
 <p>केंद्रीय कर आयुक्त (अपील)</p>		
<p>O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,</p>		
<p>वस्तु एवं सेवा कर भवन</p>	<p>GST Building, 7th Floor, Near Polytechnic, Ambavadi, Ahmedabad- 380015</p>	
<p>सतवी मंजिल पॉलिटेक्निक के पास आम्बावाडी, अहमदाबाद-380015</p>		
<p>079-26305065</p>		<p>टेलीफैक्स : 079-26305136</p>

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क फाइल संख्या : File No : V2/42/RA/GNR/2018-19

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-202-18-19

दिनांक Date : 29-03-2019 जारी करने की तारीख Date of Issue:

29/4/2019

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

C. file

Passed by Shri Uma Shanker Commissioner (Appeals) Ahmedabad

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश : AHM-CEX-003-ADC-AJS-005-18-19 दिनांक : 30-08-2018 से सृजित

Arising out of Order-in-Original: AHM-CEX-003-ADC-AJS-005-18-19, Date: 30-08-2018
Issued by: Add. Commissioner, CGST, Div: RRA, HQ, Gandhinagar Commissionerate, Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Sohni Ceramics

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।

I. Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944, 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- षोबी/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 दूसरा मंजिल, बहुमाली भवन, असारवा, अहमदाबाद, गुजरात 380016

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 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 पढी कार्य से बचने के लिए यथार्थिती अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.



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

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

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

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

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2018(2018 की संख्या 24) दिनांक: 06.08.2018 जो की वित्तीय अधिनियम, 1998 की धारा 23 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."

II. Any person aggrieved by an Order-in-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/Goods and Services Tax (Compensation to States) Act, 2017, may file an appeal before the appropriate authority.



ORDER IN APPEAL

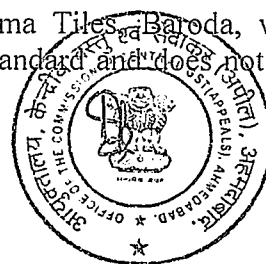
This is a departmental appeal filed by Assistant Commissioner, CGST, Himmatnagar Division, Gandhinagar Commissionerate [for short –‘appellant’] against OIO No. AHM-CEX-003-ADC-AJS-005-18-19 dated 30.8.2018, passed by the Additional Commissioner, CGST, Gandhinagar Commissionerate [for short –‘adjudicating authority’], in terms of review order No. 31/2018-19 dated 7.12.2018, passed by the Commissioner, CGST, Gandhinagar.

2. Briefly, the facts are that based on a preventive case, a show cause notice dated 4.10.2013, was issued to M/s. Sohni Ceramics [for short – ‘respondent’], Shri M B Patel, Shri I D Patel and Shri D.I.Patel.. The notice *inter alia* proposed demanding central excise duty of Rs. 14,04,620/- along with interest and further proposed penalty on the respondent under Section 11AC read with Rule 25 of the Central Excise Rules, 2002. The notice further proposed penalty on the other co-noticees under Rule 26 of the Central Excise Rules. This notice was adjudicated vide OIO No. AHM-CEX-003-ADC-010-14-15 dated 29.9.2014 by the Additional Commissioner, Central Excise, Ahmedabad-III Commissionerate wherein he confirmed the demand & imposed penalties. On an appeal being filed, it was decided by the then Commissioner(Appeal) vide his OIA No. 189 to 192/2014-15 dated 31.3.2015 issued on 1.4.2015. The appellant again preferred an appeal before the Hon’ble CESTAT, who vide its order No. A/13199-13201/2017 dated 11.10.2017, remanded back the matter to the original adjudicating authority, for denovo adjudication.

3. Based on the aforementioned direction of the Hon’ble CESTAT, the show cause notice dated 4.10.2013, was adjudicated vide the impugned OIO dated 30.8.2018, wherein the adjudicating authority has dropped the demand of Rs. 5,38,033/-, confirmed demand of Rs. 8,66,588/- along with interest and further imposed penalty on the co-noticees as mentioned above except Shri I.D.Patel, on whom no penalty was imposed.

