



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

केंद्रीय उत्पाद शुल्क भवन, 7th Floor, Central Excise Building,
सातवीं मंजिल, पॉलिटेक्निक के पास, Near Polytechnic,
आम्बावाडी, अहमदाबाद-380015
Ambavadi, Ahmedabad-380015



☎ : 079-26305065

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रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(74)125&126/Ahd-II/Appeals-II/ 2016-17 / 11255 to 11264

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 236-237-17-18

दिनांक (Date): 22.12.2017 जारी करने की तारीख (Date of issue): 08-01-18

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker, Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-V), अहमदाबाद- II, आयुक्तालय द्वारा जारी

मूल आदेश सं----- दिनांक -----से सृजित

Arising out of Order-In-Original No. _MP/01-03/OA/2016-17_ Dated: 22.12.2016

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

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

M/s Saraswati Metal Works

M/s Samirbhai Baldevbhai Patel

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 है।

Gifts



- (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 :-

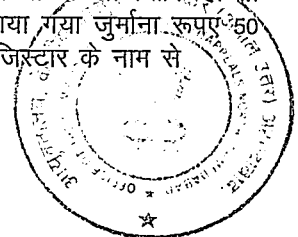
- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (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 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 वहां 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 वहां रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्ट्रार 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-f 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।

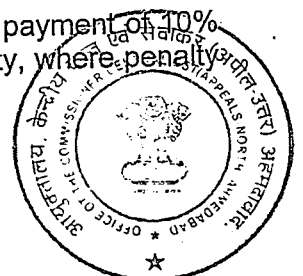
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section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

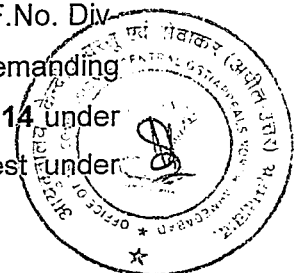


ORDER-IN-APPEAL

This order covers the following **2 appeals filed** against O.I.O. No. MP/01-03/OA/2016-17 dated 22/12/2016 (hereinafter referred to as 'the impugned order') passed by Assistant Commissioner, Central Excise, Division-V, and Ahmedabad-II (hereinafter referred to as 'the adjudicating authority'):

- (i) **Appeal** filed by **M/s Saraswati Metal Works, 407**, Near Hajipura Garden, Outside Delhi Gate, Shahibaug, Ahmedabad – 380 004 (hereinafter referred to as 'the appellant') and
- (ii) **Appeal** filed by **Shri Samirbhai Baldevbhai Patel**, Power of Attorney holder of the appellant (hereinafter referred to as 'the Power of Attorney holder')

2. Briefly stated, the facts of the case are that the appellant was engaged in the manufacture and clearance of **Copper Zinc Base Alloys (Brass) Sheets / Circles** falling under Chapter sub-heading 74092900 of the First Schedule to the Central Excise Tariff Act, 1985 (CETA, 1985). On the basis of information received from HQ Preventive section of the department, an inquiry was by the jurisdictional Range / Division office wherein it was revealed that the appellant was not registered with Central Excise and was clearing their finished products without payment of Central Excise duty, whereas by virtue of **Sr. No. 217 of the Notification No. 12/2012-C.E. dated 17-3-2012 and explanation added vide Notification No. 12/2013-CE dated 01/03/2013, 'trimmed or untrimmed sheet or circles of copper and copper alloys including brass, intended for use in the manufacture of handicrafts or utensils'** attracted Central Excise duty at the specific rate of Rs.3500/- per tonne subject to condition No. 19 & 20 of Notification No.12/2012-CE dated 01/03/2013 stipulating that such goods are not produced or manufactured by a manufacturer who produced or manufactures copper from copper ore or copper concentrate; that no credit of duty paid on inputs under Rule 3 or Rule 13 of CCR, 2004 had been taken and that the entire amount of duty was paid in cash or through account current. The appellant responded to the inquiry stating that they were availing exemption benefit under Sr. No.216 of Notification No.12/2012 dated 17/03/2012 whereby all goods other than trimmed or untrimmed sheets or circles of copper, intended for use in the manufacture of handicrafts or utensils attract NIL rate of duty subject to condition 19 thereof, which states that such goods are not produced or manufactured by a manufacturer who produced or manufactures copper from copper ore or copper concentrate. On the basis of the manufacturing process of Copper Zinc Base Alloys (Brass) Sheets and Circles submitted by the appellant it was forthcoming that the finished goods were manufactured from Copper Alloys scrap, Brass scrap and Zinc from open market. This fact was confirmed in a statement dated 05/09/2014 of the Power of Attorney holder who was looking after all the work related to the proprietorship unit of the appellant. Therefore, a Show Cause Notice (hereinafter 'the SCN') F.No. Div-V/SCN/Saraswati/2014 dated 08/07/2015 was issued to the appellant, demanding Central Excise duty of **Rs.86,236/-** for the **period April-2013 to December-2014** under section 11A(4) of Central Excise Act, 1944 (CEA, 1944) along with interest under



