter of appellant-2 was held on 14.09.2017. Paresh Sheth, Advocate appeared for the same and reiterated the grounds of appeal and submitted copy Order-in-Appeal No.RAJ-EXCUS-000-APP-170 to 173 dated 16.02.2017.

5. I have carefully gone through the facts of the case and submissions made by the appellant-1and appellant-2 in the appeals memorandum and the submissions made by the appellant-2 at the time of personal hearing. The dispute involved in the instant appeals is pertaining to the eligibility of Cenvat credit on the inputs

purported to have received under the cover invoices issued by M/s Pranav Metal Mart, Nadiad and whether the impugned order rejecting the Cenvat Credit availed by the appellant-1 and recovery thereof with interest and imposition of penalty is correct or otherwise; that whether the penalty imposed against appellant-2 who actively involved in transportation of goods in this case is sustainable.

6. I observe that both the two appeals were transferred into call book in the year 2009 as the Hon'ble Tribunal's order in a similar matter in case of M/s Monarch Metals Pvt Ltd and M/s Dhan laxmi Tubes & Metal Industries has been challenged by the department before Hon'ble High Court of Gujarat. The Hon'ble High Court has rejected the department appeals vide order dated 21.01.2011. In view of said High Court's decision, the cases are now taken for decision.

7. I observe that the adjudicating authority has denied the Cenvat credit to appellanat-1 on the basis of certain records/statements of certain transporters, who were not involved in transporting the impugned goods to M/s Pranav Metal Marts, Nadiad and from M/s Pranav Metal to the appellant-1; that the transportation documents of transporters found without having stamps of commercial check posts and information provided by Commercial Check Post authorities, doubting that the manufacturer/dealers based at Jammu/Delhi who were selling copper scrap/ingots did not physically received by the register dealer M/s Pranav Metal Mart, Nadiad; that M/s Pranav Metal Mart have passed Cenvat Credit on inputs namely consignment of copper only on the strength of invoices of Jammu based units as well as registered dealers of Delhi and bogus lorry receipt without actual receipt and supply of the said goods to the appellant-1. I also observe that the adjudicating authority has imposed penalty of Rs.2,04,598/-on appellant-2 as well as Shri Rajamjal Bhavarlal Shah, Proprietor of appellant-1 as they were actively involved in receipt /transporting goods other than copper from Delhi to Ahmedabad and issuing bogus LRs for the goods other copper, thus the complicity in said fraud is clearly established.

8. The appellant-1 contended that they have purchased the input from M/s Pranav Metal on the basis of duty paid documents and the entire documentary evidence namely RG 23D register of M/s Pranav Metal Mart, invoice issued by them to the appellant-1, Cenvat Register, RG 1 and Monthly returns of the appellant-1 and accounts documents like payment particulars, entries in the ledger established beyond a shred of doubt that the appellant-1 had received the inputs in question. They further contended that they had paid price of the material by cheques and where there is no evidence showing that such huge amounts paid by cheques were never return to the appellant-1s, it stood established that there were transaction of purchase and sale between them and M/s Pranav. The appellant-1 has furnished sample copy of invoices which shows the supply of impugned goods from M/s Pranav Metal Mart, Nadiad to the appellant-1 and other documents viz RG 23-1 and bank transaction details.

9. I observe that the allegation of the department mainly that impugned goods viz copper scrap/ingots did not even physically enter even in the State of Gujarat, what to say the premises of M/s Pranav Metal, Nadiad and there from to the premises of the appellant-1 and appellant-2 has played a very crucial role in the commission of offence. In the instant case, I observe that the adjudicating authority has denied the Cenvat Credit and raised the demand on the basis of statements of certain transporters, who were not involved in transporting the impugned goods to M/s Pranav Metal and statement of authorized person of the appellant-1 who categorically stated that the impugned goods were received by the appellant-1 from M/s Pranav Metal on the strength of invoices. On other hand it was not countered the evidences produced/maintained by M/s Pranav Metal and the appellant-1 in the form of RG 23D register, Cenvat Register, RG 1 and Monthly returns and accounts documents like payment particulars, entries in the ledger. It is no doubt a settled law that department need not establish an offence case with mathematical precision but preponderance of probability is also sufficient in such case. But creating a suspicion is not sufficient to hold that preponderance of probability is in favour of the department. In the instant case, the investigating authority has not recorded any statement of any person confirming that the impugned goods have been diverted or sold to any other person. For creating preponderance of probability also there should be some incriminating statement or document. In the instant case, the appellant-1 has contended that the purchase of goods was made by cheques. There is no positive statement in this case which convincingly convey that such huge amounts paid by cheques were return to the appellant-1, as claimed by the investigating authority. In the absence of such indicators, it cannot be said that preponderance of probability is in favour of the department that impugned have not reached its destination. It is also an established fact that the suspicion, whosoever grave it may be, cannot take the place of documentary evidence. Statements recorded and relied upon by the department cannot be considered to be conclusive piece of evidence without the appellant-1 being given an opportunity to cross-examination which was denied by the adjudicating authority in this case.

