
 केंद्रीय कर आयुक्त (अपील) O/O THE COMMISSIONER (APPEALS), CENTRAL TAX		
उत्पन्न एवं सेवा कर भवन सान्त्वना मजिल पोलिटैकनिक के पास आम्बावाडी, अहमदाबाद-380015	GSIT Building - 7 Floor Near Polytechnic Ambavadi, Ahmedabad - 380015	
टेलीफोन : 079-26305065	टेलीफैक्स : 079-26305136	

क फाइल संख्या : File No : **V2(CS)9/AHD-III/2017-18** / 6022 10 6025

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-0144-17-18**

दिनांक Date : **27.10.2017** जारी करने की तारीख Date of Issue: 12-11-17

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

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

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश :
GNR-STX-DEM-DC-10-2017 दिनांक : **17.02.2017** से सृजित

Arising out of Order-in-Original: **GNR-STX-DEM-DC-10-2017**, Date: **17.02.2017** Issued by: Assistant Commissioner, Service Tax, Div: Gandhinagar, Ahmedabad-III.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

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

M/s. Pramukh Infrastructure

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 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.

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- (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- णबी/35-इ के अंतर्गत:-

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 मैटल 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 न्यायाधिकरण की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और 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 और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां 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 पढ़ी 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 अनुसूचि-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 (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 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 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

M/s. Pramukh Infrastructure, B-5, Pramukh Arcade, Opp. NID, Gandhinagar (*hereinafter referred to as 'appellants'*) have filed the present appeal against the Order-in-Original number GNR-STX-DEM-DC-10/2017 dated 17.02.2017 (*hereinafter referred to as 'impugned order'*) passed by the then Assistant Commissioner, Service Tax, Division-Gandhinagar, Ahmedabad-III (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief, are that the appellants are engaged in construction of residential and commercial complex and were registered with the Service Tax department with Service Tax registration number AAKFP8936ESD001.

3. On the basis of intelligence that the appellants were not paying appropriate Service Tax on gross amount received towards construction of residential/ commercial services provided by them, a search was conducted by the Preventive officers at the premises of the appellants. During search of the premises, a bag with currency notes was found. It was found that the bag was containing a total amount of ₹1,76,500/- which was unaccounted. Therefore, it was concluded that as the said amount of ₹1,76,500/- was received by the appellants in relation to providing taxable service, it was a taxable value leviable to Service Tax and hence, Service Tax amounting to ₹6,545/- (30% of amount after abatement) was leviable on that cash receipt. Thus, the Preventive officers withdrew the amount of ₹1,76,500/- under a regular panchnama. Finally, a show cause notice, dated 19.06.2014, was issued to the appellants with the limited purpose of confiscation of the said amount of ₹1,76,500/-.

4. The said show cause notice was adjudicated by the then Deputy Commissioner of Central Excise, Service Tax Division Gandhinagar, Ahmedabad-III vide OIO number GNR-STX-DEM-DC-19/2015 dated 28.03.2015 wherein, the amount of ₹1,76,500/- was confiscated under Section 83 of Finance Act, 1994 read with Section 12 of Central Excise Act, 1944 read with relevant provisions of Customs Act, 1962 made applicable under Notification number 68/63/CE dated 04.05.1963 as amended. The Deputy Commissioner further ordered to recover Service Tax amounting to ₹6,545/- along with interest under Sections 73 and 75 of the Finance Act, 1994 and penalty was imposed under Section 78 of the Finance Act, 1994. Being aggrieved by the said OIO, the appellants lodged an appeal before the then Commissioner (Appeals-I), Central Excise, Ahmedabad. The then Commissioner (Appeals-I), vide OIA number AHM-EXCUS-003-APP-043-16-17 dated 11.07.2016, remanded back the case directing the adjudicating authority to conduct a detailed scrutiny of the cash book account of the appellants and pass a clear order.

