



**आयुक्त(अपील )का कार्यालय,  
Office of the Commissioner (Appeal),**



केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद  
Central GST, Appeal Commissionerate, Ahmedabad  
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.  
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015  
☎ 07926305065 - टेलिफैक्स 07926305136

**DIN : 20220264SW00009479C7**

**स्पीड पोस्ट**

- क फाइल संख्या : File No : GAPPL/COM/STP/1625/2021/1501 - 05
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-003-APP-108/2021-22**  
दिनांक Date : **28-02-2022** जारी करने की तारीख Date of Issue 28.02.2022  
आयुक्त (अपील) द्वारा पारित  
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **AHM-CEX-003-ADC-MS-010-20-21** दिनांक: **17.03.2021**  
issued by Additional Commissioner, CGST & Central Excise, HQ, Gandhinagar  
Commissionerate
- घ अपीलकर्ता का नाम एवं पता Name & Address of the **Appellant / Respondent**

M/s Gallant Metal Ltd  
Near Toll Gate,  
Village: Samakhiyali,  
Taluka: Bhachau, Kutch

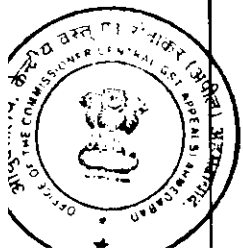
कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

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 अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन 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, 4<sup>th</sup> 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 हानिकार खाने 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.



(क) 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 मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) 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.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

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।

(c) 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 ईए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इका मुख्य शीर्ष 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 होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम 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.

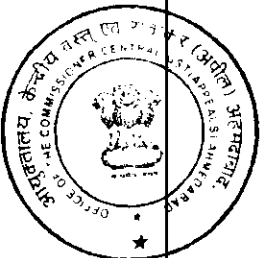
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

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

(क) 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 2<sup>nd</sup>माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद-380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



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 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रु.6.50 पैसे कान्यायालय 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 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.

- (17) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट), के प्रतिअपीलो के मामले में कर्तव्यमांग(Demand) एवं दंड(Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded)-

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है.

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (xxxiv) amount determined under Section 11 D;
- (xxxv) amount of erroneous Cenvat Credit taken;
- (xxxvi) amount payable under Rule 6 of the Cenvat Credit Rules.

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।

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**

The present appeal has been filed by M/s. Gallant Metal Ltd., Village : Samakhiyali, Taluka : Bhachau, District : Kutch (hereinafter referred to as the appellant) against Order in Original No. AHM-CEX-003-ADC-MS-010-20-21 dated 17-03-2021 [hereinafter referred to as "*impugned order*"] passed by the Additional Commissioner, CGST Commissionerate : Gandhinagar [hereinafter referred to as "*adjudicating authority*"]].

2. Briefly stated, the facts of the case is that the officers of Directorate General of Central Excise Intelligence (now Directorate General of GST Intelligence) (hereinafter referred to as DGCEI) had carried out searches at the factory and office premises of M/s.Jay Tripathi Steels Pvt Ltd (hereinafter referred to as JTSPL) as well as at the premises of their suppliers and transporters. During the course of the searches, documents and data showing illicit purchase of raw materials and clandestine clearance of finished goods by JTSPL were recovered. From these documents and data recovered, it appeared that JTSPL had purchased 296.470 MTs of MS Billets valued at Rs.74,94,167/- from the appellant. Therefore, the investigation was extended to the appellant and records were obtained from them. Statement of the Director of the appellant was also recorded in the course of which, he adopted a denial approach and declined any wrong doing. However, on comparison of the seized documents with the invoices issued by the appellant to JTSPL, it appeared that the no invoices issued by the appellant were available in respect of the 296.470 MTs of MS Billets cleared to JTSPL. It, therefore, appeared that the appellant had cleared the said goods to JTSPL without issuance of Central Excise Invoices and without payment of Central Excise duty leviable thereon.

