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

सत्यमेव जयते

NATION TAX MARKET

DIN : **20220864SW0000777D95**

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/CEXP/09/2022 1935-2939

ख अपील आदेश संख्या Order-In-Appeal Nos.**AHM-EXCUS-003-APP-39/2022-23**
दिनाँक Date : **08-08-2022** जारी करने की तारीख Date of Issue 16.08.2022

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

ग Arising out of OIO No. **AHM-CEX-003-JC-MT-004-21-22** दिनाँक: **29.09.2021** passed by Joint Commissioner, CGST& Central Excise, Gandhinagar Commissionerate

ध अपीलकर्ता का नाम एवं पता Name & Address

Appellant

1. **M/s Vardhman Stamping Pvt Ltd**
Irana Road, Survey No. 132/C,
Budasan, Kadi-Chhatral Road,
Kadi, Mehsana - 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.

(60) 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:

(clxiii) amount determined under Section 11 D;
(clxiv) amount of erroneous Cenvat Credit taken;
(clxv) 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. Vardhaman Stampings Pvt Ltd, Irana Road, S.No. 132/C, Budasan, Kadi-Chhatral Road, Taluka : Kadi, District : Mehsana – 382 721 (hereinafter referred to as the appellant) against Order in Original No. AHM-CEX-003-JC-MT-004-21-22 dated 29.09.2021 [hereinafter referred to as "*impugned order*"] passed by the Joint Commissioner, CGST, Commissionerate : Gandhinagar [hereinafter referred to as "*adjudicating authority*"].

2. The facts of the case, in brief, is that the appellant is engaged in the manufacture of goods falling under Chapter 85 of the First Schedule to the Central Excise Tariff Act, 1985 and were holding Central Excise Registration No.AAACV7624GXM001 and Service Tax Registration No. AAACV7624GST001 and also availing Cenvat facitlity under the Cenvat Credit Rules, 2004 (hereinafter referred to as the CCR, 2004). During the course of CERA audit of the records of the appellant, it was noticed that the appellant was also engaged in trading of their own raw materials on High-Seas Sale (HSS) basis. Such HSS was being effected before delivery of the goods in the premises of the appellant and it was sold either during transportation in sea or from bonded warehouse. Thus, the goods sold on HSS basis were not dutiable at the end of the appellant. It was noticed that the appellant had availed cenvat credit of service tax on the services which were procured on import of the goods sold on HSS basis. Thus, it appeared that the cenvat credit of service tax of common input services viz. Telephone services, Printing and Stationery, Legal Expenses etc. were not available to the appellant as the services were not used in or in relation to the manufacture of final products. It, therefore, appeared that the appellant was required to reverse the proportionate cenvat credit amounting to Rs.47,46,426/- for the F.Y. 2009-10 upto 31.12.2013.

3. The appellant was, therefore, issued a SCN bearing No. V.85/15-30/DEM/OA/14 dated 02.05.2014 proposing to disallow the cenvat credit amounting to Rs.47,46,426/- and recover the same along with interest under Rule 14 of the CCR, 2004 read with Section 11A(1) of the Central Excise Act, 1944 and Section 11AB of the Act respectively. Imposition of penalty under

Rule 15 (2) of the CCR, 2004 read with the Section 11AC of Central Excise Act, 1944 was also proposed.

4. The said SCN was adjudicated vide OIO No. AHM-CEX-003-JC-002-15-16 dated 24.04.2015 wherein the cenvat credit amounting to Rs.47,46,426/- was disallowed and ordered to be recovered under Rule 14 of the CCR, 2004 read with Section 11A(4) of the Central Excise Act, 1944 along with interest under Rule 14 of the CCR, 2004 read with Section 11AA of the Central Excise Act, 1944. Penalty of R.47,46,426/- was also imposed under Rule 15(2) of the CCR, 2004 read with Section 11AC of the Central Excise Act, 1944.

