



सत्यमेव जयते

## आयुक्त का कार्यालय, (अपीलस)

Office of the Commissioner,

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

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क फाइल संख्या (File No.): **V2(72)61 to 64/North/Appeals/ 2018-19** / 11583 to 11588

ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP-07 to 10-19-20**

दिनांक (Date): **09/05/2019** जारी करने की तारीख (Date of issue): \_\_\_\_\_

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

10/06/2019

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 **11/ADC/2018/RMG** Dated: **28/03/2018**

issued by: **Additional Commissioner-Central Excise (Div-I), Ahmedabad North,**

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

**M/s Vipul copper Private Ltd**

**M/s. Shri Natubhai Ptel**

**M/s. Kaluram Ramdayal Heda**

**M/s Shri Navratanlal Sharma**

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



(b) In case of rebate or duty or excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल है।

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

(घ) अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो इयूटी क्रेडीट 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 (न.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 such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(१) 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. के 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.

(२) 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 रुपये से ज्यादा हो तो रुपये 1000/- फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील :-  
Appeal to Customs, 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 सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक न. 3. आर. के. पुरम, नई दिल्ली को एवं

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification valuation and





- (ख) उक्तिलिखित परिच्छेद 2(1) क में बताए अनुसार के अलावा की अपील, अपीलों के मामले में सीमा शुल्क, केंद्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मेन्टल होस्पिटल कम्पाउंड, मेघाणी नगर, अहमदाबाद-380016.
- (b) To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad: 380016, in case of appeals other than as mentioned in para-2(1) above.
- (2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए.-3 में निर्धारित किए अनुसार अपीलीय न्यायधिकरण की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की माँग, ब्याज की माँग और लगाया गया जुर्माना रुपए 5 लाख या उससे कम है वहाँ रुपए 1000/- फीस भेजनी होगी । जहाँ उत्पाद शुल्क की माँग और लगाया गया जुर्माना रुपए 5 लाख या ५० लाख तक हो तो रुपए ५०००/ फीस भेजनी होगी । जहाँ उत्पाद शुल्क की माँग और लगाया गया जुर्माना रुपए ५० लाख या उससे ज्यादा हो तो रुपए १००००/ फीस भेजनी होगी । फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध में की जाए । यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है । स्टे के लिए आवेदन-पत्र रुपए ५००/- फीस भेजनी होगी ।
- 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.5000/-, 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 crossed bank draft in favour of Asst. Registrar of 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. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-
- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिये फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिये इस तथ्य के होते हुए भी की लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय नयाधिकरण को एक अपील या केंद्रीय 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 १९७० यथा संशोधित की अनुसूची-१ के अंतर्गत निर्धारित किये अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रुपए ६.५० पैसे का न्यायालय शुल्क टिकट लगा होना चाहिये ।
- One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall bear 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 सम्बंधित मामलो को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केंद्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यावधि) नियम, १९८२ में निहित है ।
- (6) Attention is invited to the rules covering these and other related matter contended in Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.





## ORDER-IN-APPEAL

These appeals have been filed by M/s Vipul Copper Pvt. Ltd., 1611/B, Phase-1 & 2, GIDC, Naroda, Ahmedabad (for short "VCPL") (Appellant No. 1); Shri Natubhai Patel of M/s Vipul Copper Pvt. Ltd., 1611/B, Phase-1 & 2, GIDC, Naroda, Ahmedabad (Appellant No. 2); Shri kaluram Ramdayal Heda, Proprietor of M/s Pranav Metal Mart, Nadiad (for short "PMM"), 5, Gokul Shopping Centre, Kachhiyawad, Nadiad, Gujarat (Appellant No. 3) and Shri Navratanlal Sharma, Prop. M/s Singal Road Carriers, Plot No. 1, Motiakhan, Opp. Desu, Delhi through M/s V.B. Sheth & Co. (Advocate), "DHANRAJ", Dr. Radhakrishnan Road, Moti Tanki, Sadar Road, Rajkot-360001 (Appellant No. 4) against OIO No. 11/ADC/2018/RMG dated 28.3.2018 passed by the Additional Commissioner, Central Excise & CGST, Ahmedabad-North (herein after referred to as the adjudicating authority). Since these appeals arise from the same case, I take them up together for decision by this single order.

