



केंद्रीय कर आयुक्त (अपील)



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

सत्यमेव जयते

केंद्रीय उत्पाद शुल्क भवन,

7th Floor, Central Excise Building,
Near Polytechnic,

सांतवीं मंजिल, पोलिटेकनिक के पास,
आम्बावाडी, अहमदाबाद-380015

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रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(84)96 & 97 /Ahd-II/Appeals-II/ 2015-16

स्थगन आवेदन संख्या(Stay App. No.):

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 26 & 27-17-18

दिनांक (Date): 25.07.2017, जारी करने की तारीख (Date of issue):

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. 26/ADC/2015/DSN Dated: 30/11/2015 issued by:
Additional Commissioner Central Excise (Div-), Ahmedabad-II

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

M/s Varia Engineering works Pvt ltd.

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।



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 हों।

- (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 दिनोंक 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 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 1 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम



रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नागिक 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 पट्टी 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 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 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 हैं।

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) लिखा गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'संबन्धित 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।

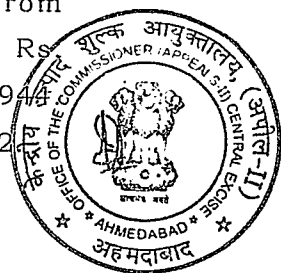
In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER IN APPEAL

The subject appeal is filed by M/s. Varia Engineering Works Pvt. Ltd., Plot No. 03, Kerala GIDC., RajkotAhmedabad-Highway, Bayla, Dist. Ahmedabad(Hereinafter Referred To As *'The Appellant'*) Against the Order in Original No. 26/ADC/2015/DSN (hereinafter referred to as *'the impugned order'*) passed by the Addl. Commissioner, Central Excise,, Ahmedabad-II (hereinafter referred to as *'the adjudicating authority'*). The appellant is engaged in the manufacture of Rolling Mill Machinery and parts thereof, and Corrugated Sheets falling under Chapter 84 and 72 of the Central Excise Tariff Act,1985.

2. On the basis of an information that the appellant was indulging in evasion of Excise duty, the officers of Central Excise (Preventive), Ahmedabad-II conducted a search of the factory and office premises .the unit is engaged in manufacturing of Rotting Mitt Machinery and parts thereof, Cold Rolled Mild Steel and Stainless Steel Coils, Corrugated Sheets and their major Raw material are Steel Plates/ Structural Steel Sections, and H. R Coils of Mild Steel and Stainless Steel .Physical verification of stock of finished goods and scrap lying in the factory premises was carried out .Shri Ram Kishor Sachan informed that the Daily Stock Account is being maintained with their Head office. Therefore, the details of stock Lying in the factory premises could not be verified with the Daily Stock Account. The fully finished excisable goods and scrap totally valued to Rs. 96,56,595/- lying unaccounted in the factory premises,placed under seizure .The duty involved on the said seized goods works out to R5.11,93,555/- . Statement of shri Kishan S. Patel, Assistant(Excise),and Statement of ShriRamKishor Sachan,VicePresident (Technical), was recorded. He stated that he is looking after production, maintenance and projects of the said unit. That they are maintaining the Daily stock Account and account of raw materials and capital goods at their office premises situated at 21, Titanium Building, Near Prahled Nagar Garden, Ahmedabad. he stated that the Daily stock account maintained for accounting of MS/SS scrap was maintained only upto 28.02.2014. Accordingly, he admitted that the fully finished excisable goods and MS/SS scrap, noticed at the factory premises were not accounted for in Daily stock account.From the foregoing pares it appeared that the appellant have contravened the provisions of Rule 10 of the CER 2002, they failed to account the production and sales of the said goods in their manufacturing account in as much as they failed to record the production manufactured on 11.03.2014 and 12.03,2014 and the closing stock as on the said date 10.03.2014 for the entire excisable goods shown as NIL balance and they also failed to record the production and clearance of MS/ SS scrap from 01.03.2014 to till the date of search. Therefore, Excise Duty of Rs. 11,93,555/- on demanded under Section 11A of the Central Excise Act, 1944. They are liable to penalty under Rule 25 of the Central Excise Rules 2002.