2.1 On conclusion of the investigation, Show Cause Notice No. DGCEI/AZU/36-218/2013-14 dated 06.02.2014 was issued to JTSPL wherein it was proposed to demand and recover Central Excise duty amounting to Rs.90,93,000/- under the proviso to erstwhile sub-section (1) of Section 11A [now Section 11A (4)] of the Central Excise Act, 1944 along with interest.

Imposition of penalty was also proposed on JTSPL as well as various other

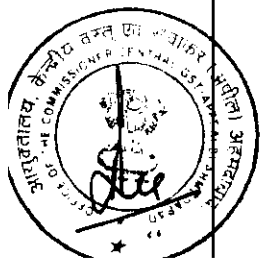


firms and persons. The SCN also proposed imposition of penalty on the appellant under Rule 26(1) of the Central Excise Rules, 2002.

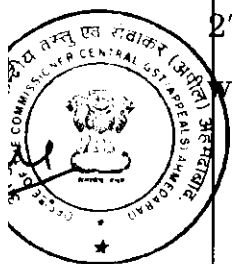
3. The said SCN was adjudicated vide the impugned order wherein the demand for Central Excise duty was confirmed against JTSPL along with Interest. JTSPL had availed the benefit under the SVLDR Scheme, 2019 and therefore, no penalty was imposed upon them. However, penalty was imposed on all other co-noticees under Rule 26 (1) of the Central Excise Rules, 2002. A penalty of Rs.10,00,000/- was imposed upon the appellant under Rule 26 (1) of the Central Excise Rules, 2002.

4. Being aggrieved with the impugned order, the appellant has filed the instant appeal on the following grounds :

- i. Penalty has been imposed upon them based on presumptions and assumptions and the allegations against them are based on uncorroborated statements. No detailed investigation has been conducted with regard to their procurement of raw material for manufacture of the goods alleged to have been cleared without payment of duty, the payments made by them to their raw material suppliers, physical stock of goods as on date of investigation as compared to the recorded stock of raw material, production, finished goods.
- ii. Without corroborative evidences, the conclusion that they had cleared Billets to JTSPL were based on presumption and assumption only.
- iii. There is no independent evidence, either direct or indirect or circumstantial to demonstrate, far less prove, purchase of raw material related to alleged clearance of Billets. There is no evidence either in the form of seizure of physical existence of the Billets. There is no evidence about any movement or transportation of the alleged supply of Billets.
- iv. There is no evidence nor is there any allegation that there was any flow back of money, in cash or otherwise, to them from the recipients of the Billets.
- v. The value of the Billets is sizeable. It is unbelievable that such alleged transportation of Billets could remain unnoticed and undetected by various government authorities.



- vi. They have filed statutory returns periodically and the department has not raised any query with regard to the alleged clearances at any time during scrutiny of returns.
- vii. All purchases of inputs were recorded in the statutory books of accounts and statutory records. There is no evidence to show that the records maintained by them are incorrect. Only on the basis of involuntary statements of the buyers etc. penalty was imposed. The statements are in isolation with no corroboration.
- viii. They dispute and disagree with the contents of the statements presented as corroborative evidence against them. On the face of it, many of the statements appear to be either concocted or contradictory or obtained under official influence, duress, false promise etc. They request that they may be permitted to cross-examine the deponents with regard to whatever is deposed by them and which is contrary to the facts.
- ix. Section 9D of the Central Excise Act, 1944 is clear that a statement under Section 14, ibid, shall be relevant only when the deponent is examined by a witness and is further cross examined by the assessee. They rely upon the decision in the case of Ellora Tobacco Co. Ltd. Vs. CCE – 2017 (347) ELT 614 (T).
- x. They also rely upon the following judgments wherein it was held that statements are not relevant and reliable, if cross examination is not allowed. 1) CCE Vs Chhajusingh S. Kanwal – 2011 (272) ELT 202 (Guj.); 2) CCE Vs. Motabhai Iron and Steel Industries – 2015 (316) ELT 374 (Guj.); 3) Shalimar Rubber Industries Vs. CCE – 2002 (146) ELT 248 (SC); 4) Hi Tech Abrasives Ltd. Vs. CCE- 2018 (362) ELT 961 (Chattisgarh); 5) G-Tech Industries Vs. UOI – 2016 (339) ELT 209 (P&H). They also rely upon the decisions of the Hon'ble Tribunal in various cases.
- xi. In view of the judgment of the Hon'ble High Court of Gujarat in the case of CCE Vs. Motabhai Iron and Steel Industries – 2015 (316) ELT 374 (Guj.) imposition of penalty based on statements, which are involuntary/unreliable/untrue, is not correct or sustainable or lawful.
- xii. The SCN was issued on 06.02.2014 for the period from 17.01.2009 to 27.01.2009, invoking larger period of limitation. If all the facts are within the knowledge of the department, extended period of limitation