2. The facts briefly are that the officers of Directorate of Central Excise intelligence, Ahmedabad booked a case against VPCL. Investigations revealed that the VCPL had availed CENVAT credit on inputs based on invoices without actually receiving the inputs in the factory. The invoices were raised/issued, among others, by PMM, a registered dealer. The scrutiny of duty paying documents revealed that VCPL had availed cenvat credit on the strength of invoices of PMM and this registered dealer had shown purchases of imported material i.e. copper from the registered dealers of Delhi. Investigation revealed that the imported consignments of copper never reached the manufacturers / dealers of Gujarat and Daman and credit was availed by them on the strength of only bills of entry/invoices. Bogus LRs were prepared while the goods were sold in or around Delhi only. A show cause notice dated 31.01.2008 was issued to, among others, the appellant, proposing penalty under Rule 26 of the CENVAT Credit Rules, 2002 and under Rule 13 of the CENVAT Credit Rules, 2002 or 15 of the CENVAT Credit Rules, 2004. The said show cause notice dtd. 31.01.2008 was adjudicated vide OIO No. 105/JC/2008/JN dtd. 30.09.2008 wherein the original adjudicating authority confirmed the demand of Rs. 18,45,716/- and imposed equivalent penalty, imposed penalties of Rs. 4,00,000/- on the appellant No. 2, of Rs. 2,00,000/- on the appellant No. 3 and of Rs. 50,000/- on the appellant No. 4. Being aggrieved by the said OIO dtd. 30.09.2008, the appellants appealed before the commissioner (Appeal) and the Commissioner (Appeal), vide the OIA No. 82-88/2009(Ahd-





II)CE/ID/Commr(A)/Ahd dtd. 27.02.2009, upheld the OIO dtd. 30.09.2008.

Being aggrieved by the said OIA, the appellant preferred an appeal before the CESTAT and the CESTAT, vide its order No. A/10167-10176/2015 dtd. 20.07.2015 set aside the matter and remanded the case to the original adjudicating authority to decide the case afresh after supplying the relied upon documents to the appellant. As per directions of the Tribunal, the adjudicating authority, vide the impugned order, confirmed the demand of Rs. 18,45,716/- and imposed equivalent penalty, imposed penalties of Rs. 4,00,000/- on the appellant No. 2, of Rs. 2,00,000/- on the appellant No. 3 and of Rs. 50,000/- on the appellant No. 4.

3. Being aggrieved by the impugned order, the appellants have filed these appeals on the following grounds:

Appellant No. 1:

- a) That the investigation is only confined to transportation of inputs from Delhi to Nadiad and there is no dispute that the goods did not travel between Nadiad where the registered dealer is situated and Ahmedabad i.e. the factory of the appellant and there is no allegation in the show cause notice that there is no transportation of goods between Nadiad and Ahmedabad;
- b) That the records of the transportation of goods between Nadiad and Ahmedabad are available and they have not even been examined;
- c) That the octroi receipt for payment of octroi on transportation of goods from Nadiad to Ahmedabad was shown and the copies of invoices and ledger account for payment of goods against the invoices are also on record. Further the accounting of input and statutory record i.e. RG 23A Part 1 as well as in the private stock ledger are also on record;
- d) That the dealers were registered and their statements are recorded. Therefore the department has identified the supplier and therefore the obligation cast on the appellant under the said sub-rule (3) was discharged;
- e) That the production done by the appellant clearly shows that they inputs had been received, consumed and were duly accounted for in the books of accounts and other records and payments were also made via cheque and the final products were dispatched on payment of duty;
- f) That the appellant is never required to verify and investigate the source of procurement by the registered dealer;
- g) That there is no allegation about nonpayment for the material or the money has been returned back on account of non-receipt of inputs;
- h) That there is an affidavit in which it is stated that the transporter had informed about forcing and coercion by the department to give confessional statement and the true facts are that the goods from Ganapati Rollings Pvt. Ltd., New Delhi are brought by truck and octroi is paid on these goods and the copy of the octroi receipt was given to the department;
- i) That they seek to rely on the judgements of Malerkotla Steels & Alloys Pvt. Ltd. vs. CCE- 2008 (229) ELT-607 affirmed in 2009 (244) 48 (P&H), Commissioner vs. Shakti Roll Cold Stripes Pvt. Ltd. – 2007 (80) RLT-267 upheld in 2008 (229) ELT-661 (P&H) and affirmed in 2009 (242) ELT-A83(S.C.) and CCE vs. Neepaz Steels Indian – 2007 (213) ELT (100) affirmed in 2008 (230) ELT-218 (P&H) that merely because