4. Feeling aggrieved, the aforementioned appellant[i.e. the department], has filed this appeal raising the following grounds in the review order:

- that the dropping of the demand of Rs. 5,38,033/- by the adjudicating authority, needs to be set aside;
- that the adjudicating authority ignored the fact that the respondent had maintained a extra computer in the labourer’s room; that no genuine manufacturer will maintain an extra computer at such a place; that it has been admitted by the partners that these computer was used to prepare the parallel invoices; that parallel invoices of November 2009 and December 2009 was recovered;
- that the adjudicating authority ignored that partners in their statements had stated that they were issuing parallel invoices after removal of goods and the said invoices were destroyed; that the trail of unrecorded transaction on which payments were received in cash is difficult for any investigation;
- that the transporters on being shown the files containing parallel invoices had admitted that they had transported the said goods to the consignees;
- that the statement of buyers are evidence and these statements on being denied cross examination, will still hold;
- that in respect of Shri Dinesh Patni, Partner of Sigma Tiles Baroda, who during cross examination stated that he had studied only upto 6th standard and does not know to write in



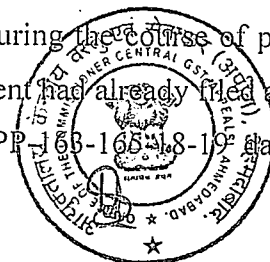
Gujarati, is not true since if he was not able to read /understand English he could not have run the business;

- the cross examination of Shri K R Bhavsar carries no importance since he is an employee of the respondent;
- the adjudicating authority erred in concluding that the investigation did not extend to the author of the invoices since they had left the job and their whereabouts were not available; that even otherwise the person signing the documents is more important than the person preparing the documents;
- that they wish to rely on the case of Hari Vishnu Packaging [2001(135) ELT 1162 (Tri)], Duncan Agro Industries [2000(120) ELT 280 S(C)], Vinod Solanki [2009(233) ELT 157], Agarwal Overseas Corporation [2009(248) ELT 242(T)], GTC Industries [2009(233)ELT 157(SC)], Kalveri Foods India P Ltd [2011(270) ELT 643(SC)], Shamsuddin M A [2010(259) ELT 44(Bom)], Telestar Travels P Ltd [2013(289) ELT 3(SC)], Vinay Traders [2016(340) ELT 521], Alnoori Tobacco Products [2004(170) ELT 135(SC)];
- the adjudicating authority instead of considering these facts has relied upon the statements made in the cross examination.

5. Personal hearing in the matter was held on 12.02.2019 wherein Shri B.R.Parmar, Consultant, appeared before me on behalf of the respondent and explained the case and submitted his cross objections. I had further issued directions to the section, to call for copies of cross examination and original statements. In the cross objection submitted by the Consultant, the following points were stated by the respondent, viz.

- that the allegation in para 9(a) of the review order is based on assumption and presumption; that the computer installed in labourer's room was never used by any labourer; that to keep an extra computer in factory is not an offence; that the said computer was used by Shri Vikas Trivedi, clerk who is sitting in the said room; that the intention of the respondent cannot be judged on assumption and presumption; the room alleged to be a labour room, was in fact part of the office;
- that as far as the grounds raised in para 9(b) is concerned, the allegation that the respondent was issuing parallel invoices which were destroyed is not correct; that as far as clearances mentioned in annexure A-3 is concerned, the department failed to establish that the goods were cleared twice; that simultaneous search was carried out in three buyers premises; that all the buyers in the statements stated that they have received the goods only once; that during cross examination the buyers denied having received the goods without cover of invoices; that the department failed to establish the illicit clearances;
- that as far as the grounds raised in para 9(c) is concerned, the contention is not correct; that the investigation extended to the transporters end did not bring any cogent evidences; that none of the transporters have confirmed that they have transported the goods twice on the same invoices;
- that since Shri P J Chudasama, Partner of M/s. Jay Mataji Transport Company, was called upon for cross examination but since he did not appear, his statement/evidence is not admissible under the provisions of Section 9D of the Central Excise Act, 1944;
- that none of the transporters have confirmed that they had transported the goods twice on the same invoices; that the transporters have nowhere stated that they received payment twice for the so called twice delivery or parallel supply of goods as alleged vide Annexure A 3;
- that no statement of drivers were recorded;
- that as far as grounds raised in para 9(e) is concerned, it is based on assumption; that it is not necessary to know English and Hindi to run a business;
- that as far as grounds raised in para 9(f) is concerned, though Shri Bhavsar was an employee he was used as a witness by the department; that the employee never deposed that the goods were sold twice; that during cross examination he stated that he was working as an accountant and was looking after the work related to accounts only and invoices were being prepared by some other person;
- that as far as grounds raised in para 9(g) is concerned, the grounds of appeal is far away from the facts on record; that the investigation was not extended to the author of the invoices;
- that statements of 9 buyers have been relied upon but no buyers have confirmed that the goods were received twice or on the same serial no. of invoice.

