आयुक्त का कार्यालय, (अपीलस)
Office of the Commissioner,

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय
Central GST, Appeal Commissionerate- Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎: 079-26305065 **टेलेफैक्स** : 079 - 26305136

रजिस्टर डाक ए .डी .द्वारा

S1760 / S1800

क फाइल संख्या (File No.) : V2(74)4 /North/Appeals/ 2018-19

ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP-26-18-19**
दिनांक (Date): **27-Jun-18** जारी करने की तारीख (Date of issue): 16/7/2018
श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित
Passed by **Shri Uma Shanker** , Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-I), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी मूल आदेश सं _____ दिनांक _____ से सृजित
Arising out of Order-In-Original No **14 to 15/AC/DEMAND/17-18** **Dated**: **27/02/2018** issued by: Assistant Commissioner Central Excise (Div-I), Ahmedabad North

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

M/s Delux 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 पूवोक्त 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 एवं सेवाकर (अपील) अहमदाबाद

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

(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 दिनाँक 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 रूपये या उससे कम हो तो रूपये 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 अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

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 मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी 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 इ.ए–3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणें की गई अपील के विरूद्व अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर 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 ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/– फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से

रेखाकिंत 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. Registar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner not withstanding 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 अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

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

M/s Delux Metal Industries, 40/A, G.I.D.C., Phase-III, Near Ambica Weigh Bridge, Naroda, Ahmedabad (hereinafter referred to as 'the appellant'**)** has filed the instant appeal against Order in Original No.14 to 15/AC/Demand/17-18 dated 27/02/2018 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, C.G.S.T. & Central Excise, Division-I, Ahmedabad North (hereinafter referred to as 'the adjudicating authority'). 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 communication issued by the Headquarters Preventive, Ahmedabad-II, it was revealed that the appellant was not registered with Central Excise and was clearing their 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. As the appellant disagreed regarding its duty liability, the following Show Cause notices (hereinafter 'the SCNs') were issued to it that is covered in the impugned order:

Sl. No.	SCN F.No. & Date	Period covered	Demand details	Penalty provisions
1.	V/16-10/Dem/Delux Metal Ind./16-17 Dated 29/06/2016	**June-2015 to March-2016**	**Rs.1,04,990/-** u/S 11A (1) read with section 11A (7A) of CEA, 1944 along with interest u/S 11AA of CEA, 1944.	i) u/S 11AC of CEA, 1944 r/w Rule 25 of CER, 2002.
2.	V/16-05/Dem/Delux Metals Ind./17-18 Dated 25/10/2017	**April-2016 to June-2017**	**Rs.1,62,659/-** u/S 11A(1) of CEA, 1944 read with S.11A(7A) of CEA, 1944 along with interest under section 11AA of CEA, 1944	i) u/S 11ACof CEA, 1944 r/w Rule 25 of CER, 2002.

2. Both the above SCNs were adjudicated vide the impugned order, confirming the demands for duty and interest as well as imposing penalty of Rs.10,499/- and Rs.16,266/- on the appellant under the provisions proposed in the SCNs.

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

i. The charges and the allegations in the SCNs and confirmed in the impugned order are not in accordance with the legal position stated under entry no. 216 of the Notification No. 12/2012 dated 17/03/2012. The entire controversy had arisen because of the explanation inserted in entry no. 217 of the said Notification. The subject goods manufactured by them are covered under entry no. 216 and attract NIL rate of duty till 28/02/2013 as settled by Supreme Court in the case of Meware Bartan Nirmal Udyog in Civil Appeal No. 3269 of 2003. From 01/03/2013 there is a change in Entry No. 217 introduced by way of Notification No. 112/2013 dated 01/03/2013 due to budget of 2013-14. However, there was no change in Entry No. 216 covering goods falling under sub-heading no. 74092900 Copper Zinc Based alloys (Brass) sheets / circles) other than copper i.e. refined copper sheets / circles falling under sub-heading 7409110 / 74091900. As there was no change in entry no. 216 of the said Notification even after budget of 2013-14, the subject goods attract NIL rate of duty. The appellant submits that in the present case, it was manufacturing copper Zinc Base Alloys (Brass) sheets / circles falling under CTSH 7409200 and therefore Entry No. 216 would apply and it was entitled to claim NIL rate of duty under the said Notification. Hon'ble Supreme Court in the case of Oblum Electrical Industries Pvt. Ltd., vs Collector of Customs Bombay – 1997 (94) E.L.T. 449 (S.C.) have held that the words in a Notification have to be construed keeping in view the object and purpose of the exemption. The denial of exemption by mechanically interpreting entry nos. 216 of Notification No. 12/2012 contrary to what has been mentioned therein only for the purpose of charging duty would frustrate the very object and purpose for the issuance of the Notification and the intent of legislature to issue such a notification. Justice G.P. Singh in his book Principles of Statutory Interpretation has explained that *'interpretation must depend on the text and the context'*. One may well say that if the text is texture, context is what gives it color and both neither can be ignored. Hon'ble Supreme Court in the case of CCE vs Rupa and Co. Ltd. – 2004 (170) E.L.T. 129 (SC) held that a strict interpretation of legislative construction cannot be at the expense of the object and purpose of the Notification. Entry no. 216 of Notification No. 12/2012 was pursuant to the commitment made by legislature and therefore it is submitted that the doctrine of promissory estoppels is duly applicable in the instant case. In is settled law as per Hon'ble S.C. in the case of Jain Eng. Co. vs Collector of Customs – 1987 (32) ELT 3 (SC) and Johnson & Johnson vs Commissioner – 1007 (92) ELT 23 (SC) 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 has opted a different interpretation. Assuming without admitting that the view of the department is correct and Copper alloys including brass are not covered under entry no. 216 of the said notification, then the question arises as to what is the implication of description in entry no. 216 saying 'all goods other than copper only' . This means that entry 216 excludes only refined copper and does not exclude copper alloys including brass. On the one hand 'copper alloys including brass' finds mention in entry no. 217 and on the other hand the same is not excluded as per the description in entry no. 216. There is no explanation inserted in entry no.216 so as to exclude copper zinc base alloys (brass) sheets or circles from entry 216 of Notification No. 12/2012.

