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

केंद्रीय जीएसटी, अपील आयुक्तालय,अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ीअहमदाबाद३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065 - टेलेफैक्स07926305136

DIN : **20220764SW0000919619**

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/CEXP/749-750/2021 /2547-2551

ख अपील आदेश संख्या Order-In-Appeal Nos.**AHM-EXCUS-003-APP-36 top 37/2022-23**
दिनाँक Date : **13-07-2022** जारी करने की तारीख Date of Issue 15.07.2022

आयुक्त (अपील) द्वारापारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of OIO No. **AHM-CEX-003-JC-MT-002 to 003-20-21** दिनाँक: **24.09.2021** passed by Joint Commissioner, CGST& Central Excise, Gandhinagar Commissionerate

ध अपीलकर्ता का नाम एवं पता Name & Address

Appellant

1. **M/s Trio Elevators Co. India Pvt Ltd**
   Survey No. 707/01, Thol Road,
   Gandhinagar - 382721

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 पूवोक्त 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 मे हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(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 मामलें 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 डयूटी केडिट 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 दिनाँक 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 रूपये या उससे कम होतो रूपये 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 अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

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 2nd माला, बहुमाली भवन , असरवा , गिरधरनागर, अहमदाबाद–380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor,BahumaliBhawan,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. Registar 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 ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होत`हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

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

(59) 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:

(clx) amount determined under Section 11 D;
(clxi) amount of erroneous Cenvat Credit taken;
(clxii) 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

Two appeals have been filed by M/s. Trio Elevators Co. Ltd., 824, 826, Kothari Industrial Estate, Santej, Rakanpur, District : Gandhinagar – 382 721 (hereinafter referred to as "*appellant*") against Orders in Original (as per details given in table below) [hereinafter referred to as "*impugned orders*"] passed by the Joint Commissioner, CGST, Commissionerate : Gandhinagar [hereinafter referred to as "*adjudicating authority*"].

S.No.	Order in Original No. and Date	Appeal No.
1	AHM-CEX-003-JC-MT-002-21-22 dated 24.09.2021	GAPPL/COM/CEXP/749/2021
2	AHM-CEX-003-JC-MT-003-21-22 dated 24.09.2021	GAPPL/COM/CEXP/750/2021

2. Briefly stated, the facts of the case is that the appellant were holding Central Excise Registration No. AACCT4923EEM001 and were engaged in manufacture of Elevator Parts falling under Chapter Heading 84313100 of the First Schedule to the Central Excise Tariff Act, 1985. The appellant were also holding Service Tax Registration No. AACCT4923ESD002. Audit of the records of the appellant was carried out by the officers of Central Tax Audit, Ahmedabad and certain objections were raised. However, the present appeals are limited to only on one issue and the same is detailed below.

2.1 The appellant were involved in the manufacturing of Lifts Parts and installation of new lifts for which 'NE' series of invoices were raised. They were also engaged in repairing and reconditioning of lifts already installed, for which 'T' series invoices were issued. The appellant removed manufactured Lift Parts from their factory and discharged central excise duty on the value as per the invoices. Subsequently, the appellant was issuing tax invoices from their Head Office for the same Lift Parts and charging different prices for these goods. The invoices issued by the Head Office is a consolidated invoice including the value of the Lift Parts and

labour charges for installation, on which service tax is discharged. It was observed by the audit officers that in certain cases, the value of the Lift Parts as per the subsequent invoices was on the higher side as compared to the value at the time of clearance from the factory. It appeared that there was an additional consideration received by the appellant on the invoices issued by the Head Office, which was not included in the assessable value of the Lift Parts cleared from the factory. In terms of Section 4 of the Central Excise Act, 1944 and Rule 6 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 (hereinafter referred to as the Valuation Rules), it appeared that the price was not the sole consideration for sale at the time of clearance from the factory and the appellant had collected additional amount by issuing subsequent invoice from the Head Office. The appellant had accordingly short paid central excise duty amounting to Rs.24,15,048/- during F.Y. 2016-17 and Rs.75,73,149/- during F.Y. 2016-17 and F.Y.2017-18.

3. The appellant was issued Show Cause Notices, as detailed below :

S.No.	Appeal No.	Show Cause Notice No. and Date	Duty/Service Tax/Cenvat credit demanded
1	GAPPL/COM/CEXP/749/2021	VI/1(b)/Tech-43/SCN/Trio Santej/2019-20 dated 16.03.2020	1) Rs.24,15,048/- 2) Rs.62,19,042/-
2	GAPPL/COM/CEXP/750/2021	VI/1(b)/Tech-44/SCN/Trio Santej/2019-20 dated 05.02.2020	1) Rs.16,874/- 2) Rs.2,433/- 3) Rs.11,100/- 4) Rs.5,128/- 5) Rs.75,53,149/- 6) Rs.16,59,906/- 7) Rs.14,19,288/-

The SCNs, detailed above, proposed recovery of the Central Excise duty/Service Tax/Cenvat Credit by invoking the extended period of limitation. The SCNs also proposed to charge and recover interest and also proposed imposition of penalty.