is not available, as held by the Hon'ble Supreme Court in the case of Nizam Sugar Factory Vs. CCE – 2006 (197) ELT 465 (SC). The CBIC has clarified vide Circular No. 5/92-CX.4 dated 13.10.1992 that mere non-declaration is not sufficient for invoking larger period of limitation.

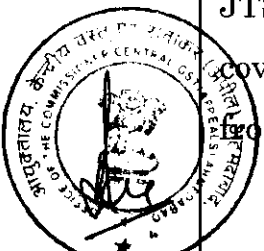
- xiii. They have not violated any of the provisions contained in the Central Excise Act, 1944 and the Rules made thereunder. Penalty is not imposable upon them. They rely upon the decision in the case of Continental Foundation Joint Venture Vs. CCE, Chandigarh-I – 2007 (216) ELT 177 (SC) and Anand Nishikawa Co Vs. CCE – 2005 (188) ELT 149 (SC).

5. Personal Hearing in the case was held on 12.01.2022 through virtual mode. Shri Dhaval K. Shah, Advocate, appeared on behalf of the appellant for the hearing. He reiterated the submissions made in appeal memorandum. He further relied upon the decision in the case of Vishwa Traders Pvt. Ltd. Vs. Commissioner of C.Ex., Vadodara – 2012 (278) ELT 362 (Tri.-Ahmd) and Shivam Steel Corporation Vs. Commissioner of C.Ex. & Cus., BBSR-II – 2016 (339) ELT 310 (Tri.-Kolkata).

6. I have gone through the facts of the case, submissions made in the Appeal Memorandum, submissions made at the time of personal hearing and additional written submissions as well as material available on records. The issue before me for decision is whether penalty under Rule 26 (1) of the Central Excise Rules, 2002 has been correctly imposed upon the appellant or otherwise.

6.1 I find that the case was primarily booked against JTSPL for evasion of Central Excise duty by clearing goods clandestinely without issuing invoices and without payment of the applicable Central Excise duty. JTSPL availed the benefit of the SVLDR Scheme, 2019 and accordingly the proceedings against them were concluded under the said scheme.

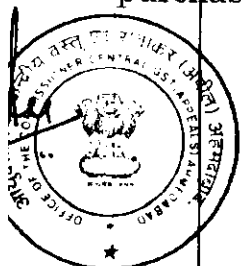
6.2 During the course of investigation, private records recovered from JTSPL revealed that they had also received Billets from the appellant and no covering Central Excise invoices in respect of these goods were found either from JTSPL or the records of the appellant. Therefore, the department was of



the view that the appellant had also cleared goods clandestinely to JTSPL by evading payment of Central Excise duty.

6.3 Having gone through the SCN and the impugned order, I find that the investigation was mainly directed towards JTSPL, M/s.Global Hi-Tech Industries Ltd – a supplier of raw material to JTSPL, the transporters and various firms who had purchased goods from JTSPL. The SCN details evidences viz. statements of transporters, records of transporters, details of cash payments etc. in the case of the clandestine clearances by another supplier of raw material to JTSPL - M/s.Global Hi-Tech Industries Ltd, who is also a co-noticee in the SCN.