Section 11AA of CEA, 1944 and proposing to impose penalty on the appellant under Section 11AC of CEA, 1944 read with Rule 25 of Central Excise Rules, 2002 (CER, 2002). Personal penalty under Rule 26 (1) of CER, 2002 was proposed to be imposed on the Power of Attorney holder in the SCN. Further, SCN F.No. CCE-II/Div.V/Demand-08/Saraswati/2015-16 dated 30/10/2015 for **Rs.40,343/-** for the period **January-2015 to June 2015** and SCN F.No. CCE-II/Div.V/Demand-16/Saraswati/15-16 dated 06/04/2016 for **Rs.30,484/-** for the period **July-2015 to December-2015** were also issued to the appellant. All the three SCNs were adjudicated *vide* the impugned order, confirming the demands for duty and interest as proposed in the SCNs. Penalty totaling to **Rs.1,57,063/-** was imposed on the appellant under Section 11AC(i) of CEA, 1944 read with Rule 25(1) of CER, 2002.

3. Being aggrieved by the impugned order, the appellant has filed the instant appeal, mainly on the following grounds:

- i. The adjudicating authority had erred on fact and law in confirming total demand of duty of Rs.1,57,063/- along with interest and imposing equivalent penalty under Section 11AC(i) of CEA, 1944 read with Rule 25(1) of CER, 2002. The appellant submits that the adjudicating authority failed to appreciate that exemption on Copper Zinc base alloys (Brass) sheets or circles was rightly availed under Entry No. 216 of Notification No. 12/2012 dated 17/3/2013 even after insertion of Explanation under Entry No. 217 as held by Hon'ble Supreme Court in the case of Meware Bartan Nirmal Udhyog in Civil Appeal No. 3269 of 2003. It is pertinent to note that there is no change in Entry No. 216 of Notification No. 12/2012 dated 17/03/2012 which covers goods falling under Chapter 74 H.No. 7409 and sub-heading No. 74092900 Copper Zinc Base Alloys (Brass) sheets / circles other than copper i.e. refined copper sheets / circles falling under S.H. No.7409110 / 74091900. The findings in the impugned order that goods in question are chargeable to duty under Entry No. 217 of the Notification No. 12/2012 dated 17/3/2012 is nothing but mis-reading of both Entry No. 216 and 217 because Entry No.216 deals with all goods covered under CTH 7409 other than copper falling under 7409110 / 74091900 i.e. refined copper sheets / circles covered under entry no. 217. The legislative intent to exemption in entry no. 216 of the said Notification is veritably to offer relief to all goods other than copper. The view that exemption notification must be interpreted in a manner that would bring about furtherance to its underlying intent and purpose finds preponderance in light of judgment of Hon'ble Supreme Court in the case of Oblum Electrical Industries Pvt. Ltd. vs Collector of Customs Bombay – 1997 (94) E.L.T. 339 (S.C.) and a catena of other decisions. The denial of exemption mechanically interpreting entry No. 216 of Notification No. 12/2012 dated 17/3/2012 contrary to what has been mentioned therein only for the purpose of charging duty would frustrate the very object and purpose of the issuance of the Notification. Without prejudice to this, it is submitted that it is settled law that where the goods are directly and squarely covered by the description under an exemption Notification, the benefit thereof cannot be denied merely because the department had opted for a different interpretation.
- ii. Penalty imposed on the appellant under Section 11AC of CEA, 1944 read with Rule 25 of CER, 2002 is not sustainable and maintainable because the NIL rate of duty availed by the appellant had been declared from time to time by submitting letter every year 2013-14, 2014-15 dated 25/7/2013 and dated 17/10/2013 and 03/09/2014 seeking clarification whether the subject goods fall under Entry no. 216 after insertion of explanation in entry no. 217 by Budget 2013 in Notification No.12/2012 dated 17/3/2012. There is no offence case booked by the department against the appellant during the last five years but on 10/01/2013, Central Excise (Preventive) officers visited our factory and drew NIL Panchnama dated 10/01/2013 and no statement was recorded. Hence there was no contravention of Rules / Notifications by reasons of fraud, collusion or any willful mis-statement or suppression of facts or contravention of the provisions of the Act or Rules made there under with intent to evade payment of duty. The ingredients of Rule 25 are not satisfied in the facts of the present case. The appellant relies on the case law CCE vs Saurashtra Cement Ltd. – 2010 (360) ELT 71 (Guj.). The appellant was not liable to pay interest as the subject goods attracted NIL rate of duty.