4. The said SCNs were adjudicated vide the impugned orders wherein, in respect of Serial No.1 of the Table at Para 3 above, the demand for Central Excise duty amounting to Rs.24,15,048/- was confirmed along with Interest and penalty equivalent to the duty was imposed under Section 11AC (1) (c) of the Central Excise Act, 1944. The demand for Cenvat credit amounting to Rs. 62,19,042/- was settled as the appellant had opted for the SVLDRS, 2019. In respect of Serial No.2 of the Table at Para 3 above, the demand for Central Excise duty, Service Tax, Interest for late payment of duty and penalty for late filing of returns were confirmed. However, the demands for Rs.16,59,906/- and Rs.14,19,288/- were dropped. Interest was ordered to be paid on the Central Excise duty confirmed. Penalty equivalent to the Central Excise duty amounting to Rs.75,53,149/- was imposed under Section 11AC (1) (c) of the Central Excise Act, 1944.

5. Being aggrieved with the impugned orders, insofar as it pertained to the confirmation of central excise duty amounting to Rs.24,15,048/- and Rs.75,53,149/- along with interest and penalty, the appellant has filed the present appeals on the following grounds :

i) They had discharged the duty as per the Valuation Rules and therefore, there is no short payment of duty. Even assuming that the audit point is correct, then it should be for those random/few invoices. The audit should have taken care of more invoices instead of remaining satisfied with few cases for the period involved. The working out of short payment is not proper and just as the amount worked out is wrong and based on scrutiny of few invoices.

ii) The adjudicating authority has not dealt with submissions made by them and has not given any finding on the submissions.

iii) They had paid excess excise duty in most of the cases but the said matter was ignored by the adjudicating authority and there is no findings and discussions on this point. No findings have

been given on the calculation of assessable value arrived at by them. The adjudicating authority has also not discussed the important submissions on these points. Therefore, the impugned order is non-speaking and in violation of principles of natural justice.

iv) For the disputed period, they had been raising invoices to Head Office and thereafter, the Head Office had been clearing the goods to third party and under this chain. It is admitted fact in the notice but the department has not considered the excess payment of duty. If the excess payment is considered, this short payment may be squared up and therefore, there is no short payment as found by the adjudicating authority.

v) They rely upon the decision in the case of Goetze India Ltd. Vs. Commissioner of Central Excise, Bangalore – 2008 (089) RLT 0464; Vinir Engi. Pvt. Ltd. – 2004 (168) ELT 34; Rishi Alloys Pvt. Ltd.- 2005 (186) ELT 287 ; Bajaj Tempo Limited – 2004 (172) ELT 473; Tilrode Chem Pvt. Ltd.- 2011 (264) ELT 36.

vi) The penalty imposed is not imposable in view of the grounds taken above. It was a question of interpretation and there was no malafide intention to evade payment of duty.

6. The appellant filed additional written submissions on 13.06.2022, wherein it was, inter alia, stated that :

- The audit party had observed that there was short payment of duty as invoices raised to buyer as well as to the Branch Office on payment of excise duty and subsequent invoices raised from Branch Office to buyer is inclusive of excise duty.
- In some case, there is short payment and in some cases there is excess payment. But the adjudicating authority has not given benefit of adjustment of duty.
- The demand has been confirmed only on the ground that they had not submitted the details and accordingly no conclusion could be arrived at.

- They had relied upon the decision in the case of Vinir Engi. Pvt. Ltd. – 2004 (168) ELT 34; Rishi Alloys Pvt. Ltd.- 2005 (186) ELT 287 ; Bajaj Tempo Limited – 2004 (172) ELT 473; Tilrode Chem Pvt. Ltd.- 2011 (264) ELT 36. But no findings have been given on the judgment relied upon by them. Copies of random invoices are submitted.

7. Personal Hearing in the case was held on 15.06.2022 through virtual mode. Shri Naimesh K. Oza, Advocate, appeared on behalf of the appellant for the hearing. He reiterated the submissions made in appeal memorandum. He stated that the demand needs re-quantification and hence, matter may be remanded to the adjudicating authority.

8. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the additional written submissions and submissions made at the time of personal hearing as well as the materials available on records. The issue before me for decision is whether the impugned orders passed by the adjudicating authority confirming the demand for central excise duty against the appellant are legal and proper or otherwise.