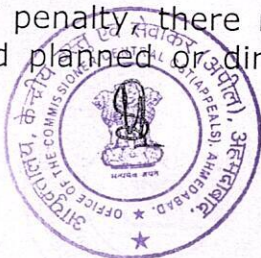


on enquiry by the department if it is found that the vehicle numbers mentioned in the invoices are not those of trucks or heavy goods vehicles, it would not only be sufficient to arrive at the conclusion that no goods at all have been received;

- j) That the matter is directly covered by Gujarat High Court decision in the case of Dhanlaxmi Tube and Metal reported in 2014 (34) STR-155;
- k) That for imposition of penalty, mens rea is a must for imposing penalty under Section 11AC.

Appellant No. 2:

- a) That the investigation is only confined to transportation of inputs from Delhi to Nadiad and there is no dispute that the goods did not travel between Nadiad where the registered dealer is situated and Ahmedabad i.e. the factory of the appellant and there is no allegation in the show cause notice that there is no transportation of goods between Nadiad and Ahmedabad;
- b) That the records of the transportation of goods between Nadiad and Ahmedabad are available and they have not even been examined;
- c) That the octroi receipt for payment of octroi on transportation of goods from Nadiad to Ahmedabad was shown and the copies of invoices and ledger account for payment of goods against the invoices are also on record. Further the accounting of input and statutory record i.e. RG 23A Part 1 as well as in the private stock ledger are also on record;
- d) That the dealers were registered and their statements are recorded. Therefore the department has identified the supplier and therefore the obligation cast on the appellant under the said sub-rule (3) was discharged;
- e) That the production done by the appellant clearly shows that they inputs had been received, consumed and were duly accounted for in the books of accounts and other records and payments were also made via cheque and the final products were dispatched on payment of duty;
- f) That the appellant is never required to verify and investigate the source of procurement by the registered dealer;
- g) That there is no allegation about nonpayment for the material or the money has been returned back on account of non-receipt of inputs;
- h) That there is an affidavit in which it is stated that the transporter had informed about forcing and coercion by the department to give confessional statement and the true facts are that the goods from Ganapati Rollings Pvt. Ltd., New Delhi are brought by truck and octroi is paid on these goods and the copy of the octroi receipt was given to the department;
- i) That they seek to rely on the judgements of Malerkotla Steels & Alloys Pvt. Ltd. vs. CCE- 2008 (229) ELT-607 affirmed in 2009 (244) 48 (P&H), Commissioner vs. Shakti Roll Cold Stripes Pvt. Ltd. - 2007 (80) RLT-267 upheld in 2008 (229) ELT-661 (P&H) and affirmed in 2009 (242) ELT-A83(S.C.) and CCE vs. Neepaz Steels Indian - 2007 (213) ELT (100) affirmed in 2008 (230) ELT-218 (P&H) that merely because on enquiry by the department if it is found that the vehicle numbers mentioned in the invoices are not those of trucks or heavy goods vehicles, it would not only be sufficient to arrive at the conclusion that no goods at all have been received;
- j) That the matter is directly covered by Gujarat High Court decision in the case of Dhanlaxmi Tube and Metal reported in 2014 (34) STR-155;
- k) That for imposition of penalty there must be evidence to the effect that the appellant had planned or directed or initiated or otherwise





participated in any manner in the alleged office for imposing penalty under Rule 26.

Appellant No. 3:

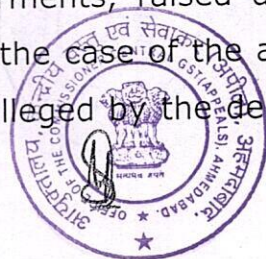
- (a) that the adjudicating authority has imposed penalty on without considering the submissions made and evidences produced and the decisions cited in his favour have been ignored;
- (b) that the penalty has been imposed even when he has categorically clarified that the input under consideration are received and are sold to the respective parties and the department has not produced any evidence to prove the financial flow back;
- (c) that in the case of Man Industries (India) Ltd reported in 2004 (175) ELT-435 has clearly held that unless the positive evidences are produced to prove the nexus of personal knowledge, no penalty can be imposed under Rule 209A. The provisions of Rule 209A and Rule 26 are pari materia with each other and therefore the principle laid down by the Bench is clealy applicable in his case;
- (d) that in the case of MONARCH METALS P. LTD. Vs Commissioner Of C. Ex., Ahmedabad reported in 2010 (261) ELT-508, the Tribunal has held that no penalty can be imposed under Rule 26. This case has been confirmed by the Hon'ble High Court of Gujarat;
- (e) that the penalty under Rule 26 read with rule 13 of the CCR, 2002/Rule 15 of CCR, 2004 has been imposed by error.

