

	<b>केंद्रीय कर आयुक्त (अपील)</b>	
सत्यमेव जयते	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केंद्रीय कर शुल्क भवन, सातवीं मंजिल, पॉलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015	7 <sup>th</sup> Floor, Central Excise Building, Near Polytechnic, Ambavadi, Ahmedabad-380015
 079-26305065		टेलिफैक्स : 079 - 26305136

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(84)/43 to 46 & 83 to 86/Ahd-I/2017-18 /10593 to 10702  
Stay Appl.No. NA/2017-18

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-167 to 174-2017-18  
दिनांक Date : 21-11-2017 जारी करने की तारीख Date of Issue 12-12-17

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित  
Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. MP/04,05,07,08/Dem/2017-18 दिनांक: 18/5/2017,  
23/5/2017,26/5/2017,26/5/2017 respectively issued by Assistant Commissioner, Central  
Excise, Ahmedabad-

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
M/s. AIA Engineering Ltd. & H.B.Metals Pvt. Ltd  
Ahmedabad

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 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) केंद्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक  
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।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit  
Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New  
Delhi - 110 001 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 :

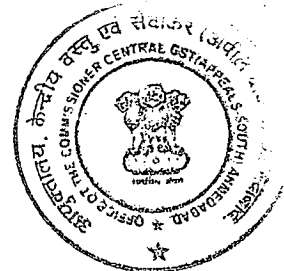
(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे  
भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के  
दौरान हुई हो।

(ii) 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.

(b) In case of rebate of duty of 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 हो।

... 2 ...



(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 मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of 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 हो।

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

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

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) 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 हॉस्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016

(a) 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.



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

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

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the 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 है।

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

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है.

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. 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 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."

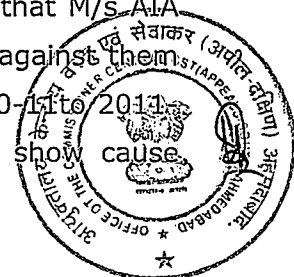


ORDER-IN-APPEAL

Following eight appeals have been filed by the appellant mentioned at column No.2 of below mentioned table against the Orders-in-Original [*impugned order*] passed by the Assistant Commissioner of Central Excise, Division-V, Ahmedabad-1 [*adjudicating authority*], mentioned against the appellant.

S. No	Name of the appellant (M/s)	Appeal No.	Order-in-Original & date	Amount involved(duty/CENVAT) (Rs)	Penalty involved (Rs)
1	2	3	4	5	6
1	AIA Engineering Ltd (unit-12)	43/Ahd-1/17-18	MP/04/Dem/17-18 -18.05.2017	5,10,697/-	5,10,691/-
2	AIA Engineering Ltd (unit-1)	44/Ahd-1/17-18	MP/05/Dem/17-18 -23.05.2017	36,461/-	36,461/-
3	AIA Engineering Ltd(Girnar-B)	45/Ahd-1/17-18	MP/07/Dem/17-18 -26.05.2017	1,89,365/-	1,89,365/-
4	AIA Engineering Ltd (unit-5)	46/Ahd-1/17-18	MP/08/Dem/17-18 -26.05.2017	3,42,736/-	3,42,736/-
5	H.B.Metals Pvt Ltd	83/Ahd-1/17-18	MP/04/Dem/17-18 -18.05.2017	-	5,10,691/-
6	H.B.Metals Pvt Ltd	84/Ahd-1/17-18	MP/05/Dem/17-18 -23.05.2017	-	36,461/-
7	H.B.Metals Pvt Ltd	85/Ahd-1/17-18	MP/07/Dem/17-18 -26.05.2017	-	1,89,365/-
8	H.B.Metals Pvt Ltd	86/Ahd-1/17-18	MP/08/Dem/17-18 -26.05.2017	-	3,42,736/-