5. Being aggrieved, the appellant filed an appeal before then Commissioner (Appeal-I), Central Excise, Ahmedabad, who vide OIA No. AHM-EXCUS-003-APP-004-16-17 dated 25.04.2016 upheld the OIO and rejected the appeal filed by the appellant.

6. Being aggrieved by the said OIA, the appellant filed appeal before the CESTAT, Ahmedabad. The Hon'ble Tribunal vide Order No. A/13463/2017 dated 14.11.2017 held the extended period of limitation was not invokable. The Hon'ble Tribunal further held that the calculation adopted by the adjudicating authority was factually incorrect and not as per the formula laid down in Rule 6 of the CCR, 2004. The Hon'ble Tribunal remanded the matter to the adjudicating authortity for quantification of demand for the period within limitation as per the formula prescribed under Rule 6 (3) of the CCR, 2004. It was further held that as extended period of limitation is not invokable, no penalty is imposable on the appellant.

7. In the remand proceedings, the case was adjudicated vide the impugned order and cenvat credit amounting to Rs. 7,92,366/- was diallowed and ordered to be recovered under Rule 14 of the CCR, 2004 read with Section 11A of the Central Excise Act, 1944 along with interest under Rule 14 of the CCR, 2004 read with Section 11AA of the Central Excise Act, 1944. Penalty of Rs.3,64,683/- was imposed under Rule 15 (2) of the CCR, 2004 read with Section 11AC of the Central Excise Act, 1944.

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

i. The adjudicating authority has not followed the directions given by the Hon'ble Tribunal and straightaway confirmed the demand for the period from April, 2013 to December, 2013 as proposed in the SCN. The Hon'ble Tribunal had specifically directed the adjudicating authority to calculate the proportionate credit in terms of Rule 6 (3) of the CCR, 2004.

ii. The adjudicating authority should have considered the trading value of the goods sold as HSS and should not have taken the entire value of the goods sold as HSS. The adjudicating authority should have granted them the option to proportionately reverse the cenvat credit in terms of Rule 6 (3A) of the CCR, 2004. However, the adjudicating authority has not followed the directions of the Hon'ble Tribunal and thus, rendered the entire adjudication futile and purposeless.

iii. The adjudicating authority has committed error in holding that they had submitted varying details and there was discrepancy in the documents submitted by them vis-à-vis their reply dated 31.05.2021. There was no discrepancy in the documents submitted by them. The discrepancy pointed out by the Superintendent was satisfactorily answered by them vide letter dated 31.05.2021. However, their explanations have not been considered and the demand was confirmed.

iv. The adjudicating authority has erred in holding that there was a mis-match in the ER-1 returns and the ledger accounts submitted with their reply dated 05.03.2021. It has been held that the HSS for the period from April, 2013 to December, 2013 was Rs.20,86,81,198/- but in their reply, they had submitted that value of HSS was Rs.8,78,90,975/-. It has also been held that they had not submitted the ledgers for April, June and July, 2013.

v. The actual value of HSS from the period from April, 2013 to December, 2013 is Rs.8,78,90,975/- which was correctly mentioned in their reply dated 31.05.2021. The HSS were made only in April, June, July and September, 2013. Ledgers of these months are submitted.

vi. Since Rs.8,78,90,975/- was the sale value of the exempted goods, the cost price of the goods sold on HSS was Rs.8,58,82,063.50. Thus, the value of trading activity was Rs.20,08,911.50. A statement containing these details is submitted.

vii. There was no discrepancy in the documents submitted by them and the adjudicating authority has erred in pointing out non existent discrepancies.

viii. The SCN and the impugned order has not considered the fact that there was no HSS in the month of December, 2013. There were exports and local sales amounting to Rs.10,64,30,649/- which were wrongly taken as HSS.

ix. They had while submitting the ledgers wrongly named the file a HSS December, 2013. For this reason, the Superintendent has considered the value of Rs.10,64,30,649/- as value of HSS. They had vide letter dated 31.05.2021 pointed out that there was an apparent mistake in considering the said amount towards HSS as the same pertained to local sale of dutiable goods as well as exports.