Appellant No. 4:

- (a) that the adjudicating authority has imposed penalty on without considering the submissions made and evidences produced and the decisions cited in his favour have been ignored;
- (b) that the penalty has been imposed even when he has categorically clarified that the input under consideration are received and are sold to the respective parties and the department has not produced any evidence to prove the financial flow back;
- (c) that in the case of Man Industries (India) Ltd reported in 2004 (175) ELT-435 has clearly held that unless the positive evidences are produced to prove the nexus of personal knowledge, no penalty can be imposed under Rule 209A. The provisions of Rule 209A and Rule 26 are pari materia with each other and therefore the principle laid down by the Bench is clealy applicable in his case;
- (d) that in the case of MONARCH METALS P. LTD. Vs Commissioner Of C. Ex., Ahmedabad reported in 2010 (261) ELT-508, the Tribunal has held that no penalty can be imposed under Rule 26. This case has been confirmed by the Hon'ble High Court of Gujarat;
- (e) that the penalty under Rule 26 read with rule 13 of the CCR, 2002/Rule 15 of CCR, 2004 has been imposed by error.

4. Personal hearing in the matter was held on 08.05.2019. Shri S. J. Vyas, Advocate appeared on behalf of the appellants and reiterated the grounds of appeals.

5. I have gone through the facts of the case, the grounds mentioned in the appeal and the oral averments, raised during the course of personal hearing. First of all I take up the case of the appellant-1. The primary issue to be decided is whether as alleged by the department, the appellant-1 has





availed CENVAT credit on invoices without receiving inputs in the factory or otherwise. Appellant-1 has vehemently denied the charges and has stated that they had received the goods, which were accounted for in their RG 23A part-I register and that these inputs were utilized for further manufacture of final excisable goods which were removed on payment of duty.

5.1 I find that the impugned order has resulted after detailed investigation carried out from government agencies who are concerned with the responsibility of keeping check on the interstate movement of goods and vehicles. As detailed in para 17 of the impugned order, investigations were carried out from the transport department of Gujarat and Rajasthan and which revealed that no physical transportation of consignments under question took place. The verification report from the transportation departments have revealed that even the vehicles the details of which could be found with them were incapable of the quantity and nature of goods claimed by the appellants. There is a very specific finding that the vehicles mentioned in the seized LRs were government vehicles, auto rickshaws, pick up vans etc. Which could never carry the quantity as mentioned in the seized LRs. It is quite evident that the most important evidence of non-receipt of the goods as supported by the government departments of Gujarat and Rajasthan is that the details of the vehicles were not correct and proved beyond any doubt that all the LRs were bogus and were made to facilitate the availment of inadmissible cenvat credit. It is to be noted that the investigation was carried out extensively from concerned department of Madhyapradesh as discussed in para 18 of the impugned order and the conclusions of the investigation is that the goods were not transported through Madhyapradesh to and there is no rebuttal from the appellants and documentary evidence as to how they received the goods and by what vehicles. In the appeal memorandum, the appellants have not been able to say anything about the mode and transportation of goods through any other alternate route.

5.2 The appellants have contended that the statement dtd. 28.11.2006 of Shri Sharma was retracted but it is also undisputed that further opportunity was also given to him to present his facts with evidence but he did not utilize that opportunity and therefore I have no hesitation that the retraction was merely to camouflage his designs of facilitating availment of inadmissible cenvat credit by showing himself innocent. Further investigations carried out by the department have corroborated the admissions made by Shri Sharma





in his statements and in this scenario; the retraction without supporting evidences does not carry any weight.

