आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015
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सत्यमेव जयते

आज़ादी का अमृत महोत्सव

**By SPEED POST**

DIN:- 20230864SW0000888D65

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| (क) | फ़ाइल संख्या / File No. | GAPPL/COM/CEXP/212 to 214/2023-APPEAL /11636 to 11638 |
| (ख) | अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date | AHM-EXCUS-003-APP-074 to 076/2023-24 and 21.08.2023 |
| (ग) | पारित किया गया / Passed By | श्री शिव प्रताप सिंह, आयुक्त (अपील) Shri Shiv Pratap Singh, Commissioner (Appeals) |
| (घ) | जारी करने की दिनांक / Date of issue | 21.08.2023 |
| (ङ) | Arising out of Order-In-Original No. AHM-CEX-003-JC-SP-023-22-23 dated 28.03.2023 passed by the Joint Commissioner, CGST, Gandhinagar Commissionerate. | |
| (च) | अपीलकर्ता का नाम और पता / Name and Address of the Appellant | M/s Shreenathji Extrusion, Paiki 188/6/3, Survey No. 188/6, At & Post – Karan Nagar, Kadi Road, Kadi, Mehsana, Gujarat-382715 (Appellant -1)<br><br>Mr. Manoj Dhirubhai Gondaliya, Proprietor of M/s Shreeji Traders (Appellant -2)<br><br>Mrs. Gitaben Manoj Gondaliya, Proprietor of M/s Shreeji Enterprise (Appellant -3) |

कोई व्यक्ति इस अपील-आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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 :-

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 : -

(क) 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।

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.

(ख) 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।

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.

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

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

(घ) 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।

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.

(2) 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.

(3) 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 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 :-

(2) उक्तलिखित परिच्छेद 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।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2ndfloor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad. 380004. In case of appeals other than as mentioned above para.

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 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 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 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 शुल्क अधिनियम 1970 यथा संषोधित की अनुसूची -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 का न्यायालय 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.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपीलो 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)।

(1) खंड (Section) 11D के तहत निर्धारित राशि;
(2) लिया गलत सेनवैट क्रेडिट की राशिय;
(3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

यह पूर्व जमा ' लंबित अपील' में पहले पूर्व जमा की तुलना मेंए अपील' दाखिल करने कें 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:

(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules.

(6) (i) 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."

## अपीलिय आदेश / ORDER-IN-APPEAL

This order arises out of the three (03) appeals filed by M/s. Shreenathji Extrusions, Paiki 188/6/3, Survey No.188/6, At & Post Karan Nagar, Kadi Road, Kadi, Mehsana [hereinafter referred to as the appellant-1], Shri Manojbhai D. Gondaliya, Proprietor of M/s Shreeji Traders, Shed No.1, Plot No.6, Narayan Estate, Behind Ajay Petrol Pump, Anup Engineering Road, GIDC, Odhav, Ahmedabad – 382415 [hereinafter referred to as the appellant-2] and Mrs. Gitaben M. Gondaliya, Peoprietor of M/s Shreeji Enterprise, 7-Radhe Gokul Apartment, Nr. Panchtirth School, Naroda-Kathwada Road, Nava Naroda, Ahmedabad – 382325 [hereinafter referred to as the appellant-3] against OIO No.AHM-CEX-003-JC-SP-023-22-23 dated 28.03.2023 [hereinafter referred to as the impugned order] passed by Joint Commissioner, Central GST, Commissionerate : Gandhinagar [hereinafter referred to as the adjudicating authority]. Since the impugned order is same in all the three appeals viz. GAPPL/COM/CEXP/213/2023, GAPPL/COM/CEXP/212/2023 and GAPPL/COM/CEXP/214/2023 they are being decided together vide this OIA.

2. Briefly stated, the facts of the case are that the appellant-1 are a partnership firm holding Central Excise Registration No. ACMFS6940BEM001. They are engaged in manufacture and clearance/sale of Aluminium Section, Aluminium Wastage and Aluminium Ingots falling under CETH – 76041020, 76020090 and 76012010 respectively. Appellant-2 and appellant-3 are partners of the firm appellant-1. The Income Tax Department, Ahmedabad had carried out Search/Survey action under Section 132 of the Income Tax Act, 1961 on 24.10.2018 in respect of the entities connected/related to Kaka Group and SCNs were issued by the Income Tax department to various entities and additions to income was made under assessment orders issued covering the period Assessment Year (A.Y.) 2013-14 [Financial Year (F.Y.) 2012-13] to Assessment Year 2019-20 (Financial Year 2018-19). Two of these Assessment Orders : ITBA/AST/S/153A/2021-22/1035988830 (1) dated 28/09/2021 and ITBA/AST/S/153A/2021-22/1035991052 (1) dated 28/09/2021 were issued to the firm-appellant-1 on the basis of documents impounded , investigation carried out and tax evasion calculated on the basis of these impounded documents.