10. Further, as stated above, I observe that the case was not taken for decision earlier by the appellate authority as similar matter decided by the Hon'ble Tribunal, Ahmedabad in favour of M/s Monarc Metal Pvt Ltd has challenged by the department before Hon'ble High Court of Gujarat. In the matter of M/s Monarch Metal Pvt Ltd, the Hon'ble Tribunal has decided almost identical facts and circumstances from the same investigation, proceedings against the party were held to be unsustainable. Extract of the said case is reproduced below:

> ***8.*** *As is clear from the above that the appellate authority has not considered and appreciated various evidences on record which stand discussed in detail by the original adjudicating authority. He has allowed Revenue's appeal on short ground which was the basis for the issuance of show cause notice that LR do not bear the*

check-post stamp and the statement of the transporter. The appellant-1s have rightly contended that statement of the transporter being in the nature of co-accused, cannot be made the sole basis for holding against the appellant-1, unless corroborated with material particulars. I find that there is no such evidence on record. On the contrary, the assessee has produced ample evidence in the shape of documentary record to reflect upon the fact that they had actually received the inputs from the first dealer and had made payments to them through Demand Draft. In any case, the fact of non-stamping of LR is only in respect of the goods received by the registered dealer. As rightly observed by the original adjudicating authority, the same would not reflect upon the fact of non-receipt of the inputs by the appellant-1 from the dealer inasmuch as the dealer might have supplied the inputs obtained by him from other source.

***9.** In view of the above, set aside the impugned order of Commissioner (Appeals) and restore the order of original adjudicating authority and allow the Appeal Nos. E/686, 693/2009 with consequential relief to the appellant-1s.*

Appeal Nos. E/802, 840, 925/09 :

(i) The Modvat credit of Rs. 2,83,191/- stand denied to M/s. Dhanlaxmi Tubes & Metals Industries (for short DTMI) along with imposition of penalty upon various persons on the ground that the inputs such as copper scrap, copper wire scrap, copper rod etc. have not actually been received by them and only invoices have been issued by the dealer PMM. For the above finding, the lower authorities have, though admitted, movement of trucks to Nadiad under the cover of LR issued by the transporter, but have denied the credit on the ground that delivery register of the transporter showed that the goods were of miscellaneous nature and not copper. I find that apart from the above, there is no other evidence to reflect upon the fact that the inputs were not actually received by the appellant-1. In the present case, there is no dispute that the LRs were issued by the transporter showing the appellant-1 as the consignee of the goods. However, Revenue has based his case on the Goods Register maintained by the transporter indicating the description of the goods as 'Miscellaneous'. This fact, by itself, cannot be held to be sufficient for arriving at conclusion that the inputs were never transported to the appellant-1's factory. All the documentary evidence on record supports the appellant-1's case about the receipt of the input whereas there is no independent corroborative evidence by the Revenue produced on record.

