



सत्यमेव जयते

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

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाडी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
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DIN : 20220364SW0000557855

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/CEXP/559/2021 / 7084-88
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-003-APP-115/2021-22**
दिनांक Date : **25-03-2022** जारी करने की तारीख Date of Issue 28.03.2022
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, Gandhinagar Commissionerate
- घ अपीलकर्ता का नाम एवं पता Name & Address of the **Appellant / Respondent**

M/s Nawaz Steel Traders
Matwa Chowk, Alka Cinema Road,
Bhavnagar-364001

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, 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 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 मामलों 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 इए-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 इ.का 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 2ndमाला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd 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 पढी 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूची-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.

- (24) 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:

- (iv) amount determined under Section 11 D;
- (vi) amount of erroneous Cenvat Credit taken;
- (lvii) 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. Nawaz Steel Traders, Matwa Chowk, Alka Cinema Road, Bhavnagar – 364 001 (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 buyers, 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 clandestinely cleared and sold finished goods valued at Rs.8,09,701/-, involving Central Excise duty amounting to Rs. 83,400/-, to the appellant.

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.1,00,000/- 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. The adjudicating authority has not at all dealt with the pleas made in their written reply before him. Their written reply has been completely ignored while passing the impugned order which is non-speaking and a non-reasoned one.
- ii. The adjudicating authority has not recorded any findings on the arguments raised before him and has also cursorily and mechanically issued the impugned order. No findings have been recorded for imposing penalty on them.
- iii. On perusal of the SCN and the impugned order, it is clear that there is no justifying reason for imposing penalty on them.
- iv. They adopt and reiterate the various pleas made in their written reply to the SCN filed before the adjudicating authority.
- v. The impugned order was passed without giving them the opportunity of personal hearing. They could not attend the personal hearing as they were not aware of the change of adjudicating authority. The impugned order has been passed in violation of the principles of natural justice.
- vi. Regarding the virtual personal hearing on 20.01.2021, they submit that they had vide letter dated 19.01.2021 requested for adjournment. Hence, the facts recorded at Para 15 of the impugned order are not correct.
- vii. The SCN was issued answerable to the Commissioner of Central Excise, Ahmedabad-III. However, the same was adjudicated by the Additional Commissioner without issuing any corrigendum by the authority issuing the SCN.
- viii. It can be seen from the SCN and the findings recorded in the impugned order that there is no evidence on record to suggest that they had in any way conspired or colluded with JTSPL to facilitate evasion of excise duty. There is also no evidence to show that they had asked the goods to be removed clandestinely.



- ix. Penalty can be imposed under Rule 26 of the Rules if a person knowingly deals with any goods which he knows are liable for confiscation. They had neither purchased or dealt with the goods knowing that the same were liable for confiscation and as such no penalty is imposable under Rule 26.
- x. It is established principle that intentions about commission of any offence are to be proved. In the present case, there being no material in the SCN that they had any intention to purchase goods illicitly as alleged in the SCN and the impugned order, no penal action can be taken against them. There is no evidence against them regarding contravention of any of the Rules nor any discussion in the impugned order. Therefore, they are not liable for penalty under Rule 26 of the Rules.
- xi. The duty involved in the case is Rs.83,400/- and the penalty imposed is Rs. 1,00,000/- which is beyond the provisions of Rule 26 (1) of the Rules. Rule 26 (1) of the Rules provides for a penalty not exceeding the duty on such goods or two thousand rupees whichever is greater.
- xii. The penalty imposed be set aside as they have never acquired possession of goods as alleged in the SCN and they have not committed an offence.

5. Personal Hearing in the case was held on 09.02.2022 through virtual mode. Shri Sarju S. Mehta, Chartered Accountant, appeared on behalf of the appellatant for the hearing. He reiterated the submissions made in appeal memorandum.

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 appellatant or otherwise.

6.1 I find that the case was primarily booked against JTSPL for evasion of Central Excise duty for 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 clandestinely cleared their finished goods to the appellant and no covering Central Excise invoices in respect of these goods were issued by JTSPL. Therefore, the department was of the view that the appellant had purchased goods clandestinely cleared by JTSPL in respect of which Central Excise duty was evaded by JTSPL.

