

 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील)	
O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,		
केंद्रीय उत्पाद शुल्क भवन, 7 th Floor, Central Excise Building, Near Polytechnic, आम्बावाडी, अहमदाबाद-380015		
आम्बावाडी, अहमदाबाद-380015		
079-26305065		टेलिफैक्स : 079 - 26305136

रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(72)78 /Ahd-II/Appeals-II/ 2016-17 /1378 to 1383
 ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 107-17-18
 दिनांक (Date): 29.09.2017 जारी करने की तारीख (Date of issue): _____
 श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित
 Passed by Shri Uma Shanker , Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-I), अहमदाबाद- II, आयुक्तालय द्वारा जारी
 मूल आदेश सं----- दिनांक -----से सृजित
 Arising out of Order-In-Original No . 12-13/AC/DEMAND/16-17 Dated: 09/15/16
 issued by: Assistant Commissioner Central Excise (Div-I), Ahmedabad-II

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

M/s Gujarat Metal Industries

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:

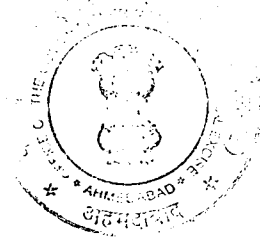
(1) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001 को की जानी चाहिए ।

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

(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 मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित हैं ।



- (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, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैटल 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 न्यायाधिकरण 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 है 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 अनुसूचि-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 वाखिल करने के लिए पूर्व शर्त बना दिया गया है।

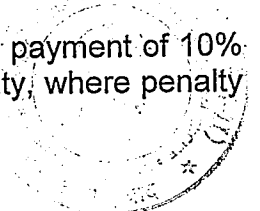
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section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

M/s Gujarat Metal Industries, 480/2, Sidheshwari Estate, Nr.-Telephone Exchange Building, GIDC, Naroda, Ahmedabad 382 330 (henceforth, "appellant") has filed the present appeal against the Order-in-Original No.12-13/AC/DEMAND/16-17 dated 15.9.2016 (henceforth, "impugned order") passed by the Assistant Commissioner, Central Excise, Div-I, Ahmedabad-II (henceforth, "adjudicating authority").

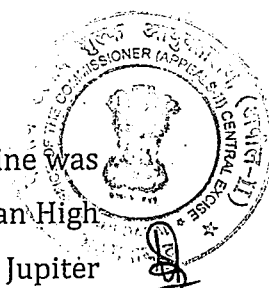
2. The facts giving rise to the present appeal, in brief, are as follows. The appellant, a manufacturer of Cold Rolled Stainless Steel (SS) Pattas/ Pattis, was discharging duty liability under compounded levy scheme as notified vide Notification No.17/2007-CE(NT) dated 1.3.2007 (henceforth, "said notification"). One of the FIVE Cold Rolling Mills (CR Mills) installed in the factory of appellant remained closed during two intervals of three months each, i.e., for Feb-Mar-Apr 2015 and Jan-Feb-Mar 2016, being dismantled for repairs & maintenance, and for the reason that one CR Mill was out of production during the stated period, appellant paid the central excise duty for FOUR Mills only. Revenue did not agree with reduction in duty payment on account of such a closure of Mill as, according to revenue, the said notification did not provide for any abatement of duty in such a situation. Therefore, following two show-cause notices were issued for recovery of duty not paid -

Show Cause Notice No.	Date	Amount of demand	Period of demand
F.No.V/16-05/Dem/Gujarat Metal/15-16	3.8.2015	Rs.1,21,200	Feb-Mar-Apr 2015
F.No.V/16-01/Dem/Gujarat Metal/16-17	4.5.2016	Rs.1,20,000	Jan-Feb-Mar 2016

2.1 Both the show cause notices were decided in a common order, i.e., impugned order and the adjudicating authority confirmed the duty demands as well as demands of interest thereon. Penalty equal to ten percent of demand amounts was also imposed on the appellant. The impugned order is under challenge in the present appeal.

3. The main grounds of appeal taken by the appellant are as follows -

3.1 Appellant contends that no duty is payable for the period when machine was dismantled and in support of this argument, appellant has relied on Rajasthan High Court's decision in the case of Collector of Central Excise, Jaipur-II v. Jupiter



Industries [2006 (206) ELT 1195 (Raj.)], wherein, as per appellant, it was held that no duty is payable for the period when machine was not installed/ operated.

3.2 Appellant submits that the central excise is payable on production and when there is no production due to non-existence of machine, there cannot be any duty liability. The appellant has quoted the decision of Delhi Tribunal in the case of Acme Industries v. Commissioner of C.Ex., Jaipur-II [2011(269) ELT 523(Trib.-Del.)]