5. In light of the direction given in the above OIA, the adjudicating authority issued the impugned order. The adjudicating authority, vide the impugned order, confirmed the demand of ₹6,545/- along with interest under Sections 73 and 75 respectively of the Finance Act, 1994 and ordered to appropriate the said amounts as the appellants had already paid the Service Tax amount along with interest. He further ordered to impose equal penalty under Section 78 of the Finance Act, 1994 and as the appellants had already paid an amount of ₹1,636/- he ordered to appropriate the said amount against their total penalty liability. He further ordered for absolute confiscation of the cash amounting to ₹1,76,500/- which was withdrawn from the premises of the appellants under panchnama dated 12.12.2013 under Section 83 of Finance Act, 1994 read with Section 12 of Central Excise



Act, 1944 read with Section 121 of Customs Act, 1962 made applicable under Notification number 68/63/CE dated 04.05.1963 as amended.

6. Being aggrieved with the impugned order the appellants have preferred the present appeals. The appellants stated that there is no provision of seizure in the Finance Act, 1994. The relevant provisions of Customs Act, 1962 made applicable vide Notification number 68/63/CE dated 04.05.1963 are for smuggled goods and in the instant case the situation is different. The appellants further argued that the presence of cash in any business establishment is natural and in the present situation, the appellants were receiving cash from their members from time to time and the same was remitted to the bank keeping certain amount in hand. The appellants had cash balance of ₹3,25,813/- on 01.10.2013 and the seized amount of ₹1,76,500/- was part of the said cash balance.

7. Personal hearing in the matter was granted and held on 21.08.2017. Shri Bishan Shah, CA appeared before me and reiterated the contents of the appeal memo.

8. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellants at the time of personal hearing. At the very onset, I find that the appellants have filed the appeal with a request to release the amount of ₹1,76,500/-. I also find that the appellants have already paid the Service Tax, demanded on the said confiscated amount, along with interest and a part of the penalty. The cash was seized on the ground that it was an unaccounted one and the department accordingly demanded Service Tax on the same. Once the Service Tax (along with interest and penalty) has been paid by the appellants, the said cash is no more unaccounted one. Even a juvenile could understand it very well that the appellants have paid Service Tax only after accounting it for in their Books of Account. Thus, the department has no legal right to confiscate the said cash. In order to carry business activities an assessee needs cash. It is required to purchase raw material, to pay for transportation, to pay for the numerous activities which are essential to run the business. Similarly, many a times the cash is received for the goods sold or services rendered and undisputedly it is the most acceptable and convenient mode of exchange. The presence of cash in any business establishment is natural and it should not be frowned upon during investigation. Many a times it is found that the cash available in the premises are seized and taken away by the department without examining the fact whether the same is detainable or not. The cash can be seized only in exceptional circumstances and not in a routine manner particularly when the explanation for cash is available at the time of search and certainly not if the money is duly accounted.

8.1. Further, another question arises here that whether the department is legally empowered to confiscate cash under the Finance Act, 1994! The department of Service Tax has not been authorized with the power to detain or seize under the Finance Act, 1994. The Central Excise authorities are empowered to detain or seize goods under Rule 24 of the CER, 2002. The services, being intangible, cannot be detained or seized. If the services cannot be detained or seized, same rule is applicable to the mode of exchange (cash) also. The departmental officers withdrew the cash under Section 83 of Finance Act, 1994 read with Section 12 of Central Excise Act, 1944 read with Section 121 of Customs Act, 1962 made applicable under Notification number 68/63/CE dated 04.05.1963 as amended. Section 83 of



Finance Act, 1994 empowers to apply certain provisions of Central Excise Acts and Sections. Now let us see whether a Central Excise officer is empowered to seize and confiscate cash by applying Section 121 of Customs Act, 1962.

3.2. Before we proceed further we will examine the power to seize as available in the statute. The Central Excise Act, 1944 gives power to Central Excise officer to search premises and seize the goods if he has a reason to believe that the goods are removed with the intention to evade duty. The power to search, retain or seize the goods is enumerated in Rules 22, 23 and 24 of the Central Excise Rules, 2002 the same read as follows:

Rule 22. Access to registered premises. –

(1) An officer empowered by the [Commissioner or Commissioner, as the case may be] in this behalf shall have access to any premises registered under these rules for the purpose of carrying out any scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

(2) Every assessee, [as importer who issues invoices on which CENVAT credit can be taken] and first stage and second stage dealer shall furnish to the officer empowered under sub-rule (1), a list in duplicate, of –

(i) all the records prepared and maintained for accounting of transaction in regard to receipt, purchase, manufacture, storage, sales or delivery of the goods including inputs and capital goods, as the case may be;

*(ii) all the records prepared and maintained for accounting of transaction in regard to payment for input services and their receipt or procurement; and *

(iii) all the financial records and statements (including trial balance or its equivalent).

