
 सत्यमेव जयते	<b>आयुक्त (अपील-II) का कार्यालय-केंद्रीय उत्पाद शुल्क</b> <b>शुल्क</b> <b>O/O THE COMMISSIONER (APPEALS-II), CENTRAL EXCISE</b> 7वीं मंजिल, केंद्रीय उत्पाद शुल्क भवन, पॉलिटेक्निक के पास, आम्बवाडी, अहमदाबाद - 380015	 7 <sup>th</sup> Floor, Central Excise Building, Near Polytechnic, Ambavadi, Ahmedabad-380015

रजिस्टर डाक ए.डी. द्वारा

क फाइल संख्या (File No.): V2(72)84 /Ahd-II/Appeals-II/ 2015-16  
 V2(72)85 /Ahd-II/Appeals-II/ 2015-16

/1572 to 1577

स्थगन आवेदन संख्या(Stay App. No.):

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-109-110-16-17

दिनांक (Date): 30.03.2017, जारी करने की तारीख (Date of issue): 10/04/17

श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित

Passed by **Shri Uma Shanker**, Commissioner (Appeals-II)

ग \_\_\_\_\_ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-), अहमदाबाद- II, आयुक्तालय द्वारा जारी

मूल आदेश सं \_\_\_\_\_ दिनांक \_\_\_\_\_ से सृजित

Arising out of Order-In-Original No. 13/ADC/2015/MKR Dated: 15/10/2015

issued by: Additional Commissioner Central Excise (Div-), Ahmedabad-II

घ अपीलकर्ता/प्रतिवादी का नाम एवम पता (Name & Address of the Appellant/Respondent)

1.M/s Real Strips Ltd.

2. M/s Prakashraj S. jain

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 an 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) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अंतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक 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।

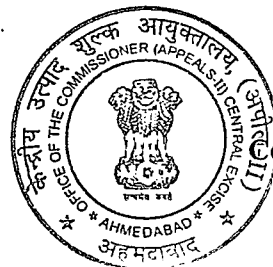
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid:

(ii) यदि माल की हानि के मामले में जब हानि कारखाने से किसी भंडारगार या अन्य कारखाने में या किसी भंडारगार से दूसरे भंडारगार में माल ले जाते हुए मार्ग में, या किसी भंडारगार या भंडार में चाहे वह किसी कारखाने में या किसी भंडारगार में 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

(□) 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 मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

G. file



Cont...2

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

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

- (d) 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 भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष 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 हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम 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 सेवाकर 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) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

- (ख) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलों के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मेटल हॉस्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

- (b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

- (2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से



रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।

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 शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.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 is 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), के प्रति अपील के मामले में कर्तव्य मांग (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 सेवा कर 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।

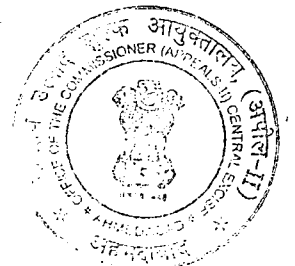
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 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.

इस सन्दर्भ में 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 subject appeal is filed by 1. M/s. Real Strips Limited, Survey No. 245-246, Village Sari, Ahmedabad-Bavla Highway, Taluka- Sanand, Distt- Ahmedabad and 2. Mr.Prakashraj S. Jain, Joint MD [of M/s. Real Strips Limited] (hereinafter referred to as 'the appellants') against the Order in Original No.13/ADC/2015/MKR (hereinafter referred to as 'the impugned order') passed by the Addl. Commissioner, Central Excise, Ahmedabad-II (hereinafter referred to as 'the adjudicating authority'). The appellants are manufacturer of 'SS CR Strips' falling under Chapter 72 of the Central Excise Tariff Act 1985[hereinafter referred as CETA-1985].

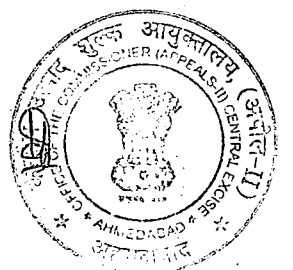
2. The facts in brief of the case is , M/s. Paras Bhavani Steel Pvt. Limited (Unit-1) Odhav, Ahmedabad (hereinafter referred to as "M/s. Paras) indulged in illicit clearance of SS Pipes, manufactured by them, without Central Excise invoices and without payment of Excise duty . M/s. Paras cleared the finished goods by suppressing the actual production. M/s. Paras had procured SS CR Strips, from M/s. Real strips, clandestinely without invoices on cash basis. the appellants were issued SCN for recovery of excise duty of Rs. 13,44,282/ +121307/-with interest and Penalty .The said SCN was adjudicated vide the impugned order, and confirmed the demand.a penalty was also imposed on Shri Prakashraj S. Jain ,Joint Managing Director of the appellant unit .