2.1 The SCNs, Assessment Orders and RUDs containing impounded documents and other electronic evidences in respect of M/s. KAKA Group were forwarded by

the Income Tax Department vide letter bearing F. No. ACIT/CC-2(1)/REIC/KAKA Group/2021-22 dated 24.03.2022 to the Directorate General of Goods & Service Tax Intelligence (DGGI), Ahmedabad Zonal Unit (AZU) for examining the issue of evasion of Central Excise/Service Tax/GST by the said Group of firms. The DGGI concluded their inquiry on the basis of the SCN and assessment orders issued by Income Tax department.

3. Show Cause Notice F.No. DGGI/AZU/Gr.C/36-03/2022-23 dated 09.04.2022 (SCN for short) was issued to the appellant-1 covering the period of F.Y. 2017-18 (upto June-2017) i.e March-2017 to June-2017, wherein it was proposed :

(i) To demand and recover Central excise duty amounting to Rs. 60,75,427/- under Section 11A(4) of the Central Excise Act, 1944 from appellant-1 alongwith interest in terms of Section 11 AA of the Central Excise Act, 1944;

(ii) Confiscation was proposed under Rule 25 of Central Excise Rules, 2002 in respect of excisable goods totally valued at Rs. 4,86,03,418/- cleared during the relevant period, on the premises that central excise duty has not been paid on them and those goods were not available for confiscation ;

(iii) Penalty was proposed under Rule 25 of the Central Excise Rules, 2002 read with Section 11AC of the Central Excise Act, 1944,

(iv) Personal penalties were proposed under Rule 26 (1) of the Central Excise Rules 2002 on appellant–2 and appellant-3

4. The SCN was adjudicated vide the impugned order vide which :

(i) The demand of Central Excise duty amounting to Rs. 60,75,427/- was confirmed under Section11A(4) of Central Excise Act, 1944 alongwith interest under the provisions of Section 11AA of Central Excise Act, 1944.

(ii) Goods valued at Rs. 4,86,03,418/- cleared during the relevant period was confiscated under Rule 25 of Central Excise Rules, 2002 read with the Central Excise Act, 1944. As the goods were not available for confiscation, penalty of

Rs. 60,75,427/- was imposed under Rule 25 of the Central Excise Rules.

(iii) Penalty amounting to Rs. 60,75,427/- was imposed on appellant-1 under the provisions of Section 11AC of the Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002.

(iv) Personal penalty amounting to Rs. 50,00,000/- was imposed on appellant-2 under Rule 26(1) of the Central Excise Rules, 2002, also holding him as the proprietor of a firm - M/s. Shreeji Traders.

(v) Personal penalty amounting to Rs. 25,00,000/- was imposed on appellant-3 under Rule 26(1) of the Central Excise Rules, 2002, also holding her as the proprietor of a firm M/s. Shreeji Enterprise.

5. Being aggrieved with the impugned order, appellants-1 has filed his appeal on the following grounds:-

- The adjudicating authority has confirmed the demand of Central Excise duty proposed vide the SCN without considering the submissions made by the appellant.
- The demand was imposed merely based on the conclusion drawn by the Income Tax Officer merely based on the search conducted, the statement recorded, and Assessment Proceedings concluded by the Income Tax Authority without further investigation.
- The demand was confirmed heavily relying on the WhatsApp Chat between an employee and appellant-2 whereas the figures reflected in the said WhatsApp Chat were not free from dispute.
- The SCN as well as the impugned order was issued merely relying on the data impounded by the Income Tax Department, statements recorded by them , and assessment conducted by them. It is a well-settled principle of law that demand cannot be raised merely on the basis of an assessment made by the Income Tax Authorities, without carrying out any further investigation by the concerned excise authorities.
- The SCN as well as the impugned order was issued by the Learned Adjudicating Authority relying on the statements recorded under section 132(4) the Income

Tax Act. In this regard section 132(4) of the Income Tax Act,1961 provide as under:

*(4) The authorized officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and* ***any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act.***

It can be observed from the above, the provision explicitly indicates that the evidentiary value of the statement recorded under section 132 of the Income Tax Act is restricted and limited to the provisions of the Income Tax, and the same cannot be used or relied upon for any other purpose. In the present matter adjudicating authority has relied upon the WhatsApp chat impounded by the Income Tax Authority and the statement recorded, which cannot be used in proceeding under the Central Excise Act, 1944.

- the Adjudicating Authority has relied on the statement of Shri Ravikumar Raval an employee of the appellant-1. It is also on record that appellant-1 has raised the dispute on the statement of the said employee recorded during the search proceedings by the Income Tax Authorities, by way of submitting an affidavit, that the whole statement was recorded in Hindi language when the said employee was unable to read and write Hindi language. In addition to that, the Income Tax Authority taking the statement has misinterpreted the statement given by the employee.
- The said statement cannot be relied upon as admissible evidence in terms of the provisions of Section 9D of the Act. The provisions of Section 9D are reproduced as under:

***"9D. Relevancy of statements under certain circumstances. –***

*(1) A statement made and signed by a person before any Central Excise Officer of a gazetted rank during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains, -*

*(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable; or*

*(b) when the person who made the statement is examined as a witness in the case before the Court and the Court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.*

*(2) The provision of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a Court, as they apply in relation to a proceeding before a Court."*