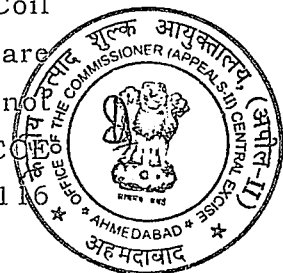
Shri Ram Kishor Sachan, Vice President (Technical) of the said unit was concerned and responsible for accounting of the finished excisable goods, and rendered himself liable fo penalty under Rule 26 of the CER2002. Therefore, show cause notice issued for *The seized goods should not be confiscated and* duty of Rs. 11,93,555/- should not be demanded ,Penalty under Rule 25 and Penalty under Rule 26 of CER 2002 be imposed upon Shri Ram Kishor Sachan, Vice President [Technical]. Said SCN was decided vide above order and confirmed the demand with penalties.

3. Being aggrieved with the said OIO the appellant has preferred this appeal on the followings grounds;

that they accounted for stock of fully finished goods and scrap as on 12/3/2014 in their private records as well as books of Accounts from time to time up to and as on dated 12/03/2014, in spite of which physical verification of stock of finished goods and scrap was done and various statements were recorded only with a view to creating wrong controversial issues. they are not liable to pay duty of Rs. 11,93,555/- as demanded and not liable to pay penalty under Section 11AC of the CEA, 1944 read with Rule 25 of CER, 2002 . there is no direct evidence to prove that they have contravened the provision of Rule 10 that they had accounted for all fully finished goods and scrap lying in the factory premises as on 12/031/2014 into their private Records. They enclosed extracts of their private records i.e. C.R. Coil Programme Register detailing such entries for past and present.

As regards fully finished goods the appellant submitted that they were recorded in Daily stock Register up to 10/3/2014 but not recorded up to and as on 12/03/2014 only because there was staggering in factory on 11th day of March 2014 and on dated 12/3/2014, the factory was visited by the Central Excise officers and accounts personnel was not able to make entries of such fully finished goods in Daily stock Register on 12/3/2014. that this is a Technical lapse only unintentional and inadvertent. hence seizure of fully finished goods and scrap was illegal. In the instant case, seize goods was entered in to private account, hence there was no reason to believe that the subject seized goods liable for confiscation and meant for intent to evade payment of Central Excise duty,

That reasons given for seizure of goods, that fully finished goods lying in factory was not accounted for in Daily stock Register as well as not entered into private records, is nothing but a misreading of private records. Such stock of fully finished goods was entered in to C.R.Coil Programme Register. It is pertinent to note that such private Records are withdrawn under the panchnama dated 12/3/2014. that question does not arise for demand of duty and penalty. They relied on the case laws. I. C Ahmedabad v. Continental Chemicals, reported in 2002 (140) E.L.T. 11

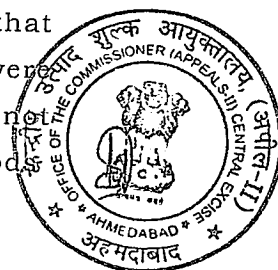


(Tn. - Mum.) 2. Bhilai Conductors P.Ltd. reported in 2000(125)ELT781(Tri.-LB). As regards imposition of personal penalty upon Shri Ram Kishor Sachan, Vice President (Technical), it is submitted that the same is even otherwise unreasonable more so when stock of fully finished goods was entered into private records there was no dishonest or matafide intention on his part as regards these goods. Imposition of personal penalty under Rule 26 of CER 2002 is unjustified.

4. Personal Hearing was fixed on dated 20-12-2016, 28-02-2017, 22.03.2017; however, nobody appeared on behalf of the appellant. Further, Jurisdictional Supdt. was present for hearing. She has informed vide letter dated 27-3-17 that the unit is doing jobwork activity and is functional. In view of above, I think that appellants are not interested in P.H. and therefore, I decide to proceed further. I have carefully gone through all case records placed before me in the form of Show Cause Notice, the impugned order and written submissions made in GOA.