3.1. The Power of Attorney holder has preferred an appeal against the impugned order imposing penalty on him under Rule 26 of CER, 2002 where the grounds of appeal filed by the appellant are reiterated and additional grounds are submitted as follows:

- i. From a plain reading of Rule 26(1) of CCR, 2002, the pre-requisite condition is that the goods should be liable for confiscation. In the present case the SCN does not propose confiscation of goods under Rule 25 of CER, 2002, therefore, the allegation against him will not make him liable to penalty under Rule 26(1) of CER, 2002. He places reliance on decision of Hon'ble CESTAT in the case of Air Carrying Corporation P. Ltd – 2008 (29) ELT 80 (Tri.Mum.) and MEK Slotted Angle (I) Ltd. vs Commissioner, Belapur – TIOL 895 CESTAT – MUM.

4. Personal hearing in the case of the appellant and the Power of Attorney holder was held on 01/12/2017 Shri Harshad Patel, Advocate appeared for personal hearing and reiterated the grounds of appeal.

5. Having carefully gone through the impugned order and the grounds of appeal filed by the appellant as well as the Power of Attorney holder, I find that the contentious issue in the present case is whether the goods namely '*Copper Zinc Base Alloys (Brass) Sheets and Circles*' was chargeable to the specific rate of Rs.3,500/- per metric tonne in accordance with SI.No. 217 of Notification No. 12/2012-C.E. dated 17/03/2012 read with Notification No. 12/2013-C.E. dated 1-3-2013 as claimed by the department or whether the said goods attracted NIL rate of duty as per SI.No.216 of the said Notification as claimed by the appellant. It is pertinent to note that there is no dispute relating the conditions in the said Notification or regarding the description of the goods '*Trimmed or untrimmed sheets or circles of copper, intended for use in the manufacture of handicrafts or utensils*'.

6. The contents of the relevant **S.No.216 and SI.No.217 of Notification No. 12/2012-C.E., dated 17-3-2012** is reproduced as follows:

Notification No. 12/2012-C.E., dated 17-3-2012

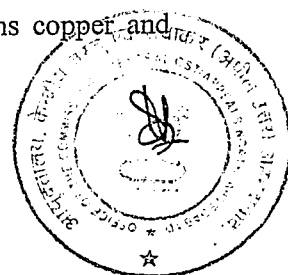
TABLE

216	7409	All goods other than trimmed or untrimmed sheets or circles of copper, intended for use in the manufacture of utensils or handicrafts	Nil	19
217	7409	Trimmed or untrimmed sheets or circles of copper, intended for use in the manufacture of handicrafts or utensils	₹ 3500 per metric tonne	19 and 20

An explanation to above reproduced column no.(3) of Sr. No. 217 of the Notification No. 12/2012-C.E., dated 17-3-2012 was inserted vide **Notification No. 12/2013-C.E., dated 01/03/2013** as follows:

(xii) against serial number 217, for the entry in column (3), the entry "Trimmed or untrimmed sheets or circles of copper, intended for use in the manufacture of handicrafts or utensils.

