



सत्यमेव जयते

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 : 20220864SW000000CBC1

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/CEXP/557/2021 /323H - 3239
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-003-APP-38/2022-23
दिनांक Date : 29-07-2022 जारी करने की तारीख Date of Issue 26.08.2022
- आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. AHM-CEX-003-ADC-MS-009-20-21 दिनांक: 25.02.2021 passed by
Additional Commissioner, CGST & Central Excise, HQ, Gandhinagar Commissionerate
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

1. M/s Harshlaxmi Chemisolv
D-613, Shiromani Complex,
Near Jhansi Rani Statue,
Opp. Ocean Park, Nehru Nagar,
Satellite, Ahmedabad - 380015
2. M/s Harshlaxmi Chemisolv
B-404, Shivalik Corporate Park,
Above D-Mart, Nr. Shyamal Char Rasta,
Satellite, Ahmedabad

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 :

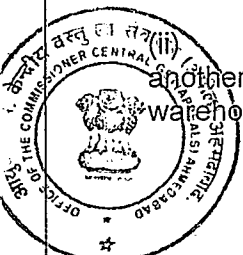
Revision application to Government of India:

(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।

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 हों।

(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.

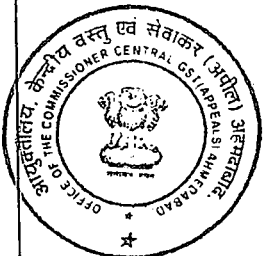
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 Appellate 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.

- (66) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामलों 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.

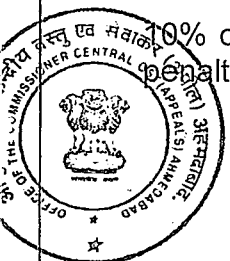
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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:

- (clxxxix) amount determined under Section 11 D;
- (clxxxii) amount of erroneous Cenvat Credit taken;
- (clxxxiii) 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. Harshlaxmi Chemisolv, B-404, Shivalik Corporate Park, Above D-Mart, Near Shymal Char Rasta, Satellite, Ahmedabad (hereinafter referred to as the appellant) against Order in Original No. AHM-CEX-003-ADC-MS-009-20-21 dated 25.02.2021 [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 intelligence gathered by the officers of the Directorate General of Central Excise Intelligence, Zonal Unit, Ahmedabad (now DGGI) indicated that the appellant, who were holding Dealer Registration No. AKCPK8308DED001 and were dealing in various types of imported as well as indigenous Organic Chemicals viz. Toluene, Nitro-Benzene, Phenol etc. They were selling the said chemicals to different buyers based in Delhi, Kundali, Panipat, Sonipat (Haryana) but allegedly passing on the cenvat credit to different manufacturers/dealers based at Vapi, Ankleshwar, Ahmedabad etc. without physical supply of the corresponding goods. Accordingly, searches were carried out at the office premises of the appellant and various documents and records were seized. Scrutiny of the seized records revealed that the appellant had issued invoices showing clearances of chemicals to various firms without supply of the corresponding goods only on paper but actually the corresponding goods were not supplied to them. It further appeared that though the appellant had received payment by cheque from the firms to whom invoices were issued without supply of goods, they retained only 10% of the total Central Excise duty plus VAT and returned the remaining amount.

2.1 Statements of the Power of Attorney Holder cum Authorized Signatory of the appellant firm was recorded wherein he, inter-alia, admitted that they had merely issued invoices in respect of excisable



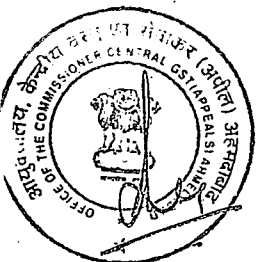
goods but the corresponding goods were not supplied by them. He further admitted that the corresponding goods were transported and sold on cash basis to different buyers at Delhi, Mathura, Alwar, Panipat etc.

2.2 On conclusion of the investigation, SCN vide F.No. DGGSTI/AZU/36-48/2017-18 dated 29.09.2017 was issued wherein it was proposed to recover cenvat credit amounting to Rs.75,83,568/- from M/s.United Metachem Industries, Ahmedabad. The SCN also proposed imposition of penalty on various firms. The appellant was also made a noticee in the said SCN wherein it was proposed to impose penalty under Rule 26 (2) of the Central Excise Rules, 2002.

3. The said SCN was adjudicated vide the impugned order wherein the demand for cenvat credit was confirmed along with interest and penalty against the main noticee. Penalty of Rs.25,00,000/- was imposed on the appellant under Rule 26 (2) of the Central Excise Rules, 2002. Penalties were also imposed on the other co-noticees.