6.4 I find that in the SCN the evidences presented are mainly pertaining to the clandestine clearance of finished goods by JTSPL and the procurement of raw material from M/s. Global Hi-Tech Industries Ltd., who had cleared the goods to JTSPL clandestinely without payment of Central Excise duty. These evidences find corroboration from more than one source. However, in the case of the appellant, the only evidence against the appellant is the printout of an excel file, recovered from a laptop in the office premises of JTSPL, containing details of purchase and sales of JTSPL during the month of January, 2009. To corroborate and substantiate these details, pertaining to the appellant, I find no there is evidence presented in the SCN. I find that except for one statement of the Director of the appellant, there is no investigation or evidence relating to the alleged clandestine clearances of the appellant. Even the Director of the appellant had in his statement denied any wrong doing. Therefore, the statement of the Director too does not support the case of the department. Further, there is no evidence, in the form of records of the transporters or statements of the transporters of the goods from the appellant to JTSPL, corroborating the alleged clandestine removal of goods by the appellant. There is also no evidence in the form of receipt of payment for the goods alleged to have been clandestinely cleared by the appellant. Further, even in the statements of the Directors and personnel of JTSPL, as reproduced in the SCN, there is no mention as regards their purchasing and receiving goods clandestinely cleared by the appellant.

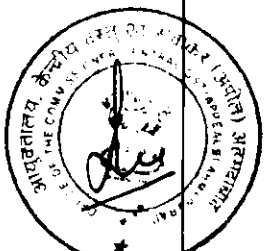




6.5 I further find that there is no material on record to indicate that the investigation was extended to the appellant and evidences of their procuring raw material, for manufacture of the Billets alleged to have been clandestinely cleared, were unearthed. The natural corollary to clandestine clearance of finished goods is that the raw material was also procured clandestinely or there is a mis-match between the physical and recorded stock of raw material. The material on records do not indicate either. It is also not forthcoming from the records whether the appellant was investigated for evasion of Central Excise duty and whether any Show Cause Notice was issued to the appellant for recovery of the Central Excise duty in respect of the goods alleged to have been cleared by them clandestinely without issuing invoices and without payment of duty. The allegation, against the appellant, of having cleared goods clandestinely is based solely on the details contained in the private records of JTSPL seized from the office premises of JTSPL. In the absence of any other evidence to corroborate the details contained in the said private records, the allegation of clandestine clearances on the part of the appellant is not sustainable.

6.6 The appellant have relied upon various case laws in their support. I find that the decision of the Hon'ble Tribunal in the case of Vishwa Traders Pvt. Ltd Vs. Commissioner of Central Excise, Vadodara – 2012 (278) ELT 362 (Tri.-Ahmd) is relevant to the issue. The Hon 'ble Tribunal had in the said case held that :

“13. On careful perusal of the entire records of the case, we find that there is nothing on record as to unrecorded purchases or consumption of various other raw material in the manufacture of Frit, there is also nothing on record to indicate that the appellant had purchased the Quartz, Feldspar, Zinc, Borax Powder, Calcium and Dolomite and without accounting them used for the manufacture of Frit for clandestine removal. There is also nothing on record nor there is any statement of the suppliers of other raw materials, which would indicate that the appellant had received unaccounted raw material from the suppliers of these raw materials. There is a solitary evidence in the form of statement of supplier of one of the raw material i.e. Borax Powder, who indicated that the appellant had procured Borax Powder and not accounted the same in his record; and the said entries and information were deduced from the documents of the premises of Shri Anil Jadav and whose evidence has been discarded for having not been produced for cross examination; in the absence of any other tangible evidence to show that the appellant had been procuring the other major raw materials required for manufacture of Frit without recording in books of accounts, we are unable to accept the contentions of the Id. AR appearing for the Revenue and the findings of the adjudicating authority, that there was clandestine manufacture and clearance of the finished goods. The investigation has not



proceeded further to bring on record unaccounted purchases of all the raw materials required for manufacturing of 'Frit'.