3. Being aggrieved with the impugned order the appellants have filed the instant appeals, on the following grounds and contended that:

They submitted that the DGCEI had issued Show Cause Notice dated: 30.05.2012 to M/s. Paras Bhavani Steel Private Limited, Odhav, Ahmedabad, demanding duty Rs. 3,60,71,852/- for alleged illicit removal of goods i.e. S.S. Pipes and others; that M/s. Paras had moved the Settlement Commission after payment of Rs.57,54,175/- and Interest Rs. 33,86,255/- but the case was not Settled and Settlement Commission had sent back the case .that the Commissioner,CentralExcise, Ahmedabad-II, had adjudicated the case and confirmed the Show Cause Notice; that M/s. Paras had moved the CESTAT, WZB, Ahmedabad under provisions of Section 35 B of the Central Excise Act, 1944 and that at present the Appeal is pending.

> that the Factory Premises of the appellant had been searched by the DGCEI Officers under Panchnama dated: 25.01.2011 but the physical stock of Inputs and Final Product i.e. S.S CR Coils had not been verified with the excise records, and therefore it could not be ascertained whether as on 25.01.2011 the stock of input and finished goods lying in the factory physically were tallied or not; In the present case, the Department has not extended the investigation up to the transporter M/s.Jay shree chamunda who transport the goods from the factory premise to M/s. Paras and therefore unless and until the clandestine removal is admitted by the transporter the duty cannot be demanded.

that the demand of duty Rs.13,44,150/- is made only on the basis of Diary marked as A/8 seized from Factory Premises of the M/s. Paras and no other corroborative documentary evidences such as, Confirmation of Transport of Goods i.e. S.S. C.R. Coil from M/s. Real Strips Ltd. to M/s. Paras has been given by any transporters.



4. Further, a written submission was submitted by Shri Prakashraj R. Jain, Joint Managing Director of M/s Real Strips Ltd. The contention of the appellant is as under;

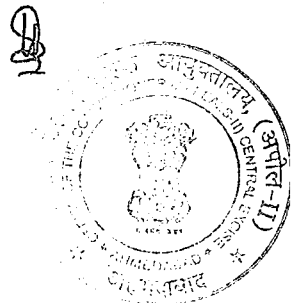
that penalty is imposed on the ground that he had allegedly dealt with M/s. Paras Bhavani Steel Pvt. Ltd. of S.S. CR coil by illicitly supplying S.S. CR Coil to M/s. Paras Ahmedabad. It is argued that the demand of duty Rs. 13,44,150/- on the alleged Clandestine Removal of S.S. CR coil by appellant No. 1 is not sustainable on the ground that the DGCEI has not unearthed the facts with corroborative documentary evidences required under Law. Similarly, the appellant No. 2 had also not accepted the alleged illicitly supply of S.S. CR Coil to M/s. Paras on the following ground:

That though it is well within the knowledge of the Department that the appellant No. 2 is also Partner in the unit namely M/s. Rajendra Rolling Mills, Odhav, Ahmedabad; Show Cause Notice are misinterpretations by the Department in concluding that an amount was paid by M/s. Paras to the Noticee No. 2 that in the statement date 24.12.2011 of Noticee No.2 stated that "WE HAVE NOT RECIEIVED ANY CASH AMOUNT FROM MIS. PARAS" and therefore, in defense now no room is remained in absences of any such above corroborative documentary evidences, the Penalty under Rule 26(2), of the CER 2002 is not sustainable.

5. Personal hearing was held on 03/11/2016. Shri R.R. Dave, Consultant appeared on behalf of the appellants. He reiterated the ground of appeal. He submitted that no statement of either goods receiver or supplier admitting clearance in cash w/o bills. No statement of proof of transporting goods to paras bhavani by real strips. No discrepancy found during stock taking. if they indulge in such clearance, discrepancy should have been there. Cross-examination not allowed. addl. Submission filed on 09-11-16, with copy of OIONo.AHM-EXCUS-003-COM-31-14-15 dated 28/01/2015, copy of statement dtd. 12-1-12 and affidavit dtd. 13-1-12. have carefully gone through the case records, submissions made by the appellants and the case laws cited during the course of personal hearing. I find that, there are three issues involved in the said SCN. They are as follows:

a. Demand for Excise duty Rs.1,21,307/- along with interest and penalty b. Demand for Excise duty Rs.13,44,150/- with interest and penalty. c. Personal penalty under Rule 26(1) of the CER 2002 imposed on Shri Prakashraj S. Jain, JointM.D.