x. The adjudicating authority has erred in considering HSS of Rs.98,58,420/- during July, 2013. The ledger entries clearly show that the transactions are related to sale of CRGO Coil and Sheets in the local market on payment of excise duty and CST. The amount of duties are also recorded in the ledger. Without verifying the ledgers, the adjudicating authority could not have concluded that the HSS for the period was Rs.20,86,81,198 and not Rs.8,78,90,975/-.

xi. An amount of Rs.49,20,300/- was also taken as HSS in the month of August, 2013, whereas these sales were related to dutiable goods sold on payment of duty.

xii. The adjudicating authority has committed a further error in pointing out discrepancy for the period from November, 2012 to March, 2013 with the CA performa submitted by them. The discrepancies are based on wrong assumptions. They had submitted ledgers for the relevant period and the sales of CRGO Coil and Sheets were mentioned in these ledgers. The adjudicating authority could have calculated the actual amount of sales of

CRGO Coil and Sheets from the ledgers submitted by them and from the ER-1 returns.

xiii. Even otherwise the sales during November, 2012 to March, 2013 are not relevant as the normal period of limitation has been decided to be from April, 2013 to December, 2013.

xiv. The Hon'ble Tribunal had held that the method of calculation adopted by the lower authorities was not in accordance with Rule 6 (3) of the CCR, 2004. They had submitted before the Hon'ble Tribunal that they were required to reverse only proportionate credit attributable to the exempted activity in terms of Rule 6(3A) (C)(iii) of the CCR, 2004 but the SCN proposed to take the entire value of HSS as exempted activity and calculated demand on such basis.

xv. The value of trading activity was the sale price minus the cost price of goods sold on HSS. From the SCN, it is seen that the entire value of HSS has been taken. The value of trading activity is defined under Explanation-1 (c) of the Rules to mean the difference between the sale price and the cost of goods sold or 10% of the cost of goods sold, whichever is more.

xvi. The trading activity in the present case is Rs.8,78,90,975/- and the cost price of the goods was Rs.8,58,82,063.50. Thus, the value of trading activity was Rs.20,08,911.50 which was clarified by them by submitting the statement of cost price and sale price. The adjudicating authority had no jurisdiction to consider the total value of the goods sold on HSS as the value of trading for arriving at the proportion between the value of dutiable and exempted service.

xvii. The Revenue has accepted the proposition that cenvat credit of common input service could be denied only in proportion to the quantum of trading activity. But while proceeding on this basis in accordance with the scheme of Rule 6 (3A) (C)(iii) of the CCR, 2004, the Revenue has taken value of HSS on an ex-facie erroneous basis.

xviii. The adjudicating authority has erred in holding that the amount of Rs.5,06,908/- paid by them against the present demand was not in relation to the present case. They had deposited the said amount

which is a fact recorded in their letters dated 26.03.2014 and 09.04.2014 submitted by them to the Audit officers. This has been accepted as pre-deposit by the Commissioner (Appeals) and the Hon'ble Tribunal in the first round of litigation. Therefore, the adjudicating authority had not authority to hold that these amounts were not paid by them in the present case.

xix. The action of imposing penalty under Rule 15 of the CCR, 2004 read with Section 11AC of the Central Excise Act, 1944 is unreasonable, arbitrary and without jurisdiction. The Hon'ble Tribunal had while remanding the matter held that no penalty shall be imposable. The action of the adjudicating authority is against the direction of the Hon'ble Tribunal.

xx. Penalty cannot even otherwise be imposed in the facts of the present case. When there is no suggestion or allegation of any malafide intention to evade payment of duty, there is no justification for imposition of penalty. They rely upon the judgment of the Hon'ble Supreme Court in the case of Hindustan Steel Limited – 1978 ELT (J159).

xxi. The imposition of penalty is also bad in law inasmuch a there is no violation of any nature committed by them. They had not acted dishonestly or contumaciously and therefore, even a token penalty would not be justified.

xxii. The order for interest is also without authority of law as the provisions of Section 11AA of the Central Excise Act, 1944 is not attracted in the instant case.