The above Section deals expressly with the circumstances in which a statement recorded before a gazetted officer of Central Excise (under Section 14 of the Act) can be treated as relevant for the purposes of proving the truth of the contents thereof. Reliance is placed on the ruling of the Hon'ble Punjab & Haryana High Court in the case of Jindal Drugs (Infra),2016 (340) E.L.T. 67 (P & H) wherein the Hon'ble High Court laid down the detailed procedure, inter alia, providing for cross-examination of the witness of the Revenue by the Adjudicating Authority and thereafter, if the Adjudicating Authority is satisfied that the statement of the witness is admissible in evidence than the Adjudicating Authority is obligated to offer such witnesses for cross-examination by the other side/assessee. Such a view has also been affirmed by the Hon'ble Supreme Court in the case of Andaman Timber (Infra) 2015 (324) E.L.T. 641 (S.C.).

- As to why the Statements of Shri Girish Vegad is incorrect and therefore is unreliable as the whole statement recorded by the Income Tax Authority of Shri VegadGirishbhai was in the Hindi language while he was not able to read and write the Hindi language. In addition, the statement given was totally inconsistent with the statement recorded by the Authority. Whereas in the affidavit given by Shri Vegad GirishBhai, it has been mentioned that he was unable to read and write Hindi language and the answer given by him while recording the statement was totally different and misinterpreted by the Income Tax Departmental officials.

- They contended that the adjudicating authority has ignored the statement given by Shri Sanjaybhai Sodavadiya wherein he had stated that proper accounting procedure has been followed and the stock has been accurately recorded and no stock lying was unaccounted. The stock entry has been passed at the end of the month to record the production done for the month. The stock in Tally Accounting Software is updated till the month of September-2018. The daily production data is recorded in the Excel sheet maintained. There are certain invoices that are yet

to be recorded in the Excel sheet also. Because of the above reason, there was a difference between the stock reflected in the Excel sheet and stock quantity during physical verification. In addition, in the whole statement, there are no questions asked as to unaccounted production and sale.

- Statement of Shri Manoj Dhirubhai Gondalia recorded under the provisions of Section 14 of the Central Excise Act 1944 on 06.04.2022. wherein he stated that there was no short recording of production in the books of accounts. The difference in stock as recorded in the books of accounts/Excel sheet and as mentioned in the WhatsApp chat was because the books of accounts are not updated on a daily basis. The accountant, i.e., Mr. Sanjay Sodavadiya left the job six months back and no permanent accountant was employed, he was visiting occasionally and at the end of the month, a single entry has been passed to record the goods manufactured during the month. If this has been considered by the adjudicating authority, then there will be no difference between the stock details recorded in the Excel sheet and the stock details mentioned in the WhatsApp chat.

- DGGI has merely based their case on statements, there is no corroborative evidence. In support of their contention they cited the following citations :
  a) J.P. ISCON PVT LTD, JATEEN GUPTA, JAYESH K KOTAK, AMIT B GUPTA, AND PRAVIN T KOTAK VERSUS C.C.E. -AHMEDABAD-I (2022 (63) GSTL 64 (Tri. Ahmd.))
  b) Decision of the Hon'ble CESTAT AHMEDABAD in the case of GUPTA SYNTHETICS LTD. VERSUS COMMISSIONER OF C. EX., AHMEDABAD-II,2014 (312) E.L.T. 225 (Tri. - Ahmd.)
  c) Decision of the Hon. Allahabad High Court in the case of CONTINENTAL CEMENT COMPANY Versus UNION OF INDIA, 2014 (309) E.L.T. 411 (All.)
  d) Decision of the Hon'ble Apex Court in the case of OUDH SUGAR MILLS LTD. Versus UNION OF INDIA - 1978 (2) E.L.T. (J 172) (S.C.)
  e) COMMISSIONER OF CENTRAL EXCISE Versus SAAKEEN ALLOYS PVT. LTD. - 2014 (308) E.L.T. 655 (Guj.) (H.C.)

- <u>Brief of the Business Activity carried out by the Appellant.</u>

  We are in the business of manufacturing Aluminium Sections. For manufacturing Aluminium Section, we purchase scrap material (domestically as well as imported).Generally, the scrap purchased/ imported comes with some attachment

around 3% to 7% in the form of rubber, colour, coatings, plastic, acrylic, etc.The scrap also contains other items like sand, other metal, iron, etc. around 8% to 10% which is useless to produce our final product namely"Aluminium Section".In whole manufacturing process there is a burning/melting loss of material of around 3% to 7% (depending on the quality of scrap and attachments) on account of the burning of attachment items like rubber, colour, coatings, plastic, acrylic, etc. and generation of wastage (depending the quality of scrap material) is around 8% to 10 % in the form of sand, residual metal, dross, slag, etc. while melting scrap, cutting the Billets and Aluminium Section. This wastage is sold in the open market.