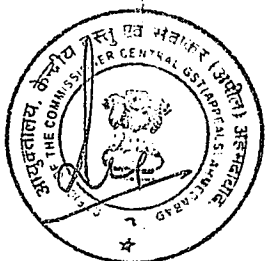
4. Being aggrieved with the impugned order; the appellant has filed the instant appeal on the following grounds:

- i) They had in their reply to the SCN clearly argued that the entire investigation has been done on the basis of evidences which itself created doubt and the authenticity of the same was challenged, besides other submissions. However, the adjudicating authority has not appreciated their submissions and proceeded to arbitrarily impose penalty under Rule 26 (2) of the Central Excise Rules, 2002.
- ii) The entire case has been constructed on the baseless allegations that they had only supplied invoices without corresponding goods whereas the facts are that they had supplied inputs on the basis of the invoices, the payment of which was done by cheque by the buyer. The inputs were used by the buyer for manufacture

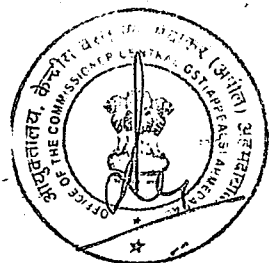


of finished goods which were cleared on payment of duty. These facts have not been disputed by the investigating agency or the adjudicating authority.

- iii) No shortage of raw materials was found at the time of search of the manufacturers. No findings have been given on their contention that the alleged actual buyers have not been investigated. The investigation has simply proceeded on the basis of statements which were recorded under threat, fear and duress.
- iv) Reliance has been placed on statements which were retracted by the concerned persons. It is a settled law that retracted statements cannot be used as an evidence.
- v) It has been recorded at Para 31.82 of the impugned order that 22 manufacturers to whom the invoices were issued without supply of goods have all paid the central excise duty for inadmissible cenvat credit along with interest and penalty and settled the issue. They cannot be expected to explain or deny the admissions of other manufacturers.
- vi) The case has been decided casually giving general findings without giving any specific weightage to their submissions. They rely upon the judgment in the case of Commissioner of Central Excise Vs. Saakeen Alloys Private Limited – 2014 (308) ELT 655 (Guj.)
- vii) They had argued that there were no corroborative evidences and that the case was based only on the private diary seized from their premises, the author of which is not known. The case has been made only on the basis of admission statements which are all similar to each other.
- viii) They had retracted their statement, challenged the authenticity of the diary. However, the adjudicating authority has not considered their submissions and observed that the manufacturer had wrongly taken and utilized credit, simply by reiterating the allegations made in the SCN.

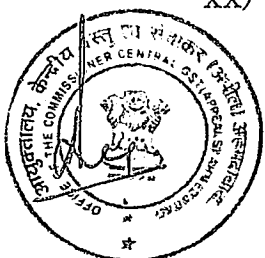


- ix) The adjudicating authority is bound to follow the guidelines issued by CBIC vide Circular No. 1053/2/2017-CX dated 10.03.2017 wherein it was specified that the adjudicating authority is expected to examine all evidences, issued and material on record and analyze those in the context of the allegations in the SCN. These have not been done by the adjudicating authority.
- x) The panchnama dated 16.09.2014 has also not been critically examined. It was necessary to examine all the evidences as they had doubted the documents which were considered as evidences.
- xi) Their submission that the case has been based on evidences which appeared to be suspicious and were accordingly required to be discarded has not been considered. It was required to extend investigations at the end of the buyers who had allegedly bought the goods in cash. Without the confirmation at the end of these buyers, the case has no legs to stand on.
- xii) The impugned order is silent on their submissions as to why the buyers who have allegedly bought the goods in cash and given cash to them were not interrogated.
- xiii) They had requested cross examination of the Partner of M/s.United Metachem Industries and other firms as well the transporters whose statements have been relied upon in the SCN. However, the cross examination was not allowed and neither has any findings been given in this regard.
- xiv) Statement has been recorded under pressure, duress etc. and as such they have no evidential value. They rely upon the decision in the case of Shiv Shakti Steel Tubes – 2008 (221) ELT 166 (P&H).
- xv) As per Section 9D of the Central Excise Act, 1944 the adjudicating authority is required to inform the reason for not allowing cross examination to the appellant. However, in the instant case, no reason has been communicated for not allowing cross examination. Further, in terms of the said Section 9D



unless and until the person whose statement is relied upon is allowed to be cross examined, the statement cannot be relied upon.