Explanation - For the purposes of this entry, "copper" means copper and copper alloys including brass." shall be substituted;



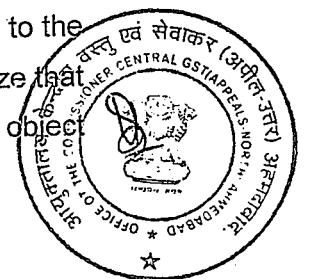
Consequent to the above amendment, Sl.No. 216 and Sl.No.217 under Notification No.12/2013-C.E. dated 01/03/2013 reads as follows:

Notification No. 12/2013-C.E., dated 01-3-2013

TABLE

216	7409	All goods other than trimmed or untrimmed sheets or circles of copper, intended for use in the manufacture of utensils or handicrafts	Nil	19
217	7409	Trimmed or untrimmed sheets or circles of copper, intended for use in the manufacture of handicrafts or utensils <i>Explanation - For the purposes of this entry, "copper" means copper and copper alloys including brass." shall be substituted;</i>	₹ 3500 per metric tonne	19 and 20

From the above extracts, it is clear that all goods of Chapter heading 7409 "***other than trimmed or untrimmed sheets or circles of copper, intended for use in the manufacture of utensil or handicrafts***" fall under **Sl.No. 216** whereas **trimmed or untrimmed sheets or circles of copper, intended for use in the manufacture of utensil or handicrafts** fall under **Sl.No. 217**. The words '***other than***' in Sl.No.216 indicates exclusion of trimmed or untrimmed sheets or circles of copper, intended for use in the manufacture of utensils or handicrafts. The explanation inserted *vide* Notification No.12/2013-C.E. dated 01/03/2013 clarifies that Sl.No. 217 cover copper and copper alloys including brass. The appellant has contended in the grounds of appeal that Sl.No. 216 excludes only such trimmed or untrimmed sheets or circles that are made out of 'refined copper', thereby claiming that the impugned goods that were not made from refined copper but made out of copper and copper alloys including brass merited classification under Sl.No.216. However, on studying the contents of the Notifications reproduced *supra*, it is clear that there is no valid basis to support such an argument because Sl.No.216 excludes all trimmed or untrimmed sheets or circles of copper intended for use in the manufacture of utensil or handicrafts. There is no reason or evidence to construe that this entry excludes only such items that are manufactured out of refined copper. Further, trimmed or untrimmed sheets or circles of copper *i.e.* copper and copper alloys including brass intended for use in the manufacture of utensils or handicrafts find a definite mention in Sl.No. 217. The pertinent fact to note is that there is no dispute that the goods manufactured by the appellant are trimmed or untrimmed sheets or circles of copper intended for use in the manufacture of utensils or handicrafts, which is categorically covered under Sl.No.217 meaning that the intent of the Notifications is to clearly charge specific rate of duty on the impugned goods. There is no scope for any doubt or any reason for an alternate interpretation with regard to the intent of these Notifications. The citations relied upon by the appellant to emphasize that a strict interpretation of legislative construction cannot be at the expense of the object