- They submitted an analysis of Production Yield and Resource Consumption Data

| **Financial Year** | **Quantity of raw material consumed (after considering the raw material received for re-melting (In tons)** | **Quantity of finished goods produced (after adjustment of opening and closing stock of semi-finished goods) (In tons)** | **Yield %** |
|---|---|---|---|
| 2016-17 | 1688.39 | 1442.05 | 85.41% |
| 2017-18 | 2742.06 | 2290.36 | 83.52% |
| 2018-19 | 4859.00 | 3926.95 | 80.82% |

From the above table, it can be established that production has declined gradually in past years. The reason for the declining production yield is the increase in the purchase of raw material imported and fewer domestic purchase has been made i.e., approximately 80% of the purchase has been made through import, further, it should be noted that imported raw material comes with more attachments which turn into wastage while melting the scrap(raw material) in the form of other material, residual aluminium, sand, slag, etc.

- They submitted that in past years they had sold wastages with high value in terms of realization because some of the raw materials purchased are not up to the mark in quality to produce aluminium sections. Therefore, we have sold such materials as wastage/scrap and due to this, there is a reduction in yield with respect to the production of finished goods. In other words, there is more generation of wastethat is sold in the open market at a high value. The details of the generation and sale of wastage is given hereunder:

| Financial year | Waste generated | %of raw materials consumed | Quantity of waste sold in Kgs | Total sales amount | Average rate of sales per Kg | Quantity sold (in Kgs) Above Rs. 30 per Kg | Quantity sold (in Kgs) Above Rs. 50 per Kg |
|---|---|---|---|---|---|---|---|
| (a) | (b) | (c) | (d) | (e) | (f) | (g) | (h) |
| 2016-17 | 147840 | 8.01% | 113515 | 806370 | 5.84 | 0 | 0 |
| 2017-18 | 279766 | 9.81% | 248289 | 10733902 | 43.23 | 110805 | 84436 |
| 2018-19 | 629282 | 11.90% | 731545 | 36996571 | 50.57 | 115290 | 463100 |

From the above-mentioned data, it can be concluded that the yield has declined, and the waste produced is sold at a higher rate as the raw material is of lower quality with more attachment.

- It is submitted that the production yield to raw material consumed ratio has ranged from 80% to 85%. For the period of September-2018 to October-2018 for which data has been considered to raise demand, the production yield was 73.15% (average of both months). Further, it is submitted that the Income Tax Authority has not found any unaccounted raw material during search proceedings. Hence, based on the factual data it can be concluded that in the month of the search, there is no unaccounted production was there, the difference between the data of WhatsApp chat and the data recorded in the Excel sheet was due to the non-updating of Excel sheet regularly due nonavailability of the permanent accountant.
- Further, the Income Tax Authority in the search proceeding has not found any unaccounted raw material lying at the factory premises. If the appellant indulged in clandestine production and removal of dutiable goods without paying the duty, then there must have beenexcess raw material lying at the factory premises from which the unaccounted production takes place.
- The Income Tax Department has not conducted proper stock counting during the search. The authority has not counted the physical stock thoroughly rather has applied shortcut methods and made estimates during the stock-taking. The finished goods are packed in bundles as per the requirement of the customer and the order includes different shapes, sizes, and thicknesses. Hence the weight of each packed bundle is different, and it is not possible to estimate the weight by simply multiplying the no. of bundles with the weight of a bundle of which weight has been measured.

- DGGI has not even attempted to conduct any physical investigation of its own, it has delegated its duty to the investigation done by the officers working under the aegis of Income Tax law. It is not worth debating that any proceedings conducted under the Income Tax law cannot be the basis of raising demand under the Excise law.
- The adjudicating authority has made a presumption of ratio for calculating the suppressed production based on which the demand has been raised. The ratio was taken as follows:

  Actual production estimation as per modus operandi= (Production as per Audit Report) *537.6/334.5

  The ratio taken was of production as per WhatsApp chat and of production data recorded in the Excel sheet.

  It is submitted that as mentioned in the foregoing paras the alleged difference is not on account of suppressed production but due to non-updating of the record daily. Hence, the difference itself is not valid than the ratio based on the difference and the demand based on that ratio is also invalid.
- The quantity of suppressed production mentioned in the notice is much more than the raw material consumed and this is not possible at all in any manufacturing business and particularly in our business because there is melting loss goes while melting in the furnace and wastage to be sold in the open market and these come to total around to 13 to 15% depending on the quality of raw material and attachments therein. The assessment year-wise comparison of the suppressed quantity of production as per notice and actual raw material consumption, production of finished goods is given hereunder:

| Asst. Year | Production as worked out in Notice (in ton) | Raw Material Issued for Consumption (after considering received back for re-melting) (in ton) | Production of Finished Product (in ton) | Adjustment of opening and closing stock of Semi-finished product (in ton) | Total Production of Finished Product (after adjustment of stock of semi-finished product) (in ton) | Yield of production of finished product ACTUAL as per Books of Account | Yield of production quantity as mentionad in NOTICE |
|---|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6=(4+5) | 7=(6/3*100) | 8=(2/3*100) |
| 2015-16 | 481.670 | 428.000 | 299.700 | 96.175 | 395.875 | 92.49 | 112.54 |
| 2016-17 | 1588.210 | 961.354 | 988.200 | -32.940 | 955.260 | 99.36 | 165.21 |
| 2017-18 | 2304.200 | 1688.987 | 1438.700 | 8.347 | 1447.047 | 85.68 | 136.42 |
| 2018-19 | 7869.300 | 2719.058 | 2827.400 | -37.041 | 2290.359 | 84.23 | 289.41 |
| Total | 12243.380 | 5797.399 | 5049.000 | -34.561 | 5083.541 | 87.69 | 211.19 |

From the above chart,the yield of the production quantity mentioned in the notice with raw material consumed comes at 112% to 289% indifferent assessment years

and overall, for four assessment years comes to 211% i.e., more than double and it is not possible in the manufacturing business that production of finished goods is more thanthe consumption of raw material. Hence the proposed suppression of quantity mentioned in the notice is without an appreciation of the facts and data of the appellant.