9. Personal Hearing in the case was held on 02.08.2022 through virtual mode. Shri Sudhanshu Bissa, Advocate, appeared on behalf of the appellant. He reiterated the submissions made in the appeal memorandum.

10. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the submissions made by them at the time of personal hearing and evidences available on records. The issue which requires to be decided in the case is whether the impugned order disallowing cenvat credit and ordering recovery of the same with interest as well as imposing penalty

under Rule 15 (2) of the CCR, 2004 read with Section 11AC of the Central Excise Act, 1944 is legally proper or otherwise.

11. I find that the impugned order has been passed in the remand proceedings ordered by the Hon'ble Tribunal, Ahmedabad vide Order No. A/13463/2017 dated 14.11.2016. The relevant part of the said Order is reproduced as below :

> "7. I find that the calculation adopted by the adjudicating authority or in the show cause notice is factually incorrect and not as per the formula laid down in Rule 6 of the CCR, 2004.
>
> 8. In that circumstances, by setting aside the impugned order and the matter is remanded back to the adjudicating authority for correct quantification of demand for the period within limitation as per formula prescribed under Rule 6 (3) of CCR, 2004.
>
> 9. It is pertinent to mention here that as the extended period of limitation is not invokable, no penalty is imposable on the appellant."

11.1 The Hon'ble Tribunal had in their Order dated 14.11.2016 clearly held that the calculation adopted in the SCN as well as by the adjudicating authority was factually incorrect and not as per the formula laid down in Rule 6 of the CCR, 2004 and accordingly remanded back the matter to the adjudicating authority for correct quantification as per the formula prescribed under Rule 6 (3) of the CCR, 2004. In terms of the directions of the Hon'ble Tribunal, the adjudicating authority was, accordingly, required to correctly quantify the demand for the period within limitation as per the formula prescribed under Rule 6 (3) of the CCR, 2004.

12. I find that the adjudicating authority had called for verification report from the jurisdictional Central Excise office, which was submitted vide letter dated 20.09.2021. The contents of the verification report are reproduced at Para 24 of the impugned order. As per the verification report, there were discrepancies in the documents and details submitted by the appellant on various dates.

12.1 I find that the adjudicating authority has despite the specific finding of the Hon'ble Tribunal that the calculation adopted in the SCN was factually incorrect, proceeded to quantify and confirm the amount of cenvat credit to be reversed by the appellant based on the same calculation, which was held to

be factually incorrect by the Hon'ble Tribunal, on the grounds that the appellant failed to provide sufficient documents to substantiate their claim. This is an act of judicial indiscipline on the part of the adjudicating authority and on this very ground the impugned order is liable to be set aside.

13. I find that the adjudicating authority has not given any findings on the submissions of the appellant as regards the quantification of the goods sold on HSS basis and the proportionate credit required to be reversed by them. The adjudicating authority has merely reproduced the contents of the verification report and, thereafter, concluded at Para 25 of the impugned order that :

> " the said noticee has failed to provide sufficient documents to substantiate their claim for reversal of amount in terms of Rule 6 (3) of the Cenvat Credit Rules. As the value of High Seas Sales taken for the period was Rs.20,86,81,198/- (based upon the ledger submitted by the said noticee at time of issuance of SCN) whereas the assessee in reply dated 05-08-2021 and documents submitted to office has now declared the same Rs.8,78,90,975/-. The said noticee has kept submitting varying details. Hence, I hold the demand of reversal of amount in terms of Rule 6(3) of Cenvat credit Rules as proposed in SCN for the period April-2013 to December-2013."

