



सत्यमेव जयते

## केंद्रीय कर आयुक्त (अपील)

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

केंद्रीय कर भवन,  
सातवीं मंजिल, पोलिटेकनिक के पास,  
आम्बावाडी, अहमदाबाद-380015

7<sup>th</sup> Floor, GST Building,  
Near Polytechnic,  
Ambavadi, Ahmedabad-380015



☎ : 079-26305065

टेलिफैक्स : 079 - 26305136

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(72)150/Ahd-South/2018-19 / 10331 to 10335

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-0175-2018-19  
दिनांक Date : 29-03-2019 जारी करने की तारीख Date of Issue 06/05/2019

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Pr. Commissioner (Appeals)

ग Arising out of Order-in-Original No. AC/14/DIV-II/2018-19 दिनांक: 26.10.2018 issued by Assistant Commissioner, Div-II, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
M.A.Enterprise  
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) 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, 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 प्रकिया 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 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 दिनोंक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

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

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

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

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

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

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

(क) 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 मैनटल हास्पिटल 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 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

This appeal has been filed by M/s. M.A.Enterprise, Plot No. 508, Phase-IV, GIDC, Vatwa, Ahmedabad-45 [for short –‘appellant’] against OIO No. AC/14/Div II/2018-19 dated 4.10.2018 passed by the Assistant Commissioner, Division II, Ahmedabad South Commissionerate [for short – ‘adjudicating authority’].

2. Briefly, the facts are that the appellant had opted for special procedure for payment of duty i.e. compounded levy scheme for manufacture of *stainless steel pattis/pattas* manufactured on cold rolling machines, in terms of Rule 15 of the Central Excise Rules, 2002 read with notification No. 17/2007-CE dated 1.3.2007 starting from 16.6.2015 to 15.6.2016 and thereafter from 16.6.2016 to 15.6.2017. The appellant was paying Rs. 40,000/- per machine for six machines installed in his premises. However, during the period from December 2016 to February 2017, the appellant did not pay the amount of Rs. 40,000/- in respect of one machine. Therefore, a show cause notice dated 29.5.2018 was issued to the appellant *inter alia* asking him to show cause as to why Rs. 1,20,000/- short paid should not be demanded along with interest. The notice also proposed penalty under Rule 25 of the Central Excise Rules, 2002, read with the notification *ibid*, and section 11AC of the Central Excise Act, 1944.

3. This notice was adjudicated vide the impugned OIO dated 4.10.2018 wherein the adjudicating authority confirmed the demand of central excise duty along with interest and further imposed penalty on the appellant.

4. Feeling aggrieved, the appellant has filed this appeal on the below mentioned grounds:

- the adjudicating authority erred in not appreciating the provisions of compounded levy scheme;
- that the appellant had intimated the fact of change in the number of cold rolling machines installed and employed in a particular month to the Range Superintendent;
- that no duty is payable for the period when the machine is dismantled; that in terms of the proviso to para 3(1) and 4(1) of the notification *ibid*, duty can be charged only on the basis of actual number of cold rolling machines installed and employed;
- that they would like to rely on the case of Jupiter Industries [2006(206) ELT 1195], Acme Industries [2011(269) ELT 523], Raj and Sand Deeps Ltd [2005(191) ELT 539], Jupiter Industries [2001(137) ELT 1018], Dayaram Printing & Dyeing Mills [2004(178) ELT 261], National Ceramic Works [2010(261) ELT 642], Ambuja Metal Industries [2010(256) ELT 763], Shailesh Dyeing and Printing Mills [2008(231) ELT 458];
- that tax is to be levied on the basis of maximum number of cold rolling machines installed and operated by and on behalf of such manufacturer immediately preceding three calendar months;
- that appendix II being filed after depositing compounded levy amount clearly shows that the appellant now cannot be stated to have not obtained written approval of the officer;
- that if in a particular month no machine is operated and no production took place there cannot be a levy of excise duty;
- that the provisions of notification *ibid* is identical to the procedure prescribed under Rule 96ZA to 96ZZG and are *pari materia* to notification No. 17/2007-CE;
- that it is the appellant’s contention that the expression ‘installed’ appearing in the notification necessarily refers to rolling machine which is actually being utilized as is clear from the use of expression utilized in the notification; that utilized necessarily mean used on continuation basis; that cold rolling machine should be installed and utilized in the appellant’s factory;
- that by no stretch of imagination demand can be raised when the machinery was not admittedly in operation;
- that no penalty is imposable on the appellant.