- Allegation of suppression is not supported by proper evidence.

a) The extended period of limitation is wrongly proposed in the SCN. The SCN does not talk about the circumstances why it can invoke the provisions of an extended period of limitation except making bald allegations in total disregard of facts on record that show that all required details are very well reflected in our financial records, income tax returns, and audited accounts. It only depicts the wrong attitude of routinely invoking the extended period of limitation. We draw your attention to CBEC Circular No. 5/92-CX.4, dated 13-10-1992 – (1993) 63 ELT T7, wherein Board has taken note of such attitude. Board has stated that such an attitude only increased fruitless adjudication with the gamut of appeals and reviews, inflation of outstanding figures, and harassment of assesses. Board has warned that such casualness in the issuance of show cause notices will be viewed seriously. It further clarifies that mere non-declaration is not sufficient for invoking a larger period, but a positive misdeclaration is necessary, as per the decision of the Supreme Court in Padmini Products and Chemphar Drugs. Reflection of the transactions in the ledger account, financial statements, and income tax records reflects upon the absence of any fraud, collusion or suppression, or wilful suppression or misstatement on our part.

b) We vehemently deny the bald allegations made in the SCN about contravention of certain provisions of the Central Excise Act, 1944, and/or the rules made thereunder with intent to evade payment of central excise dutyand there is not an iota of evidence of suppression or intent to evade payment of excise duty on our part. We state that we have not made any misstatementsor non-payment of central excise duty. The goods manufactured were duly recorded in the books of accounts. We have not removed any manufactured goods without issuing the invoice and paying excise duty on the same. The SCN is issued without any investigation done by the DGGI. There is no concrete evidence that proves that the appellant has removed goods without paying the duty.

- No interest is chargeable, no penalty and personal penalty are imposable on the appellant. They relied upon the decision of the Hon'ble Courts and the Hon'ble Tribunal in this regard.

  As per the demand order issued the appellant has been asked to pay interest under Section 11AA of the Act. It has also sought to impose penalties under Section 11AC of the Act read with Rule 25 of the Central Excise Rules 2002. Further, the said order also sought to impose a personal penalty on the partners of the concern under Rule 26(1) of the Central Excise Rules 2002.

- Demand under Central Excise Act cannot be raised post-implementation of GST law as the same is not permitted under section 174 of the CGST Act.
  Apart from the proposed demand of excise duty as per SCN not being sustainable on merit as stated above, we further submit that with effect from 01-07-2017, the provisions of the Central Excise Act, 1944 were repealed vide Section 174 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'CGST Act').In view of this, initiation of proceedings vide the impugned SCN followed by OIO against us is without jurisdiction, unconstitutional, erroneous, therefore we pray to set aside the impugned order on this ground also.

5.1 In respect of appellant-2 & appellant-3 they have filed their appeals on following grounds:-

- Penalty imposed on them under Section 26(1) of the erstwhile Central Excise Act, 1944 is in violation of the Principles of Natural Justice and thus is unsustainable.
- No positive action shown by the department relating to the intention to evade payment of duty. The department merely relied on the data impounded, the statement recorded, and the assessment conducted by the Income Tax Authorities. It is a well-settled principle of law that demand cannot be raised merely on the basis of an assessment made by the Income Tax Authorities, without doing any further detailed investigation by the concerned excise authorities. The Appellant also places reliance on the following decisions:
- They cited the decision in the case of Kamal Deep Marketing Pvt. Ltd. Vs. Commissioner of Central Excise, Indore (2004) 165 ELT 206 (CESTAT, Delhi);

- B. C. Sharma Vs. Commissioner of Central Excise, Jaipur (2000) 122 ELT 158 (CESTAT, Delhi);
- Harish Dye. & Ptg. Works Vs. Commissioner of Central Excise & Customs, Surat-1 (2001) 138 ELT 772 (CESTAT, Mumbai),
- Commissioner of Central Excise, Mumbai Vs. Metal Press India (2009) 246 ELT 303 (CESTAT, Mumbai) ;
- Vinod Kumar Gupta V. CCE (2013) 287 ELT 54 (Punjab & Haryana),