13.1 I find that the conclusion arrived at by the adjudicating authority is in utter disregard of the directions of the Hon'ble Tribunal to quantify the demand as per the formula prescribed under Rule 6 (3) of the CCR, 2004. Even if the value of the goods sold on HSS arrived at by the adjudicating authority is presumed to be correct, the cenvat credit required to be reversed has not been quantified in terms of the formula prescribed under Rule 6 (3) of the CCR, 2004. Further, the value taken for calculating the quantum of cenvat credit to be reversed is the total value of the goods sold on HSS basis, which is totally erroneous. The appellant have relied upon Explanation 1 (c) of Rule 6 (3) of the CCR, 2004, which is reproduced as below :

> "Explanation I : "Value" for the purpose of sub-rules (3) and (3A), -
>
> (a) .....
> (b) .....
> (c) in case of trading, shall be the difference between the sale price and the cost of goods sold (determined as per the generally accepted accounting principles without including the expensed incurred towards their purchase) or ten per cent of the cost of goods sold, whichever is more;".

13.2 The appellant have contended that the sale value of the goods sold by them on HSS basis is Rs.8,78,90,975/- and the cost price of the goods was

Rs.8,58,82,063.50, and accordingly, the value of the trading activity was Rs. 20,08,811.50. I find merit in the contention of the appellant as the same is supported by Explanation I (c) to Rule 6 of the CCR, 2004 as per which the value shall be the difference between the sale price and cost price of the goods sold or ten per cent, whichever is more. The quantum of cenvat credit to be reversed/paid by the appellant has to be computed with reference to this value and not the total sale value of the goods sold on HSS basis. However, the adjudicating authority has by ignoring the said Explanation, proceeded to erroneously take the total value of the goods sold on HSS basis and quantified the proportionate cenvat credit based on this value.

14. The appellant have also contended that the total sale value of goods sold on HSS basis has been wrongly arrived at by the adjudicating authority and the value of the goods sold locally on payment of excise duty and other taxes have not been excluded. They have submitted copies of the ledgers for the relevant period. Having gone through the said ledger, I find that the same contains details of the goods sold on HSS basis, goods sold for export as well as goods sold locally on payment of excise duty and other taxes. Therefore, the value of the goods sold on HSS basis is required to be re-worked out by excluding the value of goods sold locally as well as value of goods sold for export.

15. The appellant have also challenged the imposition of penalty under Rule 15 (2) of the CCR, 2004 read with Section 11AC of the Central Excise Act, 1944. I find that the Hon'ble Tribunal had in their Order dated. 14.11.2016 clearly held that "*as the extended period of limitation is not invokable, no penalty is imposable on the appellant*". However, despite this specific direction, the adjudicating authority has imposed penalty amounting to Rs. 3,64,683/- under Rule 15(2) of the CCR, 2004 read with Section 11AC of the Central Excise Act, 1944. This is an act of judicial indiscipline on the part of the adjudicating authority. The penalty imposed on the appellant is, therefore, set aside.

16. In view of the above facts, I am of the considered view that the matter is required to be remanded back to the adjudicating authority to quantify the correct value of the goods sold by the appellant on HSS basis and also to

quantify the value of the trading activity in terms of Explanation I (c) of Rule 6 of the CCR, 2004 and thereafter determine the amount of cenvat credit to be reversed/paid by the appellant. The appellant is directed to submit all the relevant documents before the adjudicating authority within 15 days of the receipt of this order. The adjudicating authority shall quantify the value of trading activity and the cenvat credit payable by the appellant after considering the submission of the appellant and by following the principles of natural justice.

17. In view of the facts discussed herein above, I set aside the impugned order and the appeal filed by the appellant is allowed by way of remand in terms of the directions contained hereinabove.

18. 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.

8th August, 2022.

(Akhilesh Kumar)
Commissioner (Appeals)

Attested:

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

Date: .08.2022.

BY RPAD / SPEED POST

To

M/s. Vardhaman Stampings Pvt Ltd,
Irana Road, S.No. 132/C,
Budasan, Kadi-Chhatral Road,
Taluka : Kadi,
District : Mehsana – 382 721

Appellant

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.