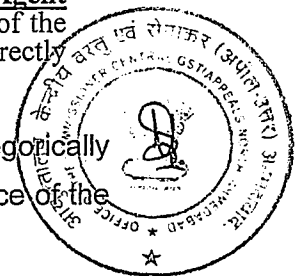


and purpose of the Notification does not support the flawed reading to claim that the impugned goods attract NIL rate of duty. The only correct interpretation is that the impugned goods being trimmed or untrimmed sheets or circles of copper intended for use in the manufacture of utensils or handicrafts is clearly excluded from Sl.No.216 immaterial of the fact whether such goods are made out of refined copper or out of copper and copper alloys including brass. Accordingly I hold that the impugned goods are correctly classifiable under SL.No.217 of Notification No.12/2012-CE dated 17/03/2012 as amended by Notification No.12/2013-CE dated 01/03/2013 attracting the specific rate of duty @Rs.3,500/- per metric tonne. As regards the invoking of extended period, it is an established fact that the appellant had never applied for or obtained Central Excise registration or followed the stipulated procedures or maintained statutory records or filed the statutory returns. I agree with the findings of the adjudicating authority that the letters submitted by the appellant from time to time were seeking clarification as to whether the said goods were eligible for NIL rate of duty under the said Notification. In spite of the categorical clarification by the department that the said benefit of NIL rate of duty was not admissible, the appellant had never intimated that it was actually availing the ineligible benefit nor had the appellant submitted details of the clearances made wrongly at NIL rate of duty without obtaining Central Excise registration or without following statutory provisions. There is no merit in the argument of the appellant that penalty cannot be imposed because no offence case was booked against the appellant. The contraventions listed out in the impugned order attract penal provisions as these contraventions were by reason of suppression of facts with intent to evade duty. Therefore, the invoking of extended period and imposition of penalty under Section 11AC of CEA, 1944 read with Rule 25 of CER, 2002 is legally sustainable.

7. As regards the penalty on the Power of Attorney holder, the adjudicating authority has imposed penalty of Rs.50,000/- under Rule 26(1) of CER, 2002. As per the statement of the Power of Attorney holder relied upon in the impugned order, as he was responsible for all the day to day activities concerning the impugned goods, he was directly involved with availing the ineligible credit and evading payment of duty. In the case of Supreme Petroleum vs CCE, Vadodara – 2006 (194) ELT 323 (Tri.-Mum.), it has been held by Hon'ble Tribunal that Power of Attorney holder of a proprietorship concern was an Agent and could not be considered the same as the proprietor. Hence simultaneous penalty could be imposed on the proprietor and the Agent. The relevant extracts are as follows:

(ii) A perusal of the CCE (A)'s order reveals that there is no reason to uphold the assessee's appeal, the catena of decisions cited as regards no penalty on the proprietor & the proprietary firm, the benefit of the decisions **cannot absolve the penalty on the firm & the Agent since the power of attorney holder for the said firm is only an Agent and cannot have the identity of the firm which a proprietor has.** As an agent of the proprietor, he is a separate person. Both i.e., the firm & the agent have been correctly imposed a penalty along with the accountant, who dealt with the goods.

As per the unretracted statement of the Power of Attorney holder, he has categorically admitted that he was handling all the work relating to manufacture and clearance of the



goods by the appellant and was responsible for the taxation aspects at the State Taxes and Central Taxes. He had direct knowledge regarding the correspondence with the department whereby the appellant was required to obtain Central Excise Registration and follow Central Excise Procedures. Therefore, the intent to evade duty by reasons of suppression of facts and contravention of the provisions are directly attributable to the Power of Attorney holder and the penalty imposed on him under Rule 26 of CER, 2002 are justifiable and sustainable.

8. In view of the above discussions, both the appeals are rejected.

9. **अपीलकर्ताओं** द्वारा दर्ज की गई अपीलों का निपटारा उपरोक्त तरीके से किया जाता है।
The appeals filed by the appellants stands disposed of in the above terms.

उमा शंकर

(उमा शंकर)

आयुक्त

केन्द्रीय कर (अपील्स)

Date: 22/12/2017

Attested

(K. P. Jacob)
(K. P. Jacob)
Superintendent,
Central Tax (Appeals),
Ahmedabad.

By R.P.A.D.

- 1) To
M/s Saraswati Metal Works,
Near Hajipura Garden, Outside Dilli Gate
Shahibaug, Ahmedabad-380 004.
- 2) Shri Samirbhai Baldevbhai Patel,
Power of Attorney holder of M/s Saraswati Metal Works,
Near Hajipura Garden, Outside Dilli Gate
Shahibaug, Ahmedabad-380 004.

Copy to:

1. The Chief Commissioner of C.G.S.T., Ahmedabad.
2. The Commissioner of C.G.S.T., Ahmedabad (North).
3. The Additional Commissioner, C.G.S.T (System), Ahmedabad (North).
4. The A.C / D.C., C.G.S.T Division-I, Ahmedabad (North).
5. Guard File.
6. P.A.



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