5. I find that the appellant has submitted that they had accounted for stock of fully finished goods and scrap as on 12/3 /2014 in their private records as well as books of Accounts from time to time up to and as on dated 12/03/2014. That the allegations made against them are false and they have not contravened any of the provisions of Rule 10 of C.Ex. Rules 2002, and not rendered them liable to pay duty and were not liable to pay penalty. I find that, the production of previous 24 hours was not entered in the RG-1 register and the Preventive Officers of Central Excise Department had visited the factory of the appellant on 12/3/2014 at 11.00 am and during the course, of physical verification of the stock, they found stock of finished goods lying in the factory which was not accounted for in RG-1 Register. That the stock was the production of 11/3/2014 which was not entered in the Daily Stock Register due to staggering on that day. They contended that, there is no statement or any evidence to show that the said goods were meant for clandestine removal. It is a mere non-accountal of the finished goods produced on the day of staggering in the RG-1 i.e. Daily Stock Register. They relied upon the case laws 1. CCE & CUSTOMS V. Resham Petrotech Ltd. - 2009 (1) TMI 110 - GUJARAT HIGH COURT - 2010 (258) E.L.T. 60 (Guj.) 2. CCE Daman V. Mukesh Metal Industries Pvt. Ltd.- 2009 (247) E.L.T.810 (Tn -Ahmd.) 3. Manek Chemicals Pvt. Ltd. V. CCE Ahmedabad 2002 (145) E.L.T. 335 (Tn. Del.)

6. I find that, the finish goods entered in private register i.e. C.R. Coil Programmer Register but not in RG-1 Register. Failure to account for Goods for one day in Daily Stock Register but entered in private Register is sufficient to impose penalty and confiscate the seized Goods. I find that fully finished goods lying in the factory of the appellant on 12.03.2014 were seized by the officers of the Central Excise as Daily Stock Account was not being maintained at factory premises; hence the stock of fully finished goods



found lying in the factory could not be verified with the details shown in Daily Stock Account.

7. I find that, the issue involved in this case is non availability of details of fully finished goods lying in the factory of the appellant in Daily Stock Account. These records were referred to as 'Statutory records'. I find that, The provisions relating to maintenance of Daily Stock Account, for example, under present CER, 2002 are contained in Rule 10, which provides as follows :-

"RULE 10. Daily stock account. — (1) Every assessee shall maintain proper records, on a daily basis, in a legible manner indicating the particulars regarding description of the goods produced or manufactured, opening balance, quantity produced or manufactured, inventory of goods, quantity removed, assessable value, the amount of duty payable and particulars regarding amount of duty actually paid.

(2) The first page and the last page of each such account book shall be duly authenticated by the producer or the manufacturer or his authorised agent.

(3) All such records shall be preserved for a period of five years immediately after the financial year to which such records pertain.

(4) The records under this rule may be preserved in electronic form and every page of the record so preserved shall be authenticated by means of a digital signature.

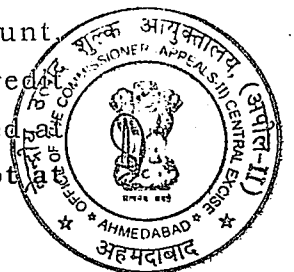
(5) The Board may, by notification, specify the conditions, safeguards and procedure to be followed by an assessee preserving digitally signed records.

8. However, in the present time of liberalization, the 'Statutory records' under CER, 1944 were dispensed with and as a measure of simplification, it has now been provided to rely on private records of the assessee, provided they contain details prescribed under CER, 2002 / CCR, 2004 and they are maintained in accordance with instructions issued by CBEG. I FIND THAT, The instructions for proper maintenance of 'Records' is prescribed at Part-I, Chapter-6 of CBEC's Excise Manual of Supplementary instructions,

2.5 The private records relevant for Central Excise, including the Daily Stock Account maintained in compliance with the provisions of the said Rules shall necessarily be kept in the factory to which they pertain.