6. Personal Hearing in all the three (03) cases were held on 21.07.2023. Mr. Nitesh Jain, Chartered Accountant, appeared on behalf of all the appellants for the hearing. He reiterated the submissions made in the appeal memorandum. He also submitted that the entire case of suppression of production was based on the investigation of Income Tax Department relating to alleged conversation in the WhatsApp Chat. He submitted that the confessional statement taken by the Income Tax authorities under duress was subsequently retracted and an affidavit in this regard was filed. DGGI has undertaken the present inquiry post completion of the Income Tax investigation. The DGGI has only relied on the show cause notices issued by the Income Tax department, the statement of the partners and employee by income tax department, and the WhatsApp chat relied in the income tax show cause notices. DGGI has extrapolated the alleged overproduction into the previous financial years in anera of erstwhile, Central Excise Act. He submitted that actually the WhatsApp chat pertained to a portion of the month which was yet to be recorded in the books of accounts. Finally, the production as per the books of accounts is much more than the production mentioned in the alleged WhatsApp Chats, as mentioned at page 17 to 19 of the appeal. Since the production as per books of accounts is more than the production as per the Whatsapp chat, question of any suppression does not arise. Apart from the evidence received from Income Tax, DGGI has merely recorded one statement of the partner Mr.Manoj Gondaliya, which is exculpatory wherein, he has denied the allegations of suppression or over production. Thus, the entire case is merely based on surmises and conjectures. He requested to allow one week time for submission of additional written submission with further evidence. He requested to set aside the impugned order.

6.1 Vide their additional written submission, the appellants have submitted an executive summary of case and submitted copies of various documents as under :

- The Income Tax department conducted a search at the premises of the appellant-1 on 24.10.2018. During the course of search they found a WhatsApp Chat between an employee of the appellant-1 and appellant-2. The said chat pertained to the period 21.09.2018 to 21.10.2018. The excerpts of the chat suggested an excess production of 203 tons and the said figure was extrapolated by the investigating agency for the entire period.
- They submitted a comparative chart showing the actual quantity of production recorded in their books as compared to the versions of the WhatsApp chat, as per table below :

| Period | Production quantity as per WhatsApp Chat (in Kgs) | Production recorded in the books in respective month (in Kgs) | Short recording/suppression in production in books (if any) (in Kgs) |
|---|---|---|---|
| 22.09.2018 to 30.09.2018 | 1,35,181 | 3,42,000 | 00 |
| 01.10.2018 to 22.10.2018 | 4,02,502 | 4,32,000 | 00 |
| Total | 5,37,683 | 7,74,000 | 00 |

The above figures show that there was no short recording of production in books when the books are updated with actual production. At the time of search the records were not updated as the same was regularly updated at the end of the month. These facts of lack of updation was stated by one of their employees in his statement before the Income Tax authorities, however the same was not considered by the adjudicating authority. Upon updating the entries with the actual figures, the demand of Central Excise stands nullified.

- The allegations of suppression is not supported with proper evidence. They submitted Copy of Statement dated 06.04.2022 of Shri Manoj Dhirubhai Gondalia, Partner of M/s Shreenathji Extrusion recorded by DGGI, AZU
- Copy of SCN alongwith RUDs & Assessment Orders issued to M/s Shreenathji Extrusion by Income Tax Department

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum, additional submissions, submissions made during personal hearing and materials available on records. The issue before me for decision is whether the

demand of Central Excise duty amounting to Rs. 60,75,427/- confirmed alongwith interest and penalties vide the impugned order in the fact and circumstances of the case is legal and proper or otherwise. The demand pertains to the period March-2017 to June-2017.

7.1. It is observed that the appellant are a Partnership firm registered under erstwhile Central Excise Act, 1944 and engaged in the manufacturing and clearance of Aluminium Section (CETH-76041020), Aluminium Wastage (CETH-76020090), Aluminium Ingots (CETH-76012010). They have been filing their Central Excise monthly Returns(ER-1) regularly during the Central Excise regime. For the month of March-2017, they have filed their monthly ER-1 return on 10.04.2017.

7.2 I find that the Income Tax department, Ahmedabad had conducted survey/searches under Section 132 of Income Tax Act, 1961 on M/s Kaka Group of firms/companies and relying upon the documents and other evidences recovered from these premises they had issued SCN followed by Assessment Orders covering the period F.Y. 2012-13 to F.Y. 2018-19. Two assessment orders ITBA/AST/S/153A/2021-22/1035988830(1) dated 28/09/2021 and ITBA/AST/S/153A/2021-22/1035991052(1) dated 28/09/2021 pertaining to the appellant-1 firm alongwith all relied upon documents and a piece of electronic evidence in the form of 'WhatsApp Chat' was forwarded by the Income Tax Depratment, Ahmedabad to the DGGI, Ahmedabad Zonal Unit. The DGGI concluded their investigation and issued SCN to the appellants and the said SCN was decided vide the impugned order.

8. It is observed from the documents submitted by the appellants that during the course of investigation the DGGI has recorded a statement of appellant-2 (partner of appellant-1 firm) under Section 14 of the erstwhile Central Excise Act, 1944 and concluded the investigation relying on other evidences shared by the Income Tax Department. It is also observed that the SCN was issued harping on a piece of electronic evidence in the form of 'WhatsApp Chat' forwarded by the Income Tax Depratment, Ahmedabad. Reported the said 'WhatsApp Chat' was between appellant-2 and his employee (Shri.Ravikumar G.Raval) and pertains to the period 21.09.2018 and 21.10.2018, i.e during the GST Regime.