ii. There was no contravention of rules / notifications by reasons of fraud, collusion or any willful suppression of facts with intent to evade duty as the appellant had submitted letters every year for clarification. The ingredients of Rule 25 are not satisfied in the case of the appellant and penalty thereof read with section 11AC cannot be imposed. The appellant relies on CCE vs Saurashtra Cement Ltd. –

2010 (360) ELT 71 (Guj.). the adjudicating authority ought to have appreciated that penalty under Section 11AC could not be imposed as this was not a case of duty not paid or erroneously refunded by way of fraud, collusion or any willful suppression of facts with intent to evade duty. The conduct of the appellant was *bona fide* and hence no penalty could be imposed. The department was aware of the activities of the appellant as it had submitted letters every year about manufacture and clearance of its products. It is settled law that when demand was not sustainable, penalty also was not sustainable. Similarly no interest was payable as the subject goods attracted NIL rate of duty.

4. Personal hearing in the case of the appellant and M/s Delux Metal Works was held on 13/06/2018 attended by Shri Harshad Patel, Advocate. The learned Advocate reiterated the grounds of appeal. The earlier Order-in-appeal was decided against the appellant.

5. Having carefully gone through the impugned order and the grounds of appeal, I find that the disputed issue 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 Sl.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 Sl.No.216 of the said Notification as claimed by the appellant. There is no dispute regarding fulfillment of the stipulated conditions in the Notification or that the goods were *'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 Sl.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;

After 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 ***Explanation* - For the purposes of this entry, "copper" means copper and copper alloys including brass." shall be substituted;**	₹ 3500 per metric tonne	19 and 20

On a conjoint reading of the above reproduced relevant extracts of Notification No. 12/2012-C.E., dated 17-3-2012 and Notification No.12/2013-C.E. dated 01/03/2013, 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. In this regard, 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 were made from copper and copper alloys including brass merit classification under Sl.No.216. This argument is not valid or correct in the present context 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, basis 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 utensil or handicrafts find a definite mention in Sl.No. 217. The pertinent fact to note is that there is no dispute regarding the fact that the goods manufactured by the appellant are trimmed or untrimmed sheets or circles of copper intended for use in the manufacture of utensil or handicrafts, which is unambiguously covered under Sl.No.217 and there is no scope for any doubt or reason for any alternate interpretation with regard to the intent of these Notifications. The citations relied upon by the appellant are to emphasize that a strict interpretation of legislative construction cannot be at the expense of the object and purpose of the Notification that in the instant case does not support the flawed reading to claim that the impugned goods are not excluded from the

realm of Sl.No. 216 and hence attract NIL rate of duty. The only correct interpretation in the instant case is that the impugned goods being trimmed or untrimmed sheets or circles of copper intended for use in the manufacture of utensil 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 Rs.3,500/- per metric tonne. Thus the demand is liable to be confirmed along with interest and the appeal fails to challenge the confirmation of demand for duty and interest in the instant case. As regards the imposition of penalty, it is an established fact that the appellant had never applied for or obtained Central Excise registration, followed the stipulated procedures, maintained statutory records or filed the statutory returns. The claim for benefit of Sr.No.216 of the said Notification is totally unjustifiable and appears to be in the nature of an afterthought once the inquiry was initiated by the department. Therefore, the contravention of legal provisions in the present case is with intent to evade duty attracting the invoking of extended period and imposition of penalty under Section 11AC of CEA, 1944. In view of the discussions *supra*, the appeal filed by the appellant 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 the above terms.

उमाशंकर

(उमा शंकर)
आयुक्त
केन्द्रीय कर (अपील्स)

Date: 27 / 06 /2018

Attested

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

By R.P.A.D.

1) To
M/s Delux Metal Industries,
Plot No.40/A, G.I.D.C., Phase-III,
Near Ambica Weigh Bridge,
Naroda, Ahmedabad.

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.