
 केंद्रीय कर आयुक्त (अपील) O/O THE COMMISSIONER (APPEALS), CENTRAL TAX वस्तु एवं सेवा कर भवन सतवा मंजिल पॉलिटेक्निक का पास अम्बावाडी अहमदाबाद-380015 079-26305065		 GST Building 7 th Floor, Near Polytechnic Ambavadi, Ahmedabad-380015 टेलीफोन : 079-26305136
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क फाइल संख्या : File No : V2(72)94&95/AHD-III/2016-17 / 1067-40 1073

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-093-94-17-18

दिनांक Date : 30.08.2017 जारी करने की तारीख Date of Issue:

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 :
19/D/GNR/VHB/2016-17 दिनांक : 27.09.2016 से सृजित

Arising out of Order-in-Original: 19/D/GNR/VHB/2016-17, Date: 27.09.2016 Issued by:
Assistant Commissioner, Central Excise, Div: Gandhinagar, Ahmedabad-III.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Shree Ram Steel Re-Rolling Mill

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 प्रक्रिया 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- ण0बी/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 मैन्टल हास्पिटल कम्पाउण्ड, मेघानी 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 न्यायाधिकरणों 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 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 (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 43 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 होंगे।

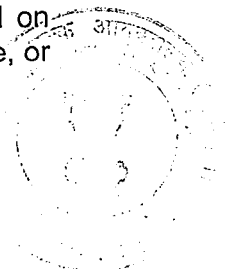
For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 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

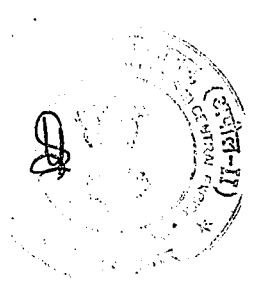
Following two appeals have been filed by the appellants as per column No.2 of below mentioned table against Order-in-Original No.19/D/GNR/VHB/2016-17 dated 27.09.2016 [hereinafter referred to as "the impugned order"] passed by the Assistant Commissioner of Central Excise, Gandhinagar Division, Ahmedabad-III [hereinafter referred to as "the adjudicating authority"] along with application for condonation of delay.

S No	Name of the appellant	Amount involved	Appeal No.
1	Shree Ram Steel Rolling Mill, Vijapur, Mehsana (Appellant-1)	Rs.3,81,512/- with Int. Rs.3,81,512/- Penalty	94/Ahd-III/16-17
2	Shri Kirtikumar B patel, Partner of Shri Ram Steel Rolling Mill (Appellant-2)	Rs.50,000/- Penalty	95/Ahd-III/16-17

2. Briefly, the facts are that the Directorate General of Central Excise Intelligence unit Vapi (DGCEI) carried out a search on M/s. Vishal Engineering, M/s. Jindal Ispat Pvt Ltd and M/s Vishal Casteels, engaged in the manufacture of MS Ingots. Documents seized during the search revealed that these manufacturers had clandestinely cleared M S Ingots, without invoices and without payment of Central Excise duty, to various units, including appellant-1. Investigations were thereafter conducted against the three manufacturers and the appellant-1. A notice dated 02.12.2014 was subsequently issued to the appellant, *inter-alia*, alleging that they had manufactured and cleared TMT bars, Round bars, Square Bars,, MS Angles, channels, etc from MS ingots received from the aforementioned three manufacturers and had thereafter cleared it without invoices and without payment of Central Excise duty. The notice therefore, demanded Central Excise duty of Rs. 3,81,512/- along with interest on TMT bars, Round bars, Square Bars,, MS Angles, channels, allegedly manufactured during 2009-10. Penalty was also proposed on the appellant-1 and appellant-2. The adjudicating authority confirmed the demand along with interest and also imposed penalty on both the appellants.

4. Being aggrieved, both the appellant-1 and appellant-2 have filed appeals on the following grounds:

- They have been unnecessarily involved in the matter as a main notice due to prejudicial mind; that there was no investigation at their end regarding purchase of raw materials, transportation of raw materials and production of finished goods etc. ; that that there is no material evidence of goods received by appellants from the said three firms.
- Statements of the authorized persons of M/s Vishal Engineers and other firms are readymade statements prepared by the officers and not reliable to support this case.
- The statement of Shri Kirtikumar B Patell, Partner of the appellant-1 clearly establishes that the allegations made against them are not sustainable. Therefore, the impugned order is required to be set aside.



- The appeals could not file within the time prescribed due to ill health of the Consultant. Hence, the delay of 27 days may be condoned.

5. Personal hearing in the matter was held on 20.07.2017. Shri K.C.Rathod, Authorized Representative of the appellant-1 and Shri Kirtikumar Patel, Partner of the appellant appeared for the same. They reiterated the arguments made in the grounds of appeals.

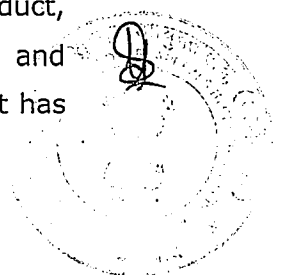
6. I have gone through the facts of the case, the grounds of appeal and the oral averments, raised during the course of personal hearing.

7. I observe that both the appellant-1 and appellant-2 have not filed the instant appeals in the prescribed time limit as prescribed under Section 35 of the Central Excise Act, 1944 but filed with a delay of 28 days. Both the appellants have submitted that they could not file these appeals within the time limit prescribed due to ill health of their Consultant. They filed condonation of delay application with a request to condone the delay. As per Section 35 of the Act, Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days. Considering the delay application filed by both the appellants, I condone the delay of 28 days occurred in filing of both these appeals.

7. The short issue to be decided in the instant cases is whether the appellant is liable to pay duty in respect of clandestine removal and whether both the appellant-1 and appellant-2 are liable to penalty.