2. Briefly stated, the appellant viz M/s AIA Eengineering Ltd (Uni-12, Unit-1, Girnar B and Unit 5) mentioned at Sr.No.1 to 4 of above table [*herein after referred to as "M/s AIA"*] are engaged in manufacturing of Alloy Steel Castings falling under chapter 84. Based on information that M/s AIA were indulging in evading Central Excise duty by way of availing and utilizing in-admissible CENVAT credit on the strength of forged invoices issued by M/s H. B. Metal Pvt Ltd mentioned at Sr. No. 5 to 8 of above referred table [*hereinafter referred to as the "dealer"*], an inquiry against M/s AIA and dealer was initiated. The investigation further revealed that the dealer has supplied/delivered goods viz SS Circle, MS Rounds & Bars, MS Flats and Pipes etc falling under chapter 72 to M/s AIA, which is not their inputs; that the said goods supplied/delivered by the dealer were other than goods mentioned in the invoices. As it appeared that M/s AIA had taken CENVAT Credit wrongly to the amount as shown against them at column No.4 of above mentioned table for the period of 2010-11 to 2011-12 on the basis of fraudulent invoices issued by the dealer, show cause.

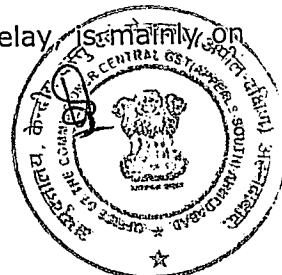


notices were issued for recovery of the said CENVAT Credit with interest and imposition of penalty. Vide the impugned order, the adjudicating authority has ordered for recovery of the credit wrongly availed with interest and imposed penalty equal to the credit amount wrongly taken. The adjudicating authority has also imposed penalty on the dealer as mentioned at Column No.5 of above table.

3. Being aggrieved, M/s AIA have filed the appeals on the grounds that:

- The true and correct nature of the goods received by the appellant vide the invoices issued by the dealer was not determined by the adjudicating authority so as to restrict the denial of CENVAT Credit on a specific ground; that one hand the department has alleged that the goods received were in the nature of finished goods and on the other hand, it has alleged that though the invoices described goods as S S Plates etc., the goods supplied to them were not in conformity with the said description. Both allegations are contradictory; that all the goods received were in the nature of scrap and waste which were melted and then utilized as raw material for the manufacturing process.
- The invoices supplied to the appellant described the goods as scrap and waste and this has not been disputed by the department; that the adjudicating authority has not established in the present case that the goods supplied to the appellant were in the nature of finished goods; that all the statutory records maintained by them also established that the goods received by them were scrap and waste.
- For manufacturing of their finished goods, they were purchasing inputs in the nature of scrap, ferro alloys etc under the cover of duty paid invoices; that a huge quantity of such goods were received on a daily basis and it is impossible to scrutinize all the material received for use; that their prime object is to melt the metal and used for further process; that the finished goods were cleared on payment of duty and therefore, the CENVAT credit availed is proper and legal.
- The invoices in question were prepared by the dealer and description of the goods were entered by them; that if there was any irregularity, it is the wrong entry of the description of goods by the dealer and it cannot be made grounds for rejecting the CENVAT credit involved in the said invoices as the appellant has purchased the goods with full value and excise duty.
- The demand issued for the period of 2010-11 and 2011-12 is clearly time barred and therefore extended period is not invocable.
- They relied on various case citations in their favour.

4. Being the aggrieved with the impugned order, the dealer viz. M/s H B Metal Pvt Ltd has filed the appeals mentioned at Sr.No 5 to 8 of above referred table, along with the application condonation of delay on the grounds that:

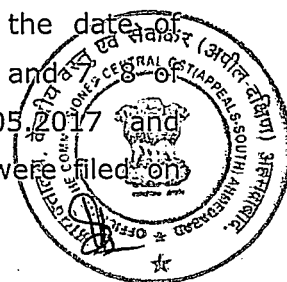


- The appeal against the impugned order was filed by them on 31.07.2017 before Assistant Commissioner by mistake and due to GST works/transformation, they could not pay attention to the instant litigation till the last date and when they realized the mistake, they had filed the appeal before Commissioner (Appeals) on 24.08.2017.
- The entire allegation against them was on the basis of invoices under which the goods are purchased and supplied to M/s AIA; that there is no evidence brought by the department that the input which were purchased by them were different from the goods supplied to M/s AIA. The conclusion of the authority that they had not supplied the goods such as S.S.Circle etc, because these goods are not the input of M/s AIA is not tenable without any evidences.
- M/s AIA has nowhere stated that the goods supplied by them has never used in their factory on the contrary it was specifically stated that the dealer has supplied the same goods which are mentioned in the invoices. Further, the invoices prepared by them are correct and mis-matching of description of goods does not attract any forgery; that to substantiate the allegation of forgery, one has to establish that the original documents was not the same and should be produced on records.
- The penalty imposed under Rule 26 of CER is not sustainable as no offence was committed by them as per the provisions of the said rule; that in the case there is no malafide intention to evade payment of duty.
- The dealer relied on some case laws in their favour.

5. Personal hearings in all the eight appeals mentioned at para 1 were held on 01.11.2017. Shri Aditya S Tripathi, Advocate appeared for the same and reiterated the grounds of appeal. The Learned Advocate has supplied copies of invoices under which the credit was taken by M/s AIA.

6. I have carefully gone through the facts of the case and submissions made by M/s AIA and the dealer in the appeals memorandum as well as at the time of personal hearings. Since all the eight appeals are in a similar nature and having similar issues, I decide all the eight appeals in a common order. The issues to be decided in the matter as to [i] whether the CENVAT credit availed by M/s AIA on the basis of invoices issued by the dealer is proper or not and [ii] whether the penalty imposed on them as well as on dealer is correct.

7. Before going into the merit of the case, I observe the dealer M/s H.B.Metal Pvt Ltd. has filed all the four appeals along with application for condonation of delay in filing of appeals. I observe that the date of communication of impugned orders mentioned at Sr.No.5, 6 and 7 above mentioned table were received by them on 26.05.2017 and 13.06.2017 respectively, against which all the four appeals were filed on

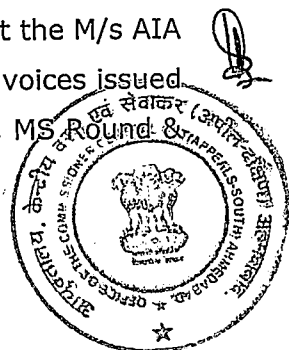


24.08.2017. In other words, the dealer has filed these appeals with a delay of 30 and 12 days respectively from the stipulated periods of 60 days. Section 35 of Central Excise Act, 1944 stipulates that " Any person aggrieved by any decision or order passed a Central Excise Officer, lower in rank than a Principal Commissioner of Central Excise or Commissioner of Central Excise, may appeal to the Commissioner of Central Excise (Appeals) within sixty days from the date of the communication to him of such decision or order; provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days". The dealer has filed the condonation of delay application on the ground that they have filed all the four appeals before the Assistant Commissioner of Central Excise by mistake on 31.07.2017 and 14.08.2017 respectively; that due to work/transformation to GST, they could not realize their mistake in time. Since the Section *ibid* allows the Commissioner (Appeals) to condone the delay for further period of 30 days from the stipulated period of 60 days, I condone the delay taken place in all the four appeals.

8. Now I take the issue involved in all eight appeals. In all the eight appeals, I observe that the allegation made by the department against M/s AIA is that they had received the goods non-duty paid goods viz waste and scrap which is other than the goods mentioned in the invoices viz. SS Circle, M S Round & Bars and MS Flats and pipes etc from the dealer; that the duty paid invoices were issued by mentioning the said description which were not their input for manufacturing final goods. In other words, they had received goods other than what was described in the invoices in order to avail CENVAT credit fraudulently. The allegation made against the dealer is that they had issued the said invoices so as to enable M/s AIA to avail the CENVAT credit fraudulently; that for a single consignment of goods, two sets of invoices were issued by the dealer; that one was sent to the appellant and another was kept with the dealer, just to facilitate the appellant to avail the CENVAT Credit on the goods. The entire allegations were confirmed in the impugned order.