8.1 As per the Income tax department report the said 'WhatsApp Chat' related to daily production data of the factory. I find that at Para D.1 of the SCN it is recorded that Shri.Ravikumar G.Raval has confirmed that 'the data of production recorded in the computer system was maintained by the accountant of the firm Shri.Sanjaybhai Sodavadiya'. Further, Shri. Sanjaybhai Sodavadiya vide his statement dated 24.10.2018 has clarified that the data in 'Tally Software' is updated on the last day of each calendar month and as on the date of search by Income Tax department, i.e 24.10.2018 the 'Tally Data' was updated upto 31.08.2018 only. Therefore, difference between the actual production i.e (upro 24.10.20180 and that in Tally Data (upto 31.08.2018) was apparent.

8.2 During the course of recording of his statement dated 06.04.2022 under Section 14 of the erstwhile Central Excise Act, 1944, appellant-1 has categorically clarified the difference of production figures cited in the SCN. At A.9 he has explained that the said excel sheet was not updated and at A.12 of the said statement it is recorded that "the alleged difference of 203 tonne was due to non updation of records and after updating records there was no difference of ... 203 tonne is part & parcel of my recorded actual production and GST was already paid on supply of such production when the goods were sold". Hence, I find that appellant-2 being the responsible person for the operations of the appellant-1-unit has conclusively clarified the so called difference in figures of production alleged in the SCN and relied in the impugned order to confirm the demand of central excise.

8.3 It is observed that the adjudicating authority has relied on the inferences drawn by the Income Tax authorities regarding the financial status of the employees of appellant-1 against whose Income Tax records some amounts were shown. I find that the investigation has not established any direct co-relation between the said amounts with the so called illicit removal of finished goods inferred by the adjudicating authority. It is also observed that a novel method of calculation of of illicit clearances was derived based on the method adopted by the income tax authorities. Further, it is also noteworthy to mention that the adjudicating authority has confiscated excisable goods valued at Rs. 4,86,03,418/- whereas no goods were ever seized or detained at any premises during the course of the investigation. Hence, the investigation of DGGI was concluded only on a solitary statement recorded by

them. They have not carried out any searches or detained/seized any finished goods at any of the premises mentioned in the impugned order.

9. In view of the above I find that the DGGI has failed to carry out an independent Inquiry/Investigation against the appellant and the entire demand of Central Excise duty amounting to Rs. 60,75,427/- was calculated on the so called method of calculation adopted by the Income Tax authorities as well as relying on the statements recorded by them . Moreover, the so called 'WhatsApp' chat actually pertained to a period of GST Regime i.e after the Central Excise regime. However, the investigation has extrapolated the said so called difference in the period March-2017 to June-2017 based on some superficial monetary evidences of employees of appellant-1. Here, I find it relevant to refer to an identical case, decided by the Hon'ble CESTAT Ahmedabad, in the case of M/s J.P.Iscon Pvt.Ltd Vs C.C.E.-AHMEDABAD-I in Service Tax Appeal No. 10599 of 2021-DB. Relevant portions of the said order is reproduced below :

...

*24. We also noticed that in the present matter it is on the records that demand is based on the .xls worksheet which was seized during the search by the Income Tax officers*

...

*In this context we find that the Hon"ble Apex Court in case of M/s. Anwar P.V. v. P.K. Basheer - reported at 2017 (352) E.L.T. 416 (S.C.) has prescribed certain guidelines before accepting electronic documents as an admissible piece of evidence.*

...

*The above prescribed certain guidelines were not followed by the revenue during the investigation of impugned matter before accepting electronic documents as an admissible piece of evidence. Therefore in our view no service tax demand is sustainable on the basis of contents of said .xls sheets.*

...

*25. Further on the basis of details of investigations shared by the Income tax Authority, Revenue knew the name of author of said xls. sheet but revenue failed to record the statement of author of said xls. sheets. Therefore, the said .xls sheet is not corroborated with any other evidence, hence, cannot be used as evidence against the assessee.*

*26. In the impugned matter Revenue and Adjudicating authority has relied upon the statement of Ms. Kalindi Shah recorded by the Income tax Authorities. In this regard we find that the Section 132 (4) of the Income Tax Act , 1961 provides as under:*

...

*We agree with the argument of Ld. Counsel that the above provision explicitly indicates that the evidentiary value of the statement recorded under the Section 132 of the Income tax Act is restricted and limited to the provisions of the Income tax and the same cannot be used or relied upon for any other purpose.*

*27. We also find that in the present case the Revenue has raised the Service tax demand merely on the ground of investigation conducted by the Income Tax Authorities. We find that demand cannot be raised merely on the basis of assessment made by the Income Tax Authorities. Tribunal in the case of Ravi Foods*