6. I find that, the first issue pertains to clearance of scrap without payment of duty and without valid invoices. that during the search, certain chits were recovered evidencing clearance of goods. On scrutiny it was established that these goods were not accounted for in the R.G.1 register and no invoices had been issued for the clearance of the said goods. Thus agreeing the illicit clearance of scrap M/s Real has paid up the entire duty of Rs.1,23,672/- with interest. Further, I find that the appellant has suppressed the clearance of goods with intent to evade Excise duty. That they had not recorded the clearance not issued invoices and not paid Excise duty. Therefore, I find that in respect of the clandestine clearances, Shri Prakashlal S Jain, Managing Director also liable to personal penalty under Rule 26(1) of the Central Excise. Therefore, he was liable for removing, concealing, selling and dealing with excisable goods which reason to believe were liable to confiscation.



7. Now, I take up the second issue .During search operations at the office premises of M/s Paras a private diary marked A/8 was seized. details of payment made by M/s Paras to M/s Real was revealed . It has been admitted and confirmed in various statements recorded under Rule 14 of CEA, 1944 by Shri Kalubhai Jivaji Desai, Accountant and authorized signatory for M/s Paras) as well as by Shri Parasmal Shremal Bohra, Managing Director of M/s Paras that amounts were paid in cash to M/s Real towards receipt of raw materials supplied clandestinely without issue of valid invoices, without payment of Excise duty. It is of vital importance to the proceedings in this case to note that the payment amounting to Rs.1,30,50,000/- made by M/s Paras to M/s Real has not been retracted or disputed. Therefore, the evidentiary value of the depositions by Shri Kalubhai Desai, authorized signatory for M/s Paras as well as by Shri Parasmal upheld as valid and sustainable.

8. I find that, only denial by Shri Prakashraj S. Jain, Joint Managing Director of M/s Real Strips Limited is that he had not received any amount in cash. On the basis of confessional statements, it has been established that the payments were actually made to M/s Real by M/s Paras. The department had unearthed enough material to indict the appellant and thereby the onus had shifted to the appellant to disprove the evidence. I rely on the decision of Hon'able CESTAT, Bangalore in the case National Boards Vs Commissioner Of CE, Calicut Reported In 2014 (313) E.L.T. 113 (Tri.-Bang.) that is clearly applicable to the present case. I rely on the case law of Gulabchand Silk Mills v. C.CE, Hyderabad-II, it was observed that; *clandestine activity can at best be established only by circumstantial evidence and it would be humanly impossible to establish every link in the chain of clandestine activity without any break.*

9. As regards personal penalty imposed on Shri Prakashraj S. Jain, Joint Managing Director, I find that in OIO No. AHM- EXCUS-002-COMMR-07-14-15 dated 23/09/2014, personal penalty has been imposed on Shri Prakashraj S. Jain, for playing active role in the clandestine supply of raw materials to M/s Paras .It is the same set of clandestine clearance that is dealt with in the present show cause notice. Therefore, I hold that penalty imposed is correct and legal.

10. In view of the foregoing discussion and findings, I upheld the impugned order and disallow both the appeals filed by the appellants.

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

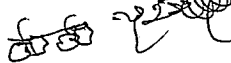
11. The appeal filed by the appellant stand disposed off in above terms.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स - II)

Attested



[K.K.Parmar )

Superintendent (Appeals-II)  
Central excise, Ahmedabad.



By Regd. Post A. D

1. M/s. Real Strips Limited,  
Survey No. 245-246,  
Village Sari,  
Bavla Highway,  
Taluka- Sanand,  
Distt- Ahmedabad.

2. Mr.Prakashraj S. Jain, Joint M.D  
M/s. Real Strips Limited,  
Survey No. 245-246,  
Village Sari, Taluka- Sanand,  
Distt- Ahmedabad.

Copy to :

1. The Chief Commissioner, Central Excise, Ahmedabad.
2. The Commissioner, Central Excise, Ahmedabad-II.
3. The Asstt. Commissioner, Central Excise, Div-IV, AhmedabadII
4. The Asstt.Commissioner (Systems), Central Excise, Ahmedabad-II.
5. Guard file.
6. PA file.