(3) Every assessee, [an importer who issue an invoices on which CENVAT credit can be taken] and first stage and second stage dealer shall, on demand make available to the officer empowered under sub-rule (1) or the audit party deputed by the [Principal Commissioner or Commissioner, as the case may be] or the Comptroller and Auditor General of India, or cost accountant or chartered accountant nominated under section 14A or section 14AA of the Act, -

(i) the records maintained or prepared by him in terms of sub-rule (2);

(ii) the cost audit reports, if any, under section 233B of the Companies Act, 1956 (1 of 1956); and

(iii) the Income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961 (43 of 1961), for the scrutiny of the officer or audit party or the cost accountant or chartered accountant, as the case may be].

[Explanation. - For the purposes of this rule, "first stage dealer" and "second stage dealer" shall have the meanings assigned to them in CENVAT Credit Rules, 2004].

Rule 23. Power to stop and search. –

Any Central Excise Officer may search any conveyance carrying excisable goods in respect of which he has reason to believe that the goods are being carried with the intention of evading duty.

Rule 24. Power to detain or seize goods. -

If a Central Excise Officer, has reason to believe that any goods, which are liable to excise duty but no duty has been paid thereon or the said goods were removed with the intention of evading the duty payable thereon, the Central Excise Officer may detain or seize such goods.

The above said rules give power to seize the goods only. The officer of the Central Excise can seize the goods or detain the goods if there is a violation in payment of Central Excise duty. But in no circumstances he has the power to seize the cash available in the premises searched, under the Central Excise rules. As no power is available with the Central Excise officer to seize the cash as per statutory provisions of the Central Excise Act and Rules, usually the provisions available in the Custom Act are invoked. Section 121 of the Custom Act 1962 gives the officer of the department to seize the cash/ Indian currency. The same read as follows:

SECTION 121. Confiscations of sale-proceeds of smuggled goods.-

"Where any smuggled goods are sold by a person having knowledge or reason to believe that the goods, the sale-proceeds thereof shall be liable to confiscation".

Now, it is well settled that mere possession of currency is no offence and cannot be seized when an explanation for the same is available. (Smt. Malhar vs.CCE(1988)33 ELT, Abdul Razak v.CC 1999(108)ELT 283).

In this regard law is settled in the following judgements :

- (1)Indian Charge Chrome v. UOI(2003) 152 E.L.T 269 (Del HC DB).
- (2)Pradeep Kumar Singh v. CC-1998 (104) E.L.T. 111.
- (3)CC v. Bharat Kumar-1999 (109) E.L.T. 552.
- (4)CC v. M Raja (2003) 151 E.L.T. 689.
- (5)J.K.S AIR TRAVELS VERSUS CHIEF COMMISSIONER OF CUSTOM 2016 (331) E.L.T 173(MADRAS).

The Hon'ble tribunal in the matter of M/S Sunrise Metal Industries Vs. Commissioner of Central Excise, Daman 2009(248) ELT 699 (Tri.-Ahmedabad) had an occasion to deal with the seizure of cash which were duly accounted and held as follows:

"Tribunal in the case of Ramchandra v. CC reported in 1992 (60) E.L.T 277 (Tribunal) has held that for invocation of Section 121 of the Customs Act, the ingredients of the same are required to be satisfied. The same are that there must be a sale, the sale must be of smuggled goods, the sale must be by a person, having knowledge or reason to believe that the goods are of smuggled origin and the seller and purchaser and the quantity of goods must be established by the customs authorities. In the case of Commissioner of Customs, Mumbai v. Sadashiv R. Lele reported in 2005 (191) E.L.T. 841 (Tri.-Mumbai), it was held that the onus to prove that Indian Currency

under seizure is liable to confiscation is on the department. As such by observing that besides inculpatory statement there was nothing on record to prove that the currency was sale proceeds of smuggled liquor, benefit of doubt was extended to the appellant and confiscation was set aside. The facts of Sipani Fibres Limited v. CCE., Bangalore reported in 2007 (212) E.L.T. 374 (Tri.-Bang.) = 2007 (6) S.T.R. 197 (Tribunal) are more or less pari materia to the facts of the present case. Therein allegations were made about the unauthorized availment of Cenvat credit on the granules purchased but diverted and not utilized. Tribunal after observing that not a single instance stands given by the investigation for purchase of plastic granules from the appellant, confiscation of the currency cannot be sustained. By applying the ratio of the above precedent judgments to the facts of the present matter, I find that the Revenue has not produced even an iota of evidence to show that the currency in question is consideration for sale of the imported but diverted material. Even the allegation of diversion is the subject matter of another proceedings which have not attained finality. Shri Mehta, Administrative and Finance Controller of the trading firm has accepted and claimed the ownership of the Indian Currency of Rs. 4 lakhs and has also produced accounts and statement of cash balance, which stand rejected by the authorities below on the ground of after thought, without examining the same. In any case having held that there is no evidence of any sale purchase of the imported raw material, the ingredients of Section 121 do not stand fulfilled justifying confiscation of Indian Currency or imposition of penalties upon the appellants. As a result, the impugned orders are set aside and all the appeals are allowed with consequential relief to the appellants."

The Hon'ble Tribunal, again in the matter of Imtiyaz Iqbal Pothiwala vs Commissioner of Customs, 2016(335) E.L.T. 747 (Tri. Del.) reiterated the abovesaid view and set aside the confiscation of cash once its not related with the smuggling activities. The relevant para is as follows:

"15. The Indian currency of Rs. 21 lakhs was seized on the ground that it is in respect of the sale proceed of smuggled gold as we are setting aside the confiscation of the gold on the ground that it is the lawfully purchased by Imtiaz Iqbal Pothiwala and the sale is out of that legally procured gold. Therefore, confiscation of currency is also set aside. Consequently, the confiscation of jeep from which the gold is recovered and penalties are also set aside. Appeals are allowed"

In view of the above discussion, it is quite clear that the department has no legal authority, under Finance Act, 1994, to seize or confiscate the cash found in the premises of the appellants. Moreover, when Service Tax has already been paid on the said amount, it becomes the moral responsibility of the department to immediately release the same amount in favour of the appellants.

The cash is a tool to run the business and an unwarranted seizure only put breaks on the movement of the business. Not only this, the seizure of cash also affects individual liberty so unless and until there is prima facie strong nexus between available cash and excisable goods sold clandestinely, the cash should not be seized.

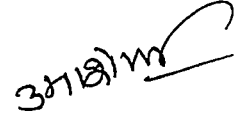
9. In view of the above discussion, I set aside the confiscation and direct the adjudicating authority to release the amount of ₹1,76,500/- in favour of the appellants. The appellants are also directed to pay the entire penalty,

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demanded under Section 78 of the Finance Act, 1994, with immediate effect. The appeal is disposed off as per the discussion held above.

10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

10. The appeals filed by the appellant stand disposed off in above terms.



(उमा शंकर)

CENTRAL TAX (Appeals),

01/01/17 AHMEDABAD.

ATTESTED


(S. DUTTA)

SUPERINTENDENT,

CENTRAL TAX (APPEALS), AHMEDABAD.

To,
M/s. Pramukh Infrastructure,
B-5, Pramukh Arcade, Opp. NID,
Gandhinagar

Copy to:

1. The Chief Commissioner, Central Tax, Ahmedabad Zone.
2. The Commissioner, Central Tax, Ahmedabad (Gandhinagar).
3. The Dy./Asst. Commissioner, Central Tax, Division-Gandhinagar.
4. The Asst. Commissioner (System), Central Tax Hq, Gandhinagar.
5. Guard File.
6. P. A. File.