[ii]contravention of specified rules attracting penal action.

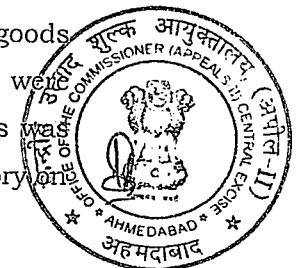
9. I find that admittedly, records such as Daily Stock Account Accounts of Raw Materials and Capital Goods on which CENVAT credit are availed, etc. are maintained by the appellant at their office situated at 21, Titanium Building Near Prahlad Nagar Garden, Ahmedabad, and not



their factory premises, as required under Para 2.5, Part-I, Chapter-6 of CBEC's Excise Manual of Supplementary Instructions. Further, it is also an undisputed fact that the Daily Stock Account of finished goods was maintained upto 10-03.2014 only and the closing stock of entire excisable goods as on that date was shown as NIL balance and Daily Stock Account for accounting of Scrap was maintained upto 28.02.2014 only. I find that, The appellant has submitted that fully finished goods were recorded in Daily Stock Account upto 10.03.2014 only and not upto 12.03.2014 because there was staggering in factory on 11.03.2014, therefore account personnel was not able to make entries of such fully finished goods in Daily Stock Account on 12.03.2014, which is a technical lapse in maintaining of the finished goods stock of a one day. It is also asserted by the appellant that the stock was the production of 11.3.2014 which was not entered in the Daily Stock Register due to staggering on that day. I find that these submissions of the said assessee are self contradictory in as much as if there was staggering in factory on 11.03.2014, there could not have been any production of fully finished goods on 11.03.2014 which was required to be recorded in Daily Stock Account. As the closing balance of fully finished excisable goods was shown as NIL on 10.03.2014 in Daily Stock Account and there was staggering in the factory on 11.03.2014, the only reasonable conclusion which can be drawn is that the said fully finished excisable goods were manufactured prior to that date but were not accounted for in Daily Stock Account. I am also not capable to convince myself how the staggering in the factory on 11.03.2014 would affect proper maintenance of Daily Stock Account when admittedly Daily Stock Account was being maintained by the appellant at their office and not at their factory. I find that, The appellant has placed reliance on entries made by them in private register and submitted that they had accounted for all finished goods and scrap lying in the factory premises as on 12.03.2014 into their private records. I have perused the copies of said Register and other documents submitted by the appellant. For better appreciation of contents of the said register, few pages of the said register and other documents submitted by the appellant and corresponding entries in the said register, I noticed that,

a. From the entry made in the C.R. Coil Programme Register, it is apparent that goods mentioned against Coil No. 250B was manufactured on 23.02.2014 and as per "Remarks Column" against the said entry, the said goods were dispatched on 24.02.2014. Therefore, the question of said goods lying in factory on 12.03.2014 does not arise.

b. From the entry made in the Mill Production - Log Book, it is apparent that goods mentioned against Sr. No. 270, Varia Coil. No. 14017793, goods weighing 16675 Kgs. were manufactured on 28.02.2014. As the closing balance of fully finished excisable goods was shown as NIL on 10.03.2014 in Daily Stock Account and there was staggering in the factory on

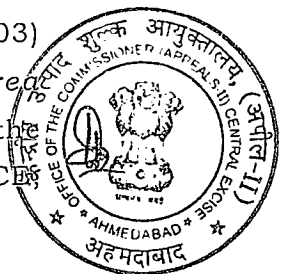


11.03.2014, how the quantity, of fully finished goods against Colt No. 270 / Varia Coil No. 14017793 manufactured on 28.02.2014 was lying in factory on 12.03.2014, has not been explained by the appellant. The appellant has not explained the difference between quantity of 16675 Kgs. shown in register as manufactured on 28.02.2014 and quantity of 5115 Kgs. found in factory on 12.03.2014 during physical verification.