(ii) The above findings find support from the Tribunal's order in case of M/s. Ajay Industrial Corporation v. CCE, Delhi - 2009 (237) E.L.T. 175 (Tri.-Del.) as also from the Tribunal's decision in case of M/s. Shree Jagdamba Castings (P) Ltd. v. CCE, Bhopal, 2006 (206) E.L.T. 695 (Tri.-Del.). It has been held in said judgments that the credit availed on the basis of invoices issued by the registered dealer, cannot be denied on the ground that the transporters have admitted the fact of non-transportation of the goods and the addresses of truck owners were found to be fake. Similarly, in the case of M/s. Malerkotla Steels & Alloys Pvt. Ltd. v. CCE, Ludhiana, 2008 (229) E.L.T. 607 (Tri.-Delhi), it was held that a manufacturer cannot be denied the credit on the ground that registered dealer had not received the inputs. The Tribunal in case of M/s. Lloyds Metal Engg. Co. v. CCE, Mumbai, 2004 (175) E.L.T. 132 (Tri.-Mumbai) has held that burden to prove non-receipt of the inputs is required to be discharged by Revenue by sufficient evidence. Where disputed consignments are entered in RG-23A Part I and Part II in chronological order, the allegations of non-receipt of the inputs cannot be upheld.

(iii) In view of the above, I find no justifiable reason to uphold the impugned order and the same is, accordingly set aside and the Appeal Nos. E/802, 840, 925/2009 are allowed with consequential relief to the appellant-1s.

11. The above decision challenged by the department was decided by the Hon'ble High Court of Gujarat in case of M/s Dhanlaxmi Tubes & Metal Industries [2012 (282) ELT T 206]. The Hon'ble High Court has upheld the said decision. The relevant portion is as under.

***4.** A perusal of the record of the case shows that the detailed facts as regards the investigation carried out by the Department are set out in the show cause notice*

dated 11-1-2008. Upon going through the lengthy show cause notice in its entirety, the Court finds that though on the face of it, it appears that ample evidence has been collected during the course of investigation, in fact, the evidence collected against the assessee is to the effect that the record of the transporters shows that the vehicles through which the copper ingots/wire scrap were stated to have been sent, had actually transported goods other than copper ingots/wire scraps to the manufacturers at Gujarat, Daman or Silvassa. The entire case of the Department is based on the record of the transporters without the support of any other evidence. The record indicates that there is no dispute that copper ingots purchased from units located at Jammu were transported by trucks from Jammu to Delhi. After transshipment at Delhi, they were shown to be transported from Delhi to the premises of M/s. Pranav Metal Mart, at Nadiad. According to M/s. Pranav Metal Mart, the goods so transported have in fact been received by it under proper invoices. It is also the say of M/s. Pranav Metal Mart that the goods were sold to the assessee and it is the case of the assessee that such goods were received by it along with invoices.

5. *A perusal of the order passed by the adjudicating authority indicates that the officers at the check post had entered the receipt of copper ingots in their record. Thus, even the official records maintained at the check post indicate receipt of copper. Merely because in the record of the transporter, two types of LRs had been issued in respect of the goods carried/transported by M/s. Singal Road Carriers which indicated transportation of miscellaneous goods and the other which indicated transportation of copper ingots/wire brass, the Department has jumped to the conclusion that copper ingots had not actually been transported. Except for the aforesaid evidence, there is no evidence whatsoever to indicate that M/s. Pranav Metal Mart, Nadiad had not received copper ingots or that the respondent assessee had not received the ingots along with the invoices. The statement of Shri Atul Navrattan Lal Sharma, Proprietor of M/s. Singal Road Carriers indicates that it is the categorical case of the said party that it had received raw material at its premises along with the LRs and other documents. The statement of the partner of the assessee, Shri Umesh Shah, also indicates that it was the categorical case of the assessee that it had received central excise invoices issued by the dealers through the truck driver who brought the consignments to its premises. In fact, from the statement of Shri Heda, it is apparent that M/s. Pranav Metal Mart, Nadiad, had even shown receipts of copper consignments and entered such receipts in the RG 23D registers. Likewise, the assessee had also recorded receipts of the raw materials in RG 23A Part-I record.*

6. *A bare perusal of the orders made by the adjudicating authority as well as the appellate authority clearly indicates that neither of the said authorities have discussed the evidence in detail and have merely placed reliance upon the report of the transporter for the purpose of holding that the assessee had in fact not received the goods referred to in the invoices and that only invoices had been issued to it and, therefore, the credit was not admissible to the assessee.*