9. In these instant cases, I observe that M/s AIA are engaged in manufacture of Alloy Steel Castings and their basic input is in the nature of scrap, ferro alloys etc. M/s AIA has described that they put these inputs in the furnace along with the alloys in their manufacturing plant as per grade requirement.

10. As stated above, it is the allegation of the department that the M/s AIA had availed inadmissible CENVAT credit on the basis of forged invoices issued by the dealer, wherein, the goods were mentioned as SS Circle, MS Round &



bars, MS Flats and Pipes, which is other than their input. The whole allegations against M/s AIA and the dealer are based on the admitted statement of authorized persons of M/s AIA and the dealer which supported fact that [i] M/s AIA had received the goods other than the goods mentioned in the invoices; [ii] the goods supplied by the dealer under the invoices in question are not M/s AIA's inputs for manufacturing their final goods. Statement dated 08.10.2012 of Shri Rajesh Dilipbhai Mehta, Manager Excise of M/s AIA indicated the clear facts that they had not received the goods M.S.Pipes, MS Round & Bars etc as described in the invoices issued by the dealer. His statement further revealed that such goods are not their inputs for manufacturing the final products and they had metal scrap in cut form under the disputed invoices of the dealer which was a lapse on their part in receiving goods mentioned other than in the invoices. On other hand, the statement of Shri Manoj Kumar S Agal and Shri Ramnaryan S Loddha, Authorized persons/signatory of the dealer admitted the facts that the goods supplied by the dealer to M/s AIA were S.S.Plates, M.S.Round and Bar and M.S.Plates etc which were the same material/goods purchased by them from their suppliers; that they had passed on the proportionate CENVAT credit to M/s AIA as per the invoices issued by them.

11. From the above, I observe that the nature of goods received by M/s AIA and the goods supplied by the dealer have been disputed. As per M/s AIA, the goods received by them were in the nature of metal scrap and the invoices were described the goods as S.S.Circles, M.S.Round & Bars etc. However, as per dealer's version, they had supplied the goods to M/s AIA as per description of the goods mentioned in the invoices.

12. M/s AIA has furnished sample copies of all such invoices, under which the credit was taken, before me during the course of personal hearing for perusal. I find that in the said invoices pertains to M/s AIA, the description of the goods are mentioned as "S.S.Plate Cutting circle", "Mag.Steel, "S.S.Patti", "Waste & Iron Steel Scrap", "Alloys S.S.Patti . I also observe that in all invoices, appropriate Central Excise duty was passed on by the dealer.

13. In the above circumstances, now a question arise that if the dealer has not supplied the goods as mentioned in the invoices to M/s AIA, then from where does the goods viz waste and scrap, said to be non-duty paid, received by the dealer and how does it was cleared to M/s AIA. The adjudicating authority has contended that the goods supplied to the appellant were scrap of iron and steel; that forged invoices were issued to them mentioning different goods other than scrap of iron and steel viz SS Gold rolled patta-patti , SS Round bar etc. The said contention consider merit, looking into the disposal of the authorized person of the dealer in this