5.3 I find support from the case law of M/s Viraj Alloys Ltd. Vs. Commissioner of Central Excise, Thane-II reported in 2004 (177) E.L.T. 892 (Tri. - Mumbai) of which I quote a relevant portion as below:

*"11. In the present case the show cause notice is issued by ADG of DGCEI. He is competent to issue such a notice. The Id. Advocate's contention that if the authorities allege that the inputs were not received in the factory it is also obligatory on them to establish as to what happened to the duty paid inputs purchased and how the appellant could have produced the final products without the inputs is not tenable. In our opinion the above issues are extraneous and therefore the department is not required to deal with them. It is enough if the fact of non-receipt is established to deny Modvat credit under Rule 57G. The Id. Advocate relied on the case of Indian Polypipes & Ors. v. CCE, Kol.I [2003 (157) E.L.T. 652 (T) = 2003 (89) ECC 249 (Tri.)]. We have perused this decision the facts in that case are completely different from the present one. We do not consider that the ratio of the decision applies in the present case. Similarly the decision in the case of Swastik Tin Works v. CCE, Kanpur [1986 (25) E.L.T. 798 (T)] also does not lay down any ratio which supports the appellant's case. We observe that the department raised a presumption against the appellants by establishing that the inputs could not have been received in the factory in vehicles mentioned in the invoices. This allegation itself is based on the reports by RTOs, who certified that the registration numbers belonged to vehicles other than goods transport vehicles with 10 tons capacity. It is for the appellants thereupon establish that indeed such vehicles as mentioned in the invoice did bring the input to their factory. They have failed to do so. Their gate register was burnt in some fire accident and the bills/vouchers indicating payment of cash to the drivers/owners of the trucks were also, destroyed in fire. One could understand that bills/vouchers, getting destroyed in fire or lost. But one cannot understand as to what has happened to the ledgers and registers to which the transactions done in cash are ultimately transferred. It is not the appellant's case that even*





such ledger and registers were destroyed in the fire. The fact that the inputs in the form of ship-breaking scrap was entered in RG 23A, Part-I does not establish that the goods were received in the factory. At least two truck owners have categorically denied having transported any goods to the appellant. The plea that the truck owners indulged in mal-practices and run them with false numbers is farfetched. In the appellants case 99 vehicles were such that they could not have carried the goods from the supplier to the buyer, some of the numbers belonged to auto-rickshaws, motorcycles and some numbers did not exist. The fact that out of the list of vehicles which were shown to be tankers, according to RTOs Office, two vehicles turned out to be regular carriers of goods does not establish that the case of other vehicles also it was true. An exception cannot make a rule. **Once it is established that the input has not been transported in the vehicle mentioned in the invoice it is but reasonable to say that the inputs were not received in the factory** as required under Rule 57G. The Commissioner as well as the Id. SDR relied on the case of A.N. Guha & Co. cited supra wherein the Tribunal held that it is not necessary for the department to establish a fact with mathematical precision once a presumption as to the existence of a fact is raised against an assessee. This test is satisfied in the present case." (emphasis supplied)

It is very clear from the above decision that once it is proved that the inputs have not been transported in the vehicle mentioned in the documents, it is reasonable to say that the inputs were not received. The appellants have contended that they can show the documents under which they received the goods from the dealer at Nadiad but it is an undisputed fact that the goods which were said to be sold to the appellants by the dealer were never received by the dealer so there is no question of accepting the appellants' contention.

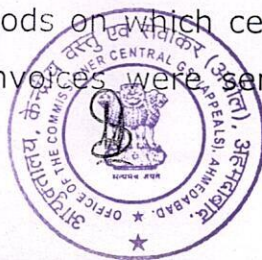
6 Now I take up the arguments made by the appellant No. 2. I find that the adjudicating authority has discussed his role in wrong availment of cenvat credit at length in para 47 of the impugned order. In view of the findings to the effect that the goods on which cenvat credit was passed on were never received and only invoices were sent to the appellant no. 1, appellant no. 2's role in the whole exercise becomes very clear. It is





established that the appellant no. 2 fabricated the cenvat credit records with an intention to avail the inadmissible cenvat credit. The appellant no. 2 has sought support from the case law of M/s Malerkotla Alloys Pvt. Ltd. (supra) and on perusal I find that the facts of that case are completely different. In the instant case, it has already been revealed on the basis of investigation from the state government departments of various states that the goods were never transported and the LRs were forged. I therefore find no reason to interfere with the impugned order and accordingly reject his appeal. The appellant no. 2 has sought support from the case law of M/s Dhanlaxmi Tubes and Metal Industries (supra) of Gujarat High Court and on perusal I find that in para 4 of the order, the Hon'ble court has noted that "*The entire case of the Department is based on the record of the transporters without the support of any other evidence. The record indicates that there is no dispute that copper ingots purchased from units located at Jammu were transported by trucks from Jammu to Delhi.*" And in para 5 of the said order, the Hon'ble court has noted that "*A perusal of the order passed by the adjudicating authority indicates that the officers at the check post had entered the receipt of copper ingots in their record. Thus, even the official records maintained at the check post indicate receipt of copper. Merely because in the record of the transporter, two types of LRs had been issued in respect of the goods carried/transported by M/s. Singal Road Carriers which indicated transportation of miscellaneous goods and the other which indicated transportation of copper ingots/wire brass, the Department has jumped to the conclusion that copper ingots had not actually been transported.*" From these notigs it is clear that in the case of Dhanlaxmi, the entire case was based on the records of the transporters without support of any other evidence and that the official records maintained at the check posts indicated receipt of goods whereas in the present case, the gamut of investigation has ranged from transporters to various check posts and conclusions have been drawn discussed herein above. I therefore find that the case laws cited by the appellant No. 2 are of no help to them and I therefore uphold the impugned order as far as it relates to the appellant No. 2.