- xvi) Where a person summoned for cross examination does not respond, his presence must be enforced failing which the evidence tendered by him, which is the subject matter of cross examination, cannot be relied upon. They rely upon the decision in the case of Shalimar Agencies Vs. Commissioner of Customs, Kandla – 2000(120) ELT 166 (Tri.); L. Chandrasekhar Vs. Collector of Customs – 1980 (48) ELT 289 (Tri.).
- xvii) Their argument that the statements were not voluntary and recorded under threat or force has not been accepted. The impugned order has been passed considering the statements of persons who were not made available for cross examination. They rely upon the decision in the case of Vinod Solanki Vs. UOI-2009 (233) ELT 157 (SC); Assistant Collector of Central Excise, Rajamundry Vs. Duncan Agro Industries Ltd – 2000 (120) ELT 280 (SC).
- xviii) They had submitted before the adjudicating authority the decision of the Hon'ble Tribunal, Ahmedabad in the similar case of Yahska Polymers Pvt Ltd. in Order No. A/10082-10083/2020 dated 14.01.2020. The Hon'ble Tribunal had allowed the appeal of the manufacturer, where the allegation was similar that they had purchased goods from the said dealers. The adjudicating authority has taken on record the said judgment but has failed to give any findings and ignored the judicial proceedings which are squarely covered in the matter.
- xix) It is a settled law that judgments of higher forums are precedence and are required to be followed and applied by all lower authorities. The non-following or non-analysing the judgment is a breach of judicial discipline.
- xx) They had submitted that penalty is applicable only for imposing penalty on biological person who issues invoices without physical



delivery of goods. Therefore, penalty cannot be imposed on a juristic person who does not act in person in making any invoice which could be used for taking invalid cenvat credit. They refer to the judgment in the case of Nilachal Power Limited – 2016 (332) ELT 515 (Cal.) Therefore, penalty cannot be imposed on a firm under Rule 26 (2) of the Central Excise Rules, 2002. Reliance is also placed upon the decision in Apple Sponge and Power Ltd. – 2018 (362) ELT 894 (Tri.Mum)..

5. Personal Hearing in the case was held on 09.02.2022 through virtual mode. Shri Anil Gidwani, Advocate, appeared on behalf of the appellant for the hearing. He reiterated the submissions made in appeal memorandum. He further made a submission dated 10.02.2022 wherein he submitted a copy of Final Order No. A/12479/2021 dated 01.11.2021 passed by the Hon'ble Tribunal in their own case.

6. I have gone through the facts of the case, submissions made in the Appeal Memorandum, and submissions made at the time of personal hearing and material available on records. The issue before me for decision is whether penalty under Rule 26 (2) of the Central Excise Rules, 2002 has been correctly imposed upon the appellant or otherwise.

7. I find that the appellant was issued the SCN wherein it was alleged that they had issued invoices in the name of M/s.United Metachem Industries, without physical delivery of the corresponding goods, with the intention of passing on cenvat credit. Accordingly, it was alleged that the appellant had knowingly facilitated availment of cenvat credit without actually clearing and delivering the goods. Therefore, penal action was proposed against the appellant.

7.1 The adjudicating authority has at Para 33.17 of the impugned order recorded his finding that “ *It is an admitted fact by M/s Harshlakshmi that they issued invoices as second stage dealer without*



supply of goods, however, physical delivery thereof made to the persons located at Delhi, Kundali, Panipat, Sonipat (Haryana), Alwar (Rajasthan), Mathura (UP) etc on cash without issuance of invoice". Accordingly, at Para 33.21 of the impugned order, the adjudicating authority has held that the appellants are liable to penalty under Rule 26 (2) of the Central Excise Rules, 2002.

8. I find that the main issue involved in the SCN, in which the appellant is a co-noticee, pertaining to demand of cenvat credit wrongly availed by M/s. United Metachem Industries has been decided by this authority vide OIA No. AHM-EXCUS-003-APP-29/2022-23 dated 30.06.2022 wherein the demand for cenvat credit on the grounds of non receipt of goods was set aside. The said OIA was passed by relying upon Final Order No. 10082-10083/2020 dated 14.01.2020 of the Hon'ble Tribunal, Ahmedabad in the case of M/s. Yahska Polymers Pvt. Ltd and M/s. Vardhaman Chemicals involving similar facts and issues. In the said case, the appellants (M/s. Yahska Polymers Pvt. Ltd and M/s. Vardhaman Chemicals) had availed cenvat credit on the basis of invoices issued by the appellant in the present appeal (M/s. Harshlaxmi Chemisol) and the allegation was that invoices were issued for passing on cenvat credit without physical supply of the corresponding goods. However, the demand was set aside by the Hon'ble Tribunal on the ground that "*In such case only on the basis of diary/ note books seized from third party or the statements it cannot be said that the Appellants did not receive the goods. The input output ratio of Appellant Units has not been challenged. Pertinently in absence of investigation at the end of actual recipients, the allegation of availing credit by the Appellants only on the basis of invoice without actual receipt of goods cannot be allowed to sustain*". In the case against M/s. United Metachem Industries too there was no investigation at the end of the actual recipients of the goods and neither was any physical stock verification undertaken. Therefore, the demand against M/s. United Metachem Industries was set aside by following the binding judgment of the jurisdictional CESTAT, Ahmedabad.