7. *As can be seen from the impugned order of the Tribunal, the Tribunal after appreciating the evidence on record has recorded that there is no evidence to reflect upon the fact that the inputs were not actually received by the assessee; there was no dispute that the LRs were issued by the transporter showing that the assessee is the consignee of the goods; the case of revenue was based on the goods registers maintained by the transporter which indicates the description of the goods as "miscellaneous". According to the Tribunal, this fact, by itself, could not be held to be sufficient for arriving at the conclusion that the inputs were never transported to the assessee's factory. The Tribunal found as a matter of fact that all documentary evidence on record supported the assessee's case about the receipt of inputs, whereas there was no independent corroborative evidence produced on record by the revenue in support of its case.*

8. *From the facts noted hereinabove, it is apparent that the Tribunal has appreciated the facts of the present case in proper perspective and upon appreciating the evidence on record, has as a matter of fact, recorded that except for the goods registers maintained by the transporter, there is no other evidence on record to indicate that the assessee has in fact not received the goods in question. In the circumstances, in the absence of any evidence to the contrary being pointed out on behalf of the revenue, the conclusion arrived at by the Tribunal being based upon findings of fact recorded by it upon proper appreciation of the evidence on record, cannot be said to be unreasonable or perverse.*

9. *For the foregoing reasons, there being no infirmity in the impugned order of the Tribunal, the same does not give rise to any question of law, as proposed or otherwise, much less a substantial question of law so as to warrant interference. The appeal is, accordingly, dismissed.*

12. Since the facts and circumstances of the above referred case are similar to the instant case, the decisions in above cases are squarely applicable to the instant case also. Therefore, in view of above discussion and decisions of Hon'ble Tribunal as well as High Court, I observe that the department's contention that no inputs were received by the appellant-1 cannot be sustainable and accordingly, the Cenvat credit denied by the adjudicating authority is not correct. Therefore, in view of above discussion and the decisions *supra,* I set aside the decision of adjudicating authority for recovery/demand against the appellant-1.

13. As regards penalty against the appellant-1, I observe that the adjudicating authority has imposed penalty imposed penalty of Rs.2,04,598/- under Rule 15 of Cenvat Credit Rules 2004 for wrong availment of Cenvat credit and Rs.2,04,598/- under Rule 25 of Cenvat Credit Rules, 2002 for clearance of final products that were cleared by debit of duty from the inadmissible Credit. Since the recovery/demand against the appellant-1 is not sustainable, the penalty imposed on the appellant-1 is also not sustainable in view of above discussion. Further, the appellant-1 has contended that the adjudicating authority has imposed penalty of Rs.2,04,598/- on their proprietor Shri Rajamjal Bhavarlal Shah for his active involvement in the case which is also not correct. In view of above discussion, the penalty on the proprietor is automatically become null and void.

14. Since the case against appellant-1 fails, in view of above discussion, the penalty imposed on appellant-2 on the ground that he played active and crucial role in receipt of goods/transportation of goods does not have any merit. Further, I observe that Rule 26 of Central Excise Rules, 2004 provides for penalty for certain offences by any person who acquire possession of, or is any concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing or in any manner deals with, excisable goods which he knows or has reason to believe are liable to confiscation. As discussed above, the department has not countered the refusal to admit non receipt of the impugned goods by the appellant-1, therefore, no excisable goods are found liable to be confiscated. Further, the appellant-2 was connected to receipt/ transportation of goods to appellant-1. Since, the impugned Cenvat credit is held to be availed correctly, no penalty is imposable on both of them. Thus, I set aside the penalty imposed on appellant-2.

15. In view of above discussion, I allow both the appeals mentioned at para-above. The appeals stand disposed of accordingly.

(उमा शंकर)
आयुक्त (अपील्स - I)
Date:26/09/2017

Attested

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

By R.P.A.D
To
M/s COMPPMETT & Chemicals,
Block No.716, Village Vadsar,
Tal-Kalol, Dist. Gandhinagar

Shri Navratan Lal Sharma
Prop. M/s Singal Road Carrier
Plot No.1, Motia Khan

Copy to:-

1. The Chief Commissioner, Central Excise, Ahmedabad Zone .
2. The Commissioner, Central Excise, Gandhinagar.
3. The Additionalt Commissioner, Central Excise, Gandhinagar
4. The Additional Commissioner, System-Gandhinagar
5. The Deputy Commissioner, Central Excise, Kalol Division.
6. Guard File.
7. P.A. File.