8. The adjudicating authority, vide the impugned OIO has confirmed the demand and imposed penalty on the grounds that M/s. Vishal Engineering, M/s. Jindal Ispat and M/s Vishal Casteels were clearing MS Ingots without the cover of invoices to the appellant-1 and the corroborative evidence collected by the investigating authority revealed that the documents seized is genuine and contains truthful reflection of all transaction for MS Ingots made by the aforementioned three units and the appellant-1 purchased the said goods illicitly and used in their manufacture of final goods which were not accounted for and cleared without payment of duty.

09. I have briefly laid out the facts in para 2 *supra*. The allegation against the appellant-1 is that [a] they had received inputs i.e. MS Ingots from three manufacturers, without any invoice and on which no excise duty was paid; and [b] that these inputs were used by the appellant in the manufacture of final product, which was clandestinely removed without payment of central excise duty and without the cover of invoices. As regards [a] above, I find that the department has



put forth a plethora of evidences to substantiate the charge that the three manufacturers had cleared MS ingots to the appellant-1, clandestinely. It is further alleged that the appellant-1 used these goods to further manufacture of final products which thereafter, were clandestinely removed without payment of duty. The dispute before me is pertaining to demand of Rs.3,81,512/-in respect of clearance of final product, clandestinely by the appellant-1, therefore, I limits my decision only in so as far as [b] *supra*, is concerned.

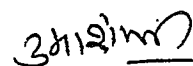
10. I find that the documents seized by DGCEI and annexure C to the notice, revealed that the appellant-1 had received 03 *saudas* under which 150 MT of material was supplied to them, without any invoices or without payment of central excise duty. I find that the show cause notice and the impugned order has alleged that the appellant had received 150 MTs of MS Ingots from the three firms during the period from 14.11.2009 to 29.03.2010; that they had manufactured and cleared 144 MTs of angles/channels/TMT bars/M S Billets etc. after considering a melting loss and end cutting of 2%; that the sale proceeds were received in cash ; that the valuation was arrived on the basis of landed cost of MS ingots + average value addition @ Rs. 5000 per ton. The said show cause notice and impugned order thereafter, lists the contraventions of the various provisions and also lists a statement recorded of Shri Kirtikumar Patel, Partner of the appellant-1 wherein he states that these purchases are not reflected in their records; that they had purchased 150 MT from M/s. Vishal Engineering, Daman, M/s. Jalaram Ispat, Daman and M/s. Vishal Casteels, Silvassa.

11. The appellant-1 in his appeal contended that there is no investigation conducted regarding manufacture of final products by the appellant and clearance without payment of duty and without issue of invoices. I observe that during investigation the records/documents seized revealed that the appellant-1 had received M.S.Ingots from above referred parties during the relevant period. Further, the statements of authorized persons of these units and the partner of the appellant-1 also support the said facts. Undisputed facts revealed that the appellant-1 is not engaged in trading activities but in manufacturing of TMT bars etc for which the essential and primary raw materials is M.S.Ingot; that such raw materials were admittedly purchased by them from the above referred parties without cover of invoices during the relevant period; that they had manufactured 144 MTS TNT bars during the relevant period from such raw materials purchased. I observe that the appellant has not put forth details of duty free raw materials obtained from any other suppliers so as to prove that they had not received M.S.Ingots from the said three parties without payment of duty or without cover of invoices. In the circumstances, the evidence put forth by the investigating authority clearly leads to the point that the appellant-1 had manufactured the finished goods from the raw materials received without payment duty from the said three parties.

12. Further, I observe that in the instant case, the investigating authority has examined all aspects of the matter and come to the conclusion that there had been gross violations by the appellants of Central Excise Act and rules made there under in relation to clearance of manufactured goods without payment of duty. On the basis of material on record, adjudicating authority confirmed the demand in question. Assessee had indulged in the activity of manufacturing or in any other manner indulges in manufacturing and removing of excisable goods namely TMT Bars in contravention of provisions of rules and thereby rendered themselves liable for penal action under Excise Rules. On the basis of evidence collected during the proceedings and on the basis of statements, adjudicating authority held that the appellants had clandestinely removed the goods and were therefore confirmed the duty and imposed penalty. Therefore, no interference required in the impugned order and upheld the same.

13. As far as penalty against appellant -2 is concerned. I observe that the adjudicating authority has imposed penalty on him as he has actively involved in such illicit clearance of finished goods manufactured by the appellant-1. Since the demand and penalty against appellant-1 has upheld, I am of the considered view that the penalty imposed on appellant-2 is correct, looking into the apt of the case.

14. In view of the foregoing, both the appeals are rejected. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है। The appeal filed by both the appellants stand disposed of in above terms.



(उमा शंकर)

आयुक्त (अपील्स - I)

Attested



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

BY RPAD.

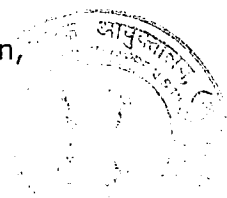
To

M/s Shree Ram Steel Re-Rolling Mills
Opp.Kanakpur Village, Highway Road,
At & PO Vijapur, Dist. Mehsana-382
870

Shri Kirti kumar B Patel,
Partner of M/s Shree Ram Steel Re-
Rolling Mills
Opp.Kanakpur Village, Highway Road,
At & PO Vijapur, Dist. Mehsana-382
870

Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad.
2. The Commissioner of Central Tax, Gandhinagar
3. The Additional Commissioner (System), Central Tax, Gandhinagar
4. The Additional Commissioner, Central Tax, Gandhinagar
5. The Deputy/ Assistant Commissioner, Central Excise, Gandhinagar Division,
6. Guard file.
7. P.A



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