9. I further find that the penalty imposed in the case of M/s.Yahska Polymers Pvt. Ltd and M/s.Vardhaman Chemicals, supra, against the appellant in the present appeal, was set aside by the Hon'ble Tribunal vide Final Order No.A/12479/2021 dated 01.11.2021, wherein it was held that :

"2. In the case of evasion booked against M/s.Vardhaman Chemical, the appellant was a co-noticee who had allegedly supplied only invoices without supplying any material to M/s.Vardhaman Chemicals. Penalty was imposed against the appellant under Rule 26 (2) of Central Excise Rules, 2002. The case against M/s.Vardhaman Chemicals was set aside by Hon'ble Tribunal vide its Final Order No. A/10082-10083/2020 dated 14.01.2020. Subsequently, the case against another identically placed dealer namely M/s. Laxmi Dye Chem, on whom also identical penalty was imposed, was set aside vide order No. A/12375/2021 dated 22.09.2021. It is seen that the appellant in an identical placed as M/s.Laxmi Dye Chem against whom penalty was set aside vide tribunal order dated 22.09.2021. Moreover, charge against the main appellant namely, M/s.Vardhaman Chemicals has also been set aside vide tribunal order dated 14.01.2020. Consequently, no penalty can imposed against the appellant, as the charges against the main noticee have been set aside."

9.1 I further find that subsequent to the personal hearing in the present appeal, a similar issue involving the present appellant was decided by the Hon'ble Tribunal, Ahmedabad vide Final Order No. A/10329/2022 dated 06.04.2022, wherein it was held that :

"2. Shri Anil Gidwani Learned Tax Consultant and Authorized appearing on behalf of the appellant at the out set submits that the penalty on the present appellant was imposed consequential to the demand confirmed against M/s. Yasika Polymers Pvt. Ltd. He submits that in the case of Yasika Polymers Pvt. Ltd. this Tribunal vide final Order No. A/10082-10083/2020 dated 14.01.2020 dropped the proceedings by setting aside the impugned orders in the said appeal. He submits that since the penalty is consequential to demand against M/s. Yasika Polymers Pvt. Ltd. which is now not existing as per the Tribunal order dated 14.01.2020 the penalty in the present case also not sustainable.

3. Shri G. Kirupanandan Learned Superintendent (Authorized Representative) appearing on behalf of the revenue reiterates the findings of the impugned order.

4. I have carefully considered the submissions made by both the sides and perused the records. I find that the penalty on the present appellant is consequential to the confirmed demand against the M/s. Yasika Polymers Pvt. Ltd., which has been set aside by this tribunal vide order No.A/10082-10083/2020 dated 14.01.2020. Since the demand of duty was itself set aside against the main appellant the penalty against the present appellant being a consequential to the demand is also not sustained."

9.2 I find that the facts involved in the above judgments of the Hon'ble Tribunal are identical to that in the present appeal. Therefore, the above



judgments of the Hon'ble Tribunal are squarely applicable to the facts involved in the present appeal. Being the judgments of the jurisdictional Ahmedabad Tribunal, the same are binding upon me and, therefore, in terms of the principles of judicial discipline and by following the judgement of the Hon'ble Tribunal, I hold that as the demand for cenvat credit against the main noticee namely, M/s. United Metachem Industries has been set aside vide OIA No. AHM-EXCUS-003-APP-29/2022-23 dated 30.06.2022, penalty against the appellant is not sustainable and is accordingly set aside.

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

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

Akhilesh Kumar
29 July, 2022
(Akhilesh Kumar)
Commissioner (Appeals)
Date: 29-07-2022.

Attested:

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



BY RPAD / SPEED POST

To

M/s. Harshlaxmi Chemisolv,
B-404, Shivalik Corporate Park,
Above D-Mart, Near Shymal Char Rasta,
Satellite, Ahmedabad

Appellant

The Additional 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~~ 4. Guard File.

5. P.A. File.