
	केंद्रीय कर आयुक्त (अपील)	
सत्यमेव जयते	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केंद्रीय कर भवन, सातवीं मंजिल, पोलिटेकनिक के पास, आम्बावाडी, अहमदाबाद-380015	7 th Floor, GST Building, Near Polytechnic, Ambavadi, Ahmedabad-380015
 : 079-26305065		टेलीफैक्स : 079 - 26305136

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(84)/127,128,135,146/Ahd-I/2017-18 / 1795-1802
Stay Appl.No. NA/2017-18

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-361to364-2017-18
दिनांक Date : 26-02-2018 जारी करने की तारीख Date of Issue 22.02.18

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. MP/17&18/Dem/2017-18 दिनांक: 5/10/2017 , MP/09/AC/Div-IV/2017-18 दिनांक: 26/10/2017 issued by Assistant Commissioner, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

**Raj Engineers/Aegis Steel Cast/H.B.Metals Pvt.Ltd/Essbee Technocast 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 a 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) केन्द्रीय 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, 4th 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।



(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 हैं 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.

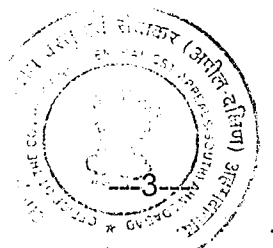
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 मेटल 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 Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि-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।

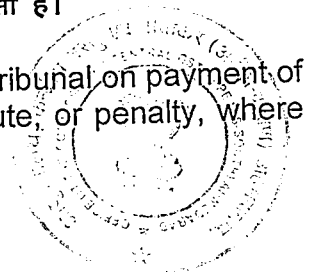
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 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."



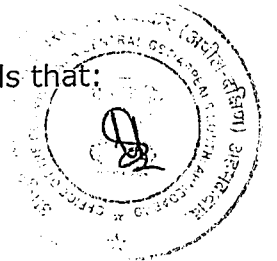
ORDER-IN-APPEAL

Following four appeals have been filed against the Orders-in-Original [for short-*impugned order*] against the appellant mentioned at column No.2 of below table, passed by the jurisdictional Assistant Commissioner of CGST, Ahmedabad South [for short-*adjudicating authority*] as mentioned at column No.4 of below mentioned table.

S. No	Name of the appellant (M/s)	Appeal No.	Order-in-Original & date and passed by	Amount involved(duty /CENVAT) (Rs)	Penalty involved (Rs)
1	2	3	4	5	6
1	Esbee Technocast, Ahmedabad	128/Ahd-1/17-18	MP/09/AC/Div-IV/17-18 dated 26.10.17- Asstt. Commissioner,CGST,Dn.IV, Ahmedabad South	15,28,344/-	15,28,344/-
2	H.B.Metal Pvt .Ltd, Ahmedabad	135/Ahd-1/17-18	MP/09/AC/Div-IV/17-18 dated 26.10.17- Asstt. Commissioner,CGST,Dn.IV, Ahmedabad South	-	2,00,000/-
3	Aegis Steel Cast, Ahmedabad	146/Ahad-1/17-18	MP/18/Dem/17-18 dated 05.10.17- Asstt. Commissioner,CGST,Dn.V, Ahmedabad South	7,56,188/-	7,56,288/-
4	Raj Engineers, Ahmedabad	127/Ahad-1/17-18	MP/18/Dem/17-18 dated 05.10.17- Asstt. Commissioner,CGST,Dn.V, Ahmedabad South	13,71,580/-	13,71,580/-

2. Briefly stated, M/s Esbee Technocast, M/s Aegis Steel Cast and M/s Raj Engineers, mentioned at Sr.No.1, 2 and 4 of above table [hereinafter referred to as the *appellant*] are engaged in manufacturing of Alloy Steel Castings falling under chapter 84. Based on information that they 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.2 of above table [hereinafter referred to as the *dealer*], an inquiry against both the appellant 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 the appellants 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 the appellants have taken CENVAT Credit wrongly to the amount as shown at column No.4 of above table, on the basis of fraudulent invoices issued by the dealer, show cause notices were issued to the appellants as well as to the dealer 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.

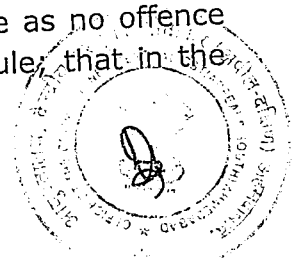
3. Being aggrieved, the appellant have filed the appeals on the grounds that:



- They received scrap in pieces or bundled and irregular cut size/cut form as scrap of different type of SS MS goods and no other form from the dealer; that no tangible evidence has brought to establish that there has been substitution of the goods;
- that there is no evidence of procurement of lower quality scrap of description other than the one given in the invoices by the dealer and it is subsequently supply to them; that there is no evidence that goods in invoices has not transported from the dealer; no indirect or direct or circumstantial evidence to identify even alleged supplier of such alleged substituted goods; no evidence either in the form of seizure or physical existence of the alleged substituted goods; no evidence of flow back money in case or otherwise.
- The dealer has raised valid invoices against which they received payment through bank channel; that concerned parties to the transaction have duly filed all statutory returns/documents starting with movements from input manufacturer/dealer/consignor to the ultimate receipt and used by the appellants for manufacture of goods.
- As regards contention of receipt and used of the inputs which are basic raw materials for the manufacture of finished goods is concerned, it is not established from the evidences collected in investigation except the statement of appellant and authorized persons of dealer and the said statements not corroborated by other evidences.
- The dealer relied on various case laws in their favour.