9. I find that the demand was raised against the appellant on the grounds that the value of goods sold under the Tax Invoices of their Head Office was higher than the assessable value on which central excise duty was paid by them at the time of clearance from their factory. Having gone through the records and submissions of the appellant, I find that the appellant are not disputing their liability to pay central excise duty on the value at which the goods were sold by their Head Office. They have, however, contended that there are cases where the goods were sold at a lesser value by the Head Office as compared to the assessable value at the time of clearance from the factory and, therefore, the excess duty paid at the time of clearance from the factory is required to be adjusted against the case of short payment of duty. The appellant have relied upon a few

judgments of the Hon'ble Tribunal in support of their claim for adjustment of duty. The appellant have also contended that the adjudicating authority has not given any findings on the judgments relied upon by them.

9.1 I find that the adjudicating authority has at Para 11.10 and 16. 10 of the impugned orders at Sr. No.1 and 2, of the Table in Para 1 above, respectively reiterated the reasons for non applicability of the judgments relied upon by the appellant which are stated in the SCN itself. I have considered the reasons cited in the said Paragraphs for not following the said judgments and find myself concurring with the findings recorded therein.

10. I find that the issue of adjustment of duty was also a subject matter in the case of Mahindra Ugine Steel Co. Ltd. Vs. Commissioner of Central Excise, Pune – 2012 (278) ELT 215 (Tri.-Mumbai). The relevant Paragraphs of the judgment of the Hon'ble Tribunal is reproduced as below :

> **"6.** As regards the appellant's claim on the excess duty paid in certain transactions shall be permitted to be adjusted against the short payment of duty against the some other transactions, it has to be observed that there is no specific provision in the excise law to make such adjustments except where the assessments are provisional. In the instant case, it is seen that the appellant had not opted for provisional assessment but instead chose to pay duty on individual transactions by determining the value of each transaction and discharging duty liability thereon. Further, whatever duty was paid by the appellants would have been taken as Cenvat Credit by the buyer of the goods and, therefore, such adjustment will also be hit by the principles of unjust enrichment. In the absence of any specific provision in law and also in view of the fact that the principles of unjust enrichment apply in matters relating to refund of excess duty paid, we do not find any merit in the argument of the appellant that whatever excess duty payments they had made should be allowed to be set off against the short duty payments made in some other transactions especially, when such excess and short payments relates to different periods of time. Therefore, the Commissioner is right in coming to the conclusion that such adjustments are not provided for in the law. The appellant has relied on the *Tal Manufacturing case* cited (supra). On a perusal of the said judgement, it is clear that the facts of the said case were completely different. In that case the issue related to rejection of transaction value on the ground that the buyer and the seller were related. The assessee in that case discharged duty liability on the transaction value whereas the department held that the assessee and the buyer were related and hence transaction value was not acceptable and sought to demand duty on cost construction basis. In that particular situation, the Tribunal held that short payments and excess payments have to be adjusted together unit wise and duty be demanded accordingly. The appellant has not shown how the facts of the said

case are identical to the present one and, hence, we do not find how this judgement can be applied to the present case.

7. The appellant has also relied on the judgement of the Hon'ble Apex Court in the case of *Jay Yuhshin Ltd.*, cited (supra) wherein the Apex Court had set aside the demand for differential duty on the cost of the components not included in a job work transaction. In our view, the said judgement does not have application to the facts of the present case as in the instant case the Hon'ble Apex Court had directed this Tribunal to go by the Cost Auditor's report with regard to the inclusion of the cost of the scrap in the assessable value of the finished goods supplied on job work basis. When such a specific direction exists for consideration and decision by this Tribunal, the Tribunal has to abide by those specific directions rather than relying on the decisions given in other cases where the decision might have been given under a different set of facts and circumstances. Therefore, the reliance placed on this judgement does not help the appellant's cause in any way.

8. In a recent decision of the Larger Bench of this Tribunal, a similar issue came up for consideration in the case of *Excel Rubber Ltd.* v. *C.C.E., Hyderabad* and *Sangam Spinners* v. *CCE, Jaipur*. The Larger Bench vide Misc. Order No. 251/2011-EX/2011, dated 30-3-2011 [2011 (268) E.L.T. 419 (Tri. - LB)] decided the matter as follows :-

> "50. The fall out of the above discussion is that once the authority on finalization finds any amount of money having been paid in excess of the duty liability ascertained in the final assessment, the excess amount so ascertained would become refundable to the assessee. Such excess amount can certainly be adjusted towards any other duty liability of such assessee under the Excise Act, 1944 and Rules made thereunder, however, such adjustments are subject to the applicability of the principles of unjust enrichment. Therefore, before grant of adjustment, the authority will have to ascertain whether such amount is to be actually refunded to the assessee or is liable either wholly or partly to be credited to the account of the consumer benefit fund and only thereafter make an order of adjustment to the extent the amount is found to be actually refundable and not liable to be credited to the account of consumer benefit fund. Needless to say, that the burden of proof in this regard would be upon the assessee."