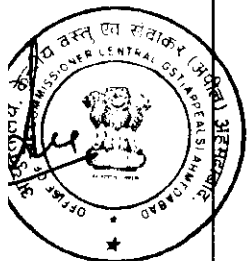
14.....

Further, it is settled law that for the purpose of clandestine removal, there has to be clandestine manufacture. We find on perusal of the record, that the Revenue authority, despite having engaged themselves in massive investigation, has not brought on record a single evidence of procurement of other major raw materials required for manufacture of Frit, either in the form of entries in the books of accounts or in the form of statements of supplier of the other major raw materials. It is undisputed that for manufacturing of Frit (the final product) major raw material is 'Quartz' which is approximately 45% of the total inputs going in the manufacturing of 'Frit'. We find from the records that Revenue has not produced a shred of evidence, to indicate that the appellant had been procuring Quartz without accounting them in books of account nor is there any evidence to indicate that other raw materials were also procured without recording them in books of accounts. In the absence of any such evidence, we are unable to persuade ourselves that the appellant M/s. VTPL had clandestinely manufactured the quantity of 'Frit' during the period 1998-1999 to January 2002. If there is no clandestine manufacture, there cannot be any clandestine clearance. Further, we also find from the records that there is no investigation which has been carried out to indicate that there has been unusual consumption of electricity or any other evidence in the form of receipt of raw material into the factory premises of the appellant M/s. VTPL or that the production figures were so manipulated that the clandestine removal could take place without receipt of other raw materials. The investigating authorities, during the course of raid, had even seized the records of security at the factory gate, but from these records, Revenue was not able to show that there was illicit receipt of the raw materials in the manufacture of final product in the factory premises."

6.7 The above judgment of the Hon 'ble Tribunal, Ahmedabad was affirmed by the Hon 'ble High Court of Gujarat – 2013 (287) ELT 243 (Guj.). The department carried the matter in appeal before the Hon'ble Supreme Court. However, the Hon'ble Supreme Court dismissed the appeal of the department upheld the judgment of the Hon'ble High Court – 2014 (303) ELT A24 (SC).

6.8 I further find that the judgment of the Hon'ble High Court of Gujarat in the case of Motabhai Iron and Steel Industries – 2015 (316) ELT 374 (Guj.) relied upon by the appellant is also applicable to the facts of the present appeal. In the said case the Hon'ble High Court had held that :

"19. From the findings recorded by the Tribunal, it is apparent that payment to M/s. Vasmin Corporation in respect of purchases was made through banking channels. Under the circumstances, the Tribunal has lightly held that the demand cannot be confirmed against the assessee. The Tribunal has further found that it is an undisputed fact that all the purchases were duly recorded in the statutory books of the assessee and the goods were also found to be entered in its statutory records. That the Department had not made any investigation at the unit of the assessee, which could have supported the

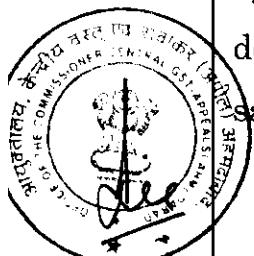


findings of the adjudicating authority. None of the consignors of the goods have denied the clearance of goods to the assessee. There was no evidence on record to show that the records maintained by the assessee were not correct. The Tribunal, was accordingly, of the view that on the basis of statements of some transporters which were not corroborated by any material on record, a huge credit could not be disallowed. It is under these circumstances that the Tribunal has set aside the demands and the penalties imposed upon the assessee and the co-noticees.”