7 Now I take up the arguments made by the appellant No. 3. I find that the adjudicating authority has discussed his role in wrong availment of cenvat credit at length in para 40 of the impugned order. In view of the findings to the effect that the goods on which cenvat credit was passed on were never received and only invoices were sent to the appellant no. 1,



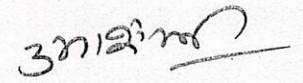


appellant no. 3's role in the whole exercise becomes very clear. It is established that the appellant no. 3 fabricated the cenvat credit records with an intention to avail the inadmissible cenvat credit. The appellant no. 2 has sought support from the case law of M/s Man Industries (India) Ltd. (supra) and on perusal I find that the facts of that case are completely different. In that case, shortage of stock was found and mens rea was absent whereas in the instant case, there has been an extensive investigation from various agencies and the mens rea is also proved. I therefore find no reason to interfere with the impugned order and accordingly reject his appeal and uphold the impugned order as far as it relates to the appellant No. 3.

8 Now I take up the issue of appellant No. 4 who was the proprietor of the M/s Singal Road Carriers, Delhi. In para 50 of the impugned order, the role played by the appellant no. 4 has been detailed. It has been pointed out after a detailed enquiry that the transporter issued bogus LRs and transported goods in such vehicles which were not suitable for carrying heavy weight of inputs. The investigation has clearly made out a case that the appellant no. 4 was engaged in issuance of bogus LRs and he did not maintain true and fair account of goods being handled by him. The transporter even did not submit any records to the investigation on the ground that the records had been stolen whereas the investigations carried out at his Ahmedabad office revealed that he was engaged in transporting goods and records were found. I therefore find that the appellant no. 4 has not been able to defend himself against the case made out in the impugned order. I therefore find no reason to interfere with the impugned order and is therefore upheld as far as it pertains to the appellant no. 4 and the appeal filed by the appellant no. 4 is disallowed.

9. in view of the above findings, the appeals filed by all the appellants are rejected and the impugned order is upheld

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



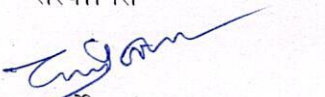
(उमा शंकर)

प्रधान आयुक्त (अपील्स)

केंद्रीय कर, अहमदाबाद

दिनांक: . .2019

सत्यापित

  
(धर्मेंद्र उपाध्याय)  
अधीक्षक (अपील्स),  
केंद्रीय कर, अहमदाबाद





**By R.P.A.D.**

To:

M/s Vipul Copper Pvt. Ltd., 1611/B, Phase-1 & 2, GIDC, Naroda, Ahmedabad	Shri Natubhai Patel of M/s Vipul Copper Pvt. Ltd., 1611/B, Phase-1 & 2, GIDC, Naroda, Ahmedabad	Shri kaluram Ramdayal Heda, Proprietor of M/s Pranav Metal Mart, Nadiad	Shri Navratanlal Sharma, Prop. M/s Singal Road Carriers, Plot No. 1, Motiakhan, Opp. Desu, Delhi through M/s V.B. Sheth & Co. (Advocate), "DHANRAJ", Dr. Radhakrishnan Road, Moti Tanki, Sadar Road, Rajkot-360001
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**Copy to:-**

- (1) The Chief Commissioner, CGST, Ahmedabad/Rajkot Zone,
- (2) The Commissioner, CGST, Ahmedabad (North),
- (3) The Dy./Asth. Commissioner, CGST, Div.-I, A'bad (North),
- (4) The Dy./Asth. Commissioner (Systems), CGST, A'bad (North),
- ✓ (5) Guard File,
- (6) P.A.File.