4. The dealer viz. M/s H B Metal Pvt Ltd has filed the appeal mentioned at Sr.No.2 of above table, being aggrieved with the impugned order passed by the adjudicating authority for imposition of penalty under Rule 26 of Central Excise Rules, 2002 (CER) as they had contravened the provisions of Rule 11 of CER by issuing forged invoices to facilitate the appellant mentioned at Sr.No.1 of above table to take inadmissible CENVAT credit. The main ground of appeal is that:

- The entire allegation against them was on the basis of invoices under which the goods are purchased and supplied to the appellant; that there is no evidence brought by the department that the input which were purchased by them were different from the goods supplied to the appellant. 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 is not tenable without any evidences.
- The appellant has nowhere stated that the goods supplied by the dealer 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.



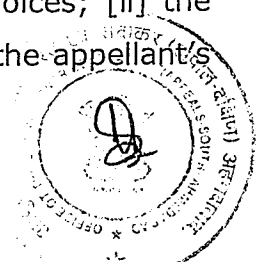
5. Personal hearings in respect of appeal mentioned at Sr.No.1 and 2 of above table were held on 31.01.2018. Shri Dhaval K Shah, Advocate appeared for the same and reiterated the grounds of appeal. Personal hearings in respect of appeal mentioned at Sr.No.3 and 4 of above table were held on 12.02.2018 and Shri Harshad G Patel, Advocate appeared for the same. He reiterated the grounds of appeals.

6. I have carefully gone through the facts of the case and submissions made by all the appellants and the dealer in the appeals memorandum as well as at the time of personal hearings. Since all the four appeals are in a similar nature and having similar issues, I decide all the said four appeals in a common order. The issues to be decided in the matter as to [i] whether the CENVAT credit availed by the appellant mentioned at Sr.No.1, 3 and 4 of above table on the basis of invoices issued by the dealer, mentioned at Sr.No.2 of above table is proper or not and [ii] whether the penalty imposed on them as well as on dealer is correct or otherwise.

7. In the appeal filed by the appellant, I observe that the allegation made by the department against them 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 the appellant 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.

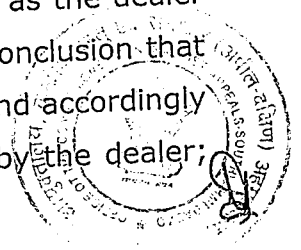
8. In these instant cases, I observe that the appellant are engaged in manufacture of Alloy Steel Castings and their basic input is in the nature of scrap, ferro alloys etc. The appellant described that they put these inputs in the furnace along with the alloys in their manufacturing plant as per grade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

9. As stated above, it is the allegation of the department that the appellant 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 the appellant and the dealer are based on the admitted statement of authorized persons of the appellant and the dealer which supported fact that [i] the appellant 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 the appellant's



inputs for manufacturing their final goods. Statement of authorized persons of the appellant indicated the clear facts that they had not received the goods as described in the invoices issued by the dealer. Their 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. Further, the statements of authorized persons of the dealer admitted the facts that the goods supplied by them to the appellant were other than the goods purchased from the supplier manufacturers and supplied different goods to the appellant. The statements further indicated that they had supplied the goods other than the goods mentioned in the invoices to the appellant and had passed on the proportionate CENVAT credit to the appellant fraudulently.

10. In the above circumstances, now a question arise that if the dealer has not supplied the goods as mentioned in the invoices to the appellant, 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 the appellant. 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 Cold rolled patta-patti , SS Round bar etc. The said contention consider merit, looking into the disposal of the authorized person of the dealer; that he disposed that the goods mentioned at the invoices in question were sold to the appellant 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 the appellant 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 authorized persons of the appellant has disposed in his statement regarding details of the manufacturing process; that the main inputs are scrap of SS, MS Manganese Scrap, Hi Crome 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 the contention of the appellant that they put whatever material they get into furnace without checking and examination for melting and for further processing of their finished goods. Further, the authorized persons of the appellant 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. The statements given by the authorized persons of the appellants as well as the dealer were never retracted at any point of time. All the facts lead to the conclusion that both the appellant 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 the appellant to take inadmissible CENVAT credit.

11. 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 recovery of CENVAT credit fraudulently availed by the appellant with interest and imposition of penalty thereof.

12. 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 the appellant, 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 the appellant 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.

13. In view of foregoing, I reject all the four appeals mentioned in the above table and uphold the impugned order. All the four appeals are disposed of accordingly.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स)

Date: /02/2018.

Attested

Mohan V.V.
(Mohan V.V.)
Superintendent (Appeal)
CGST, Ahmedabad

By RPAD

To
M/s Ess Bee Techno Cast Pvt Ltd
4-5, 9-10, Opp. New Masjid
Sikandar Market, Danilimda
Ahmedabad.

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

M/s Aegis Steel Cast
Plot No.217, Road No.2
FIDC Kathwada, Ahmedabad.



M/s Raj Engineers,
Plot No.52, Road No.4, Phase-1, GIDC
Kathwada, Ahmedabad.

Copy to:-

1. The Chief Commissioner, CGST Zone, Ahmedabad.
2. The Commissioner; CGST, South
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