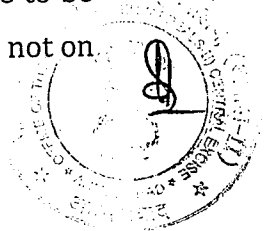
3.3 As per appellant, the earlier provisions of rule 96ZA to 96ZGG of the Central Excise Rules, 1944 as they existed during the period prior to 28.6.2001, are in pari material with the provisions of Notification No.17/2007-CE(NT) (which superseded the Notification No.34/2001-CE(NT) and therefore, Rajasthan High Court's decision in Jupiter Industries case is applicable.

3.4 With regard to penalty imposed under rule 25, appellant has stated that ingredients of section 11AC are not present in the case, hence rule 25, which is subject to section 11AC, is not applicable.

4. A personal hearing was held on 14.9.2017, wherein Shri Harshad Patel, Advocate represented the appellant and reiterated the grounds of appeal. He made additional submissions and also supplied case-law citations.

5. I have carefully gone through the facts of the case and grounds of appeal. The issue to be decided is whether Notification No.17/2007-CE(NT) governing the compounded levy scheme for SS Pattas/ Pattis allows the abatement of duty in a situation where one CR Mill, out of five remained dismantled and hence out of production for certain time period. It is pertinent to mention that there is no dispute with regard to closure of CR Mill and also about the fact that closure was in department's knowledge.

5.1 The appellant, in support of his arguments, has heavily relied on the Rajasthan High Court's decision in the case of Collector of Central Excise, Jaipur-II v. Jupiter Industries [2006 (206) ELT 1195 (Raj.)]. This decision was rendered in the context of compounded levy scheme governed by the provisions of rules 96ZA to 96ZGG of the erstwhile Central Excise Rules, 1944. Similarly, Delhi Tribunal's decision in the case of Acme Industries v. Commissioner of C.Ex., Jaipur-II [2011(269) ELT 523(Trib.-Del.)] relied upon by the appellant dealt with the identical issue in the context of Notification No.34/2001-CE(NT), which came to be rescinded by Notification No.17/2007-CE(NT). Thus, both these decisions are not on the Notification No.17/2007-CE(NT).



5.2 On the other hand, CESTAT, Ahmedabad, which is the jurisdictional Tribunal in the present matter, has given a decision in the case of Sethi Metal Industries v. Commissioner of C.Ex., Ahmedabad [2013(294) ELT 603(Trib.-Ahmd.)] denying the benefit of any abatement of duty with respect of a rolling mill remained closed for two months. Hon'ble Tribunal in this case has not applied the ratio of the judgements relied by the appellant (in that case) on the ground that the same were pertaining to rules 96ZA to 96ZGG of erstwhile Central Excise Rules, 1944. Therefore, relying on this decision of the Tribunal in Sethi Metal Industries case, I hold that said notification allowed no abatement of duty until the whole factory ceased to work and accordingly, relief claimed by the appellant is not permissible in the compounded levy scheme governed by Notification Ng.17/2007-CE(NT).

5.3 With regard to penalty imposed under rule 25 of the Central Excise Rules, 2002, appellant has contended that penalty under this rule cannot be imposed in absence of the ingredients mentioned in section 11AC of the Central Excise Act, 1944. This is not true because w.e.f. 14.5.2015 the provisions of section 11AC(1)(a) are applicable to the cases not involving fraud, suppression of facts, etc. Thus, rule 25(1), subject to section 11AC(1)(a), provides for imposition of penalty in the cases of other than those involving fraud, suppression of facts, etc. Therefore, this part of the impugned order also does not require any interference.

6. In view of aforesaid discussion, the appeal is rejected.

7. 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.



(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Date:

Attested



(Sanwarmal Hudda)

Superintendent, Central Tax (Appeals)

Ahmedabad

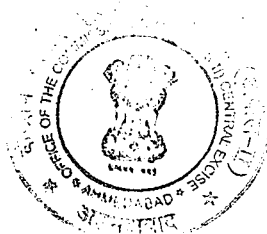
By R.P.A.D.

To,

M/s Gujarat Metal Industries, 480/2,

Sidheshwari Estate, Nr.-Telephone Exchange Building,

GIDC, Naroda, Ahmedabad 382 330



Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner of Central Tax, Ahmedabad North.
3. The Additional Commissioner, Central Tax (System), Ahmedabad South.
4. The Asstt./Deputy Commissioner, Central Tax, Division-I, Ahmedabad North.
5. Guard File.
6. P.A.