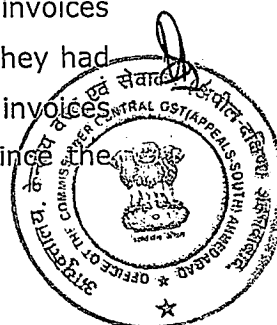


statement dated 01.09.2015; that he disposed that the goods mentioned at the invoices in question were sold to M/s AIA at a lower price, though they were brought at higher price, due to sudden slow down in the market. The reason given by the dealer for supplying the goods to M/s AIA which leads to such a big loss making business activities is not convincing and further lead to the act under doubt and a modus operandi to the contention raised by the adjudicating authority. Further, I observe that during investigation of the case, the Excise Manager of M/s AIA has disposed in his statement regarding details of the manufacturing process; that the main inputs are scrap of SS, MS Manganese Scrap, Hi Chrome Scrap, Ferro Alloys etc and the required quantity of such scraps are put in the furnace along with the alloys and as per the grade required, thereafter, the smelt is poured in the moulds and resultant alloys steel castings are obtained. In the circumstances, it is hard to believe M/s AIA contention that they put whatever material they get into furnace without checking and examination for melting and for further processing of their finished goods. Further, Shri Rajesh D Mehta of M/s AIA has admitted the fact without any doubt that they had not received the goods mentioned in the invoices but received goods metal scrap in cut form.

14. Apart from the above, I observe that the investigation authority has withdrawn certain invoices from the premises of the dealer which give different description of goods mentioned in the invoices withdrawn from M/s AIA. This facts was also admitted by the authorized person of M/s AIA in his statement and never retracted, on the contrary, by accepting the fraud, M/s AIA has reversed the CENVAT credit in question availed by them in respect of all such invoices issued by the dealer. All the facts lead to the conclusion that both M/s AIA and the dealer are hand in glove with each other and accordingly for a single consignment of goods two sets of invoices were issued by the dealer; that the invoices were not issued for the goods supplied but issued invoices other than goods supplied, so as to enable M/s AIA to take inadmissible CENVAT credit.

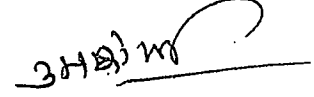
15. In view of above discussion, I do not find merit to interfere the arguments put forth by the adjudicating authority in the impugned order so as to order for the recovery of CENVAT credit fraudulently availed by M/s AIA with interest and imposition of penalty thereof.

16. As regards appeals filed by the dealer with regard to imposition of penalty against them, I observe that they had acted a lead role in the fraudulent availment of CENVAT credit by M/s AIA by issuing wrong invoices in guise of supplying other goods. The department has proved that they had indulged in the act for supply of goods other than mentioned in the invoices to M/s AIA so as to enable to avail CENVAT credit fraudulently. Since the



allegation against the recipient of the goods supplied by the dealer is sustainable, the allegation against the dealer also sustainable and I do not find any merit to interfere the impugned order with regarding to penalty imposed on them.

17. In view of foregoing, I reject all the eight appeals mentioned at para 1 above and uphold the impugned order. All the eight appeals are disposed of accordingly.

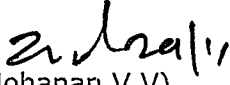


(उमा शंकर)

आयुक्त (अपील्स )

Date: 21/11/2017.

Attested

  
(Mohanan V.V)  
Superintendent (Appeal)

By RPAD

To  
M/s AIA Engineering Ltd (Unit-12),  
GVMM Estate, Odhav, Ahmedabad.

M/s AIA Engineering Ltd (Unit-1),  
235-237, GVMM Estate, Odhav, Ahmedabad

M/s AIA Engineering Ltd (Girnar-8),  
Plot No.14, Girnar Scooter Compound,  
Plot No.67, 67A & 70 of Sub plot No.5,  
Odhav Road, Odhav, Ahmedabad.

M/s AIA Engineering Ltd (Unit-5),  
Plot No.161-163,  
GVMM Estate, Odhav, Ahmedabad

M/s M.B.Metal Pvt Ltd  
237, Vijay Industrial Estate,  
B/h Bhikshuk Gruh, Odhav, Ahmedabad.

Copy to:-

1. The Chief Commissioner, CGST Zone, Ahmedabad.
2. The Commissioner, CGST, South/North
3. The Addl./Joint Commissioner, (Systems), CGST, South
4. The Dy. / Asstt. Commissioner, CGST Division V, South
5. The Deputy Commissioner, CGST, Division IV, North.
6. Guard file.
7. P.A