6. I have gone through the facts of the case, the grounds of appeal, the earlier orders, the order of the Hon'ble CESTAT and the oral averments made during the course of personal hearing. In-fact, against the impugned OIO dated 30.8.2018, the respondent had already filed an appeal, which was decided by me vide my OIA No. AHM-EXCUS-003-APP-163-165-18-19 dated 31.12.2018.



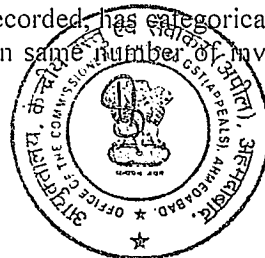
However, in the present appeal, filed by Revenue, I find that the issue to be decided, is whether the adjudicating authority, erred in setting aside the demand of Rs. 5,38,033/- or otherwise.

7. As is already mentioned in my OIA dated 31.12.2018, the show cause notice demanded Rs. 4,93,128/- as per Annexure A-3 and Rs. 9,11,493/- as per Annexure A-2. Now, Annexure A-3 is a worksheet reflecting the amount of Central Excise duty evaded by the respondent by clearing excisable goods under the cover of parallel invoices which is tallied with regular sales invoices but goods cleared twice in cash by way of same serial number of invoice filed in file listed in sr. no. 1.1 of Annexure B to panchnamma. Annexure A-2 on the other hand, is a worksheet reflecting the amount of central excise duty evaded by the respondent, by clearing excisable goods, under the cover of parallel invoices, which is not tallied with regular sales invoices filed in the file listed at Sr. No. 1.1 of the annexure B to the panchnamma.

8. In the impugned OIO dated 30.8.2018, the adjudicating authority vide his findings, in paras 14.1 to 14.9, has held that there is no sufficient and supportive, cogent, unimpeachable relevant and credible material evidence to establish the clandestine clearance of finished goods on parallel invoice as per Annexure A-3. Further, vide his para no. 14.2, he has included the amount of Rs. 44,905/- in Annexure A-3, by reducing the said amount from Annexure A-2. The adjudicating authority vide his impugned OIO, has confirmed the demand of Annexure A-2 i.e. [Rs. 9,11,493/- less Rs. 44,905/- = Rs. 8,66,588/-]. It is against this confirmation that the respondent filed the appeal which was decided vide my OIA dated 31.12.2018. The present appeal by Revenue is against setting aside the demand in respect of Annexure A-3 [i.e. Rs. 493128/- + Rs. 44905/- [relating to A-2]= Rs. 5,38,033/-.

9. Before moving on to the grounds raised in the review order, let me briefly, reproduce the findings of the adjudicating authority leading to the setting aside of the demand in respect of Annexure A 3 i.e. Rs. 5,38,033/-]. The adjudicating authority while setting aside the demand in respect of Annexure A-3, held as follows:

- the allegation is that the goods were cleared twice in cash by way of same serial number of invoice to the same party;
- that while recording the statement of Shri D I Patel on 23.7.2012, he was shown DFS Gandhinagar Report no. DFS-EE-2010-CG-213 dated 3.1.2012 and dated 4.1.20123 and its enclosure, but what was the report given by the laboratory is not forthcoming neither in the statement nor in the show cause notice; that neither the computer nor the report of DFS Gandhinagar was made a relied upon document to the show cause notice;
- that the appellant in his defence reply has contented that they had not cleared the goods twice; that there is no confirmation from buyers that they have received the goods twice on the same invoice; that mere non supply of pink copy of the invoice to buyer is not sufficient to prove that the goods have been cleared twice;
- that though 79 buyers are listed in Annexure A 3, statement of only 9 buyers were recorded;
- that of the statements recorded all the buyers except Shri D.C.Patni, Partner, of Sigma Tiles, has reported that they have received the declared quantity of goods mentioned in the said invoice; that they have received only pink copy of invoice; that none of the person has categorically state that they have received the goods twice with the same serial number of invoice;
- that as far as statement of Shri D.C.Patni, is concerned, he had in his statement stated that they had received the goods twice; that during cross examination he stated that he had received the goods only one; that since he had studied only upto 6th standard, he did not know Hindi and that since he had retracted the statement during cross examination, his earlier statement cannot be relied upon now;
- that none of the transporters, whose statement has been recorded, has categorically stated that they had transported the double quantity of goods on same day on same number of invoice or on the parallel



invoice and these transporters have also submitted copies of transport document while recording their statement;

- that no physical verification of raw materials was carried out to ascertain whether there is any excess or shortage of raw materials and finished goods as it was declared in the statutory records even though in the panchnama itself the clandestine removal under the guise of parallel invoices;
- that the investigation was not extended to Shri Vikas Trivedi, billing clerk and Shri Kunal Chauhan Assistant Accountant.

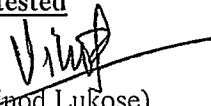
10. Let me now examine the grounds raised in the review order, which I have listed above. However, I find that the review order is not specifically giving any ground/reasoning as to why the findings of the adjudicating authority are not legally correct. The primary findings of the adjudicating authority were [a] that none of the buyers had stated that they had received the goods twice; and [b] none of the transporters had stated that they had transported the goods twice on the same invoice number. As far as one of the buyer accepting having received the goods twice, during cross examination, he retracted, further stating that he was not well conversant in Hindi. There is no evidence/corroborative evidence, put forth in the departmental review substantiating the allegation made in the show cause notice. As far as Annexure A 3 is concerned, I find that the adjudicating authority was correct in setting aside the demand. Demands can never be confirmed on the basis of assumptions and presumption. The review order also relies upon case laws on the importance of the statements made to departmental officers under the relevant sections of the Central Excise and Customs Act. However, when none of the buyer nor the transporter have stated that they have received the goods twice or transported the goods twice, the question of confirming the demand, does not arise. As far as the buyer who in his statement stated of having received goods twice, is concerned retracted during cross examination. The statement of admission, loses relevance in view of the buyer retracting during the cross examination.

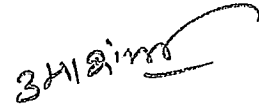
11. In view of the foregoing, I do not find any merit in the departmental appeal and the same is rejected. The OIO to the extent the departmental appeal is filed, is upheld.

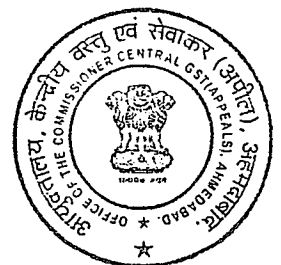
12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
12. The appeal filed by the appellants stands disposed of in above terms.

Date : 29.3.2019

Attested


(Vinod Lukose)
Superintendent (Appeal),
Central Tax,
Ahmedabad.


(उमा शंकर)
प्रधान आयुक्त (अपील्स)



By RPAD.

To,

M/s. Sohni Ceramics,
Near Government Polytechnic College Road,
N.H. No.8, ,
Motipura,
Himmatnagar,
Gujarat.

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Principal Commissioner, Central Tax, Gandhinagar Commissionerate.
3. The Assistant Commissioner, Central Tax Himmatnagar Division- I, Gandhinagar Commissionerate.
4. The Assistant Commissioner, System, Central Tax, Gandhinagar Commissionerate.
5. Guard File.
6. P.A.