10. I find that, As per sub-rule (1) of Rule 10 of CER, 2002, Daily Stock Account is required to be Maintained on a daily basis, showing particulars regarding description of the goods produced or manufactured, opening balance, quantity produced or manufactured, inventory of goods, quantity removed, assessable value, the amount of duty payable and particulars regarding amount of duty actually paid. However, I find that these statutorily required details are not shown in C.R. Coil Programme Register and other private registers. I also find that the said registers are not authenticated by the appellant. In terms of requirement of statutory provisions and instructions issued by CBEC, I find that the said Register and other Private documents of the appellant cannot be termed to be Daily Stock Account maintained in terms of Rule 10 of CER, 2002 .

11. In respect of the seized goods, I find that, the finished excisable goods found lying in the factory on 12.03.2014, which was seized by the officers of Central Excise, was not the production of one preceding day i.e. 11.03.2014, as claimed by the appellant as there was staggering in the factory on 11.03.2014. Furthermore, as shown in C.R. Coil Programme Register and other Private documents the seized goods were produced much earlier than 10.03.2014, on which date closing stock of finished goods has been shown as NIL in the Daily Stock Account. Further, Daily Stock Account for accounting of Scrap was maintained only upto 28.02.2014. I, therefore, hold that the appellant has contravened the provisions of Rule 10 of CER, 2002 with intent to evade payment of Central Excise Duty. All these act of omission and commission have been committed by reasons of willful mis-statement, and contravention of the provisions of CEA, 1944 and CER, 2002. Therefore, the seized final products are liable for confiscation under rule 25 of CER 2002.

12. As regards the contention of the appellant that there is no evidence establishing their *malafide* intention in non-accountal of finished goods, I find that the case laws cited by the appellant are not applicable in the facts and circumstances of the present case. I find that it is settled legal position that mere non-accountal of finished goods in Daily Stock account attracts confiscation and penalty under Rule 25(1)(b) of CER, 2002 and *mens rea* is not required to be proved. I rely on the case laws. 1. CCE, Vapi Vs. Modisori Ltd. 2006 (203) E.L.T. 521 (Tn. LB), Larger Bench of Hon'able CESTAT has held that *mens rea* is not an essential ingredient to warrant confiscation and penalty under the provisions of Rule 173Q(1)(a),(b) Et (c) of Central Excise Rules, 1944 2. CC



2. CCE, Lucknow V. Kumar Industries -2010 (261) E.L.T. 546 (Tn.Del.) It is held by Hon'able CESTAT that,

"5. As per the provisions of clause (b) of sub-rule (2) of Rule 25 of Central Excise Rules, 2002,it is clear that mere non-recording of production in the RG 1 Register would attract confiscation and penalty and in this regard mens rea is not required to be proved.

Further, I find that the appellant did not account for the fully finished excisable goods in Daily Stock Account with intent to evade payment of duty; therefore, penalty under Rule 25(1) of CER 2002 is imposable. Thus, I hold that penalty imposed is just and legal.

13. In respect of the penalty imposed on Shri Ram Kishor Sachan, Vice President (Technical) of the appellant unit, I find that he is holding senior position and also looking after production/ clearance of the said unit. He was responsible for accounting, transporting, removing, depositing, selling or purchasing of the said excisable goods which he knew or had reasons to believe were liable for confiscation under CEA, 1944. I therefore, hold that penalty imposed on Shri Ram Kishor Sachan, is just and legal.

14. In view of above discussion and findings, I uphold the impugned order and disallow the appeals filed by the appellants.

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

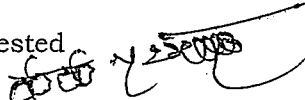
15. The appeals filed by the appellants stand disposed off in above terms.



(उमा शंकर)

आयुक्त (अपील्स)

Attested



[K.K.Parmar)

Superintendent (Appeals)
Central tax Ahmedabad.

By Regd. Post A. D

1. M/s. Varia Engineering Works Pvt. Ltd.,

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Copy to :

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