6.9 In the case of Shah Foils Ltd. & Others the Hon'ble Tribunal, Ahmedabad had vide Final Order No. A/10120-10125/2019 dated 18.01.2019 held that :

“18. The above judgment of the Tribunal stands upheld by the Hon'ble High Court of Gujarat as reported in 2014 (308) ELT 655 (Guj.) and Apex Court as reported in 2015 (3190 ELT A117 (SC). Applying the ratio of aforesaid orders, we find that the sole evidence which has been relied upon by the department is only pen drive data and statement of brokers which were even self contradictory. Though the statement of directors has also been relied upon by the department, but we found that even in some statements they have stated that the data found in pen drive do not belong to M/s SFL and it belongs to M/s Sankalp. In spite of fact that some of the statements were recorded in presence of Snehil R shah who is director of M/s Sankalp, but even then he was not questioned about such data. Atleast the officers could have recorded his statement to ascertain the truth. Even if the statements of director are considered inculpatory the same cannot be relied upon in absence of corroboration with material evidence as held in case of Tejwal Dyestuff Ind. Vs. 2007 (216) ELT 310 (TRI) and 2009 (234) ELT 242 (GUJ.). Thus the statement of directors cannot lead to inference that the goods stated in “Bombay Sales” ledgers are of Appellant. We also find that the brokers have even stated that they have taken the goods from Vasai Godown of M/s SFPL. In such case there is no reason to hold that the Appellant has dealt with M/s SFL. Thus in both cases i.e “Bombay Sales” and “Smi Cash Sales” apart from the statements which are even contradictory no corroborative evidence. The Appellant has placed reliance upon various judgments to canvas their point that in absence of corroborative evidence no demand can be made. We find that no corroborative evidence has been stated in show cause notice in the form of receipt of unaccounted raw material, transportation of unaccounted such raw material to SFL factory, consumption of unaccounted raw material, production of unaccounted finished goods, production record of unaccounted finished goods, use of consumables, extra labour and excess consumption of electricity, clearance of goods from the factory, receipt of cash from even a single person on account of alleged clandestine sale. We also find that the revenue did not undertake any investigation at the end of M/s SFPL from where the clearance of goods has taken place. When the brokers had stated that the delivery was taken from Vasai Godown which was under the ownership of M/s SFPL, the officers should have made investigation. Thus in such circumstances, the demand on account of clandestine removal cannot be made....”.

6.10 The above judgment of the Hon 'ble Tribunal, Ahmedabad was affirmed by the Hon 'ble High Court of Gujarat – 2020 (372) ELT 632 (Guj.). The department filed an appeal before the Hon'ble Supreme Court against the said judgment. However, the Hon'ble Supreme Court dismissed the appeal of



the department and upheld the judgment of the Hon'ble High Court – 2021 (377) ELT A87 (SC).

7. In view of the facts discussed herein above, I am of the view that in the absence of sufficient evidences to support the allegation of clandestine clearance, the adjudicating authority has erred in imposing penalty upon the appellant. Therefore, I set aside the impugned order and allow the appeal filed by the appellant.

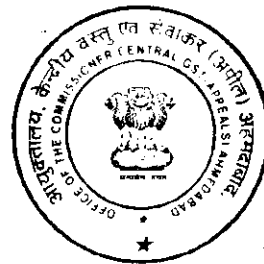
8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

*Akhilesh Kumar*  
 (Akhilesh Kumar) 28 February 2022.  
 Commissioner (Appeals)  
 Date: .02.2022.

Attested:

*(N.Suryanarayanan. Iyer)*  
 Superintendent(Appeals),  
 CGST, Ahmedabad.



**BY RPAD / SPEED POST**

To

M/s. Gallant Metal Ltd.,  
 Village : Samakhiyali,  
 Taluka : Bhachau,  
 District : Kutch

Appellant

The Additional Commissioner,  
 CGST,  
 Commissionerate : Gandhinagar

Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Gandhinagar.
3. The Assistant Commissioner (HQ System), CGST, Gandhinagar.  
 (for uploading the OIA)

- ✓ 4. Guard File.
5. P.A. File.