*Pvt. Ltd. v. C.C.E., Hyderabad - 2011 (266) E.L.T. 399 (Tri.-Bang.) has held that admission by assessee to Income Tax department as regards undisclosed/suppressed sales turnover cannot be held to be on account of clandestine removal of their final products, in the absence of any other corroborative evidence. Similarly, in the case of C.C.E., Ludhiana v. 15 ST/10599/2021-DB & Ors.*
*Mayfair Resorts - 2011 (22) S.T.R. 263 (P&H), it was held so. We also find that the CESTAT in the case of Kipps Education Centre, Bathinda v. C.C.E., Chandigarh - 2009 (13) S.T.R. 422 (Tri.-Del.), has held that the income voluntarily disclosed before the income tax authorities could not be added to the taxable value unless there is evidence to prove the same.*

*28. In view of above, we are of the considered view that in the present matter entire demand of service tax as proposed in the show cause notice is not sustainable.*

Respectfully following the above decision of the Hon'ble CESTAT I am of the opinion that the demand of Central Excise duty amounting to Rs. 60,75,427/- confirmed against appellant-1 vide the impugned order is legally not sustainable and liable to be set aside. As the demand of Central Excise duty is not sustainable, question of interest and penalty does not arise.

10. Further, regarding the appeals filed by appellant-2 and appellant-3 I find that in both the cases penalties are imposed under Rule 26(1) of the erstwhile Central Excise Rules, 1944, I find that the adjudicating authority has imposed both the penalties on the respective persons in capacity of Proprietorship firms M/s Shreeji Traders and Shreeji Enterprises respectively.

10.1 Upon going through the impugned order I find that, the investigation in the case is based on data and some electronic evidences shared by the Income Tax department and the entire investigation is directed towards the activities of appellant-1 firm. Further, the veracity of the evidences as well as the demand of Central Excise duty confirmed vide impugned order is dealt in detail in the foregoing. I also find that even in the result of investigation by Income Tax the involvement of M/s Shreeji Traders is mentioned only in a inconsequential statement which is not considered by the investigation by DGGI. Further the involvement of M/s Shreeji Enterprise is referred as the name of the said firm had appeared in the assessment order for F.Y. 2018-19, i.e during the period of GST Regime. Therefore, I find that the actual involvement of both the firms has not been discussed in the investigation. However, in order to sustain the demand of Central Excise Duty the involvement of these firms are extrapolated in the SCN. Further, the adjudicating authority has failed to analyse

the same and confirmed the Penalties on the Proprietors of these firms mechanically and indiscriminately.

10.2 I also find that the provisions of Rule 26(1) of the Central Excise Rules, 1944 categorically states that :

> *26. Penalty for certain offences.-*
> *(1)Any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or these rules, shall be liable to a penalty not exceeding the duty on such goods or rupees [two thousand rupees,] whichever is greater.]*
> *Provided that where any proceeding for the person liable to pay duty have been concluded under clause (a) or clause (d) of sub-section (1) of section 11AC of the Act in respect of duty, interest, and penalty, all proceedings in respect of penalty against other persons, if any, in the said proceedings shall also be deemed to be concluded.*

Examining these legal provisions with the facts of the case I find that the demand of Central Excise Duty in the instant case was confirmed against a different entity i.e M.s Shreenathji Extrusions under Section 11A(4) of the Central Excise Act, 1944 and there is no mention of Section 11 AC (I) (a) or Section 11 AC (I) (c) of the Central Excise Act, 1944.

11. In view of the above discussions, I am of the considered view that Personal Penalty imposed on appellant-2 and appellant-3 vide the impugned order is legally incorrect, unsustainable and liable to be set aside.

12. Accordingly, the impugned order confirming the demand of Central Excise duty amounting to Rs. 60,75,427/- on appellant-1 is set aside alongwith interest and penalties as per findings at para – 9 and previous paras. Further, in terms of the discussions in previous paras and findings at Para – 10 above, the personal penalties imposed on appellant-2 and appellant-3 is set aside. The appeal filed by all the three appellants are hereby allowed.

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.

(Shiv Pratap Singh)
Commissioner (Appeals)
Date: August, 2023.

Attested:
सोमनाथ चौधरी/SOMNATH CHAUDHARY
अधीक्षक/SUPERINTENDENT
केन्द्रीय वस्तु एवं सेवाकर (अपील), अहमदाबाद.
CENTRAL GST(APPEALS), AHMEDABAD.

**BY RPAD / SPEED POST**

To

1. M/s. Shreenathji Extrusions,
   Paiki 188/6/3, Survey No.188/6,
   At & Post Karan Nagar,
   Kadi Road, Kadi,
   Mehsana

2. Shri Manojbhai D. Gondaliya,
   Proprietor of M/s Shreeji Traders,
   Shed No.1, Plot No.6,
   Narayan Estate,
   Behind Ajay Petrol Pump,
   Anup Engineering Road,
   GIDC, Odhav, Ahmedabad – 382415

3. Mrs. Gitaben M. Gondaliya,
   Proprietor of M/s Shreeji Enterprise,
   7-Radhe Gokul Apartment,
   Nr. Panchtirth School,
   Naroda-Kathwada Road,
   Nava Naroda,
   Ahmedabad – 382325

Copy to:

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Gandhinagar.
3. The Additional/Joint Commissioner, Central GST, Commissionerate – Gandhinagar
4. The Assistant Commissioner (HQ System), CGST, Gandhinagar.
   (for uploading the OIA)
5. ~~Guard~~ File.
6. P.A. File.