In the instant case, the assessment was not provisional. Further, the assessee has not led any evidence either before the adjudicating authority or before us that they have not passed on the duty burden to anybodyelse and have borne the incidence of duty themselves. In the absence of any such evidence, their plea for adjustment of excess payments with the short payments of duty is not legally sustainable and cannot be acceded to."

10.1 I further find that a similar view was taken by the Hon'ble Tribunal in the case of Krishna Electrical Industries Ltd. Vs. Commissioner of Central Excise, Indore – 2017 (352) ELT 67 (Tri.-Del.). The relevant Paragraphs of the judgment of the Hon'ble Tribunal is reproduced as below :

> **"5.** The goods manufactured by the appellant have been cleared from the factory to the depot from where they have been cleared to the ultimate customer on payment of duty. It is evident from the facts of the case that the sale of the goods has taken place at depot. In such cases when goods are sold through depot, there is no sale at

the time of removal of the goods from the factory gate. Section 4(3)(c)(iii) includes the depot as a place of removal when excisable goods are sold from the depot after their clearance from the factory. Section 4 of the Central Excise Act provides for payment of Central Excise Duty on transaction value prevalent at the time and place of removal of the goods. In this case since the goods are not sold at the time of their clearance from the factory, as per Rule 7 of the Central Excise (Valuation) Rules, 2000, the value should be the normal transaction value of such goods when sold from the depot. In the instant case, the appellant has adopted the value accordingly. It is also pertinent to record that no provisional assessment has been ordered in the present case.

6. The Central Excise Law provides for claiming refund of Excise duty paid in excess, subject to various conditions prescribed in Section 11B. Once duty has been paid in excess, the assessee is required to file refund claim and satisfy all the conditions prescribed in the above section, to get back the excess paid duty. In the present case, we find that the appellant has gone ahead and adjusted the excess duty paid with the short paid duty which is not permissible in law."

10.2 I find that in the above judgments, the Hon'ble Tribunals have held that there is no provision in law for adjustment of excess duty paid towards the duty short paid and accordingly, the same is not permissible. In the present appeals, I find that the clearance of the goods by the appellant are self assessed and the assessment is not provisional. Therefore, in cases where the appellant claims they have paid excess duty, the same would not be available for adjustment towards cases where there is short payment of duty. The proper course of action would have been to claim refund of the duty paid in excess. Applying the ratio of the above judgments of the Hon'ble Tribunal, I am of the considered view that the claim of the appellant for adjustment of the duty claimed to be paid in excess towards duty short paid is not permissible as there is no provision in law allowing for such adjustments.

11. The appellant have in the course of the personal hearing stated that the demand needs re-quantification and hence, requested for remanding the case back to the adjudicating authority. However, they have not submitted any reason for seeking re-quantification of the demand. Since, it has already been held that adjustment of duty is not permissible in law, there does not exist any ground for re-quantification of the demand. Consequently, I do not find any substance in the request of the appellant for remanding the case back to the adjudicating authority.

12. The appellant have contested the imposition of penalty on the grounds that the issue involves interpretation and there was no malafide intention to evade payment of duty. In this regard, I find that the clearance of goods by the appellant at a lower value from their factory and subsequently raising invoice for a higher value from their Head Office is in clear violation of the provisions of Section 4 of the Central Excise Act, 1944 and the Valuation Rules, 2000. Further, the provisions of the said Act and Rules does not leave any room for ambiguity insofar as the valuation of finished goods for the purpose of levy of central excise duty is concerned. The appellant have also not specified the provision of law, the interpretation of which resulted in their paying central excise duty on a lower value while collecting a higher value from customers on the basis of invoices issued by the Head Office. Consequently, I do not find any merit in the contention of the appellant.

12. In view of the facts discussed herein above, I uphold the impugned orders and reject the appeals filed by the appellant.

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

The appeals filed by the appellant stands disposed of in above terms.

13th July, 2022.

(Akhilesh Kumar)
Commissioner (Appeals)

Date: .07.2022.

Attested:

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

BY RPAD / SPEED POST

To

M/s. Trio Elevators Co. Ltd.,
824, 826, Kothari Industrial Estate,
Santej, Rakanpur,

Appellant

District : Gandhinagar – 382 721

The Joint Commissioner,
CGST & Central Excise,
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.