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 a few buyers of the finished goods of JTSPL. The SCN details evidences viz. statements of transporters, records of transporters, details of cash payments etc..

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. Statements of some of the buyers who had purchased the finished goods clandestinely cleared by JTSPL were also recorded wherein the purchase of clandestinely cleared goods was admitted by the buyers. However, in the case of the appellant, I find that the only evidence against them 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 that no investigation was carried out in respect of the appellant and no evidence against the appellant is presented in the SCN.

6.5 Further, there is no evidence of any kind which corroborates the alleged purchase of clandestinely cleared goods by the appellant. There is also no evidence of payment made by the appellant in respect of the goods alleged to have been purchased by them. Further, even in the statements of the Directors and personnel of JTSPL, as reproduced in the SCN, there is no



reference or mention as regards JTSPL selling the clandestinely cleared goods to the appellant.

6.6 I further find that there is no material on record to indicate that the investigation was extended to the appellant. The allegation against the appellant, of having purchased goods clandestinely cleared by JTSPL, 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 purchase of goods clandestinely cleared by JTSPL is not sustainable.

6.7 It is also seen that in the SCN issued to the appellant, there is no detailing of the acts of omission or commission or contraventions of the provisions of law on the part of the appellant. At Para 12.7.1 of the SCN issued to the appellant it is stated that "The finished goods buyers of M/s.JTSPL, namely M/s.Kanak Steel Traders, Ahmedabad; M/s.Gurukrupa Steel Corporation, Mehsana; M/s.Vikas Pipes and Steels, Ahmedabad; M/s.Narshibhai Rajaram Patel, Mehsana; M/s.Shiva Enterprise, Ahmedabad; M/s.Shree Mallinath Steel Traders, Ahmedabad; M/s.Maruti Enterprise, Ahmedabad; have confirmed in their respective statements.....". Thereafter, it is mentioned that "Further, investigation has also revealed that in addition to the above buyers, M/s.JTSPL has also cleared finished goods illicitly i.e. without payment of duty to M/s.Nawaz Steel Traders, Bhavnagar.....". It therefore, is clearly evident that while some of the buyers of JTSPL were investigated and evidences gathered against them, the appellant was apparently not even subjected to any investigation and merely on the basis of the private records recovered from JTSPL, the appellant have been made a noticee in the SCN issued to JTSPL and others.

6.8 Considering the above facts, it is apparent that the SCN, in so far as the appellant is concerned, was issued mechanically even though the appellant was not investigated and also without adducing any evidence against the appellant. The adjudicating authority too has without giving any finding on the role of the appellant or even specifying the contravention on the part of the appellant imposed penalty under Rule 26 (1) of the Central Excise Rules, 2002.

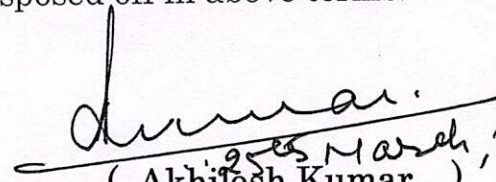


6.9 The fact that the impugned order, in so far as the appellant is concerned, was passed mechanically without application of mind is also clearly forthcoming from the quantum of penalty imposed on the appellant. Rule 26 (1) of the Central Excise Rules, 2002 provides for imposition of penalty “*not exceeding the duty on such goods or rupees ten thousand, whichever is greater*”. As per Annexure ‘E’ to the SCN, the central excise duty involved on the goods alleged to have been purchased clandestinely by the appellant amounts to Rs. 83,400/-. Despite this, the adjudicating authority has imposed a penalty of Rs.1,00,000/- on the appellant, which is in excess of the legal provisions invoked in SCN and is clearly indicative of non application of mind.

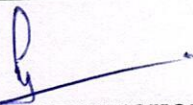
7. In view of the facts discussed herein above, I am of the view that in the absence of any evidences to support the allegation of purchase of clandestinely cleared goods, the adjudicating authority has erred in imposing penalty upon the appellant. Therefore, I set aside the impugned order and allow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

10. 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)
Commissioner (Appeals)
Date: .03.2022.

Attested:


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

BY RPAD / SPEED POST

To

M/s. Nawaz Steel Traders,
Matwa Chowk,
Alka Cinema Road,
Bhavnagar – 364 001

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.