5. Personal hearing in the matter was held on 26.3.2019, wherein Shri Harshad Patel, Advocate appeared on behalf of the appellant and reiterated the grounds of appeal. He also submitted a copy of final order no. 53040/2018 dtd 26.9.2018 in the case of Rajshree Industries.

6. I have gone through the facts of the case, the grounds of appeal and the oral submission made during the course of personal hearing. The question to be decided is whether the adjudicating authority was correct in holding that the appellant was liable to pay Rs. 40,000/- per machine per month for the period from December 2016 to February 2017 in respect of the machine which the appellant claims to have dismantled during the said months for the purpose of repair and maintenance [para 7 of statement of facts].

7. Let me first reproduce Rule 15 of the Central Excise Rules, 2002 and notification No. 17/2007-CE dated 1.3.2007, viz.

**Central Excise Rules, 2002**

*Rule 15. Special procedure for payment of duty. —*

*(1) The Central Government may, by notification, specify the goods in respect of which an assessee shall have the option to pay the duty of excise on the basis of such factors as may be relevant to production of such goods and at such rate as may be specified in the said notification, subject to such limitations and conditions, including those relating to interest or penalty, as may be specified in such notification.*

*(2) The Central Government may also specify by notification the manner of making an application for availing of the special procedure for payment of duty, the abatement, if any, that may be allowed on account of closure of a factory during any period, and any other matter incidental thereto.*

**notification No. 17/2007-CE dated 1.3.2007 [relevant extracts]**

*Compounded Levy Scheme for aluminium circles produced on cold rolling machines*

*In exercise of the powers conferred by rule 15 of the Central Excise Rules, 2002, and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 34/2001-Central Excise, dated the 28th June, 2001 which was published in the Gazette of India vide number G.S.R. 492(E) of the same date, except as respects things done or omitted to be done before such supersession, the Central Government hereby specifies the excisable goods that is stainless steel pattis/pattas, falling under Chapter 72, or aluminium circles falling under Chapter 76 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) subjected to the process of cold rolling with the aid of cold rolling machine in respect of which an assessee shall have an option to pay the duty of excise on the basis of cold rolling machine installed for cold rolling of these goods, and fixes the following rate of duty per cold rolling machine, per month:-*

<i>i) stainless steel pattis or pattas</i>	<i>Thirty thousand rupees</i>
<i>(ii) aluminium circles produced from sheets manufactured on cold rolling machines</i>	<i>Twelve thousand rupees</i>

["Thirty thousand rupees", substituted to "Forty thousand rupees" vide not. No. 5/2013-C.E., dated 1-3-2013]

**3. Discharge of duty liability on payment of certain sum.** - (1) *A manufacturer whose application has been granted under paragraph 2 shall pay a sum calculated at the rate specified in this notification, subject to the conditions herein laid down, and such payment shall be in full discharge of his liability for duty leviable on his production of such cold re-rolled stainless pattas/pattis, or aluminium circles during the period for which the said sum has been paid :*

*Provided that if there is revision in the rate of duty, the sum payable shall be recalculated on the basis of the revised rate, from the date of revision and liability for duty leviable on the production of stainless steel pattis/pattas, or aluminium circles from that date shall not be discharged unless the differential duty is paid and in case the amount of duty so recalculated is less than the sum paid, the balance shall be refunded to the manufacturer :*

*Provided further that when a manufacturer makes an application for the first time under paragraph 2 for availing of the procedure contained in this notification, the duty liability for the month in which the application is granted shall be calculated pro-rata on the basis of the total number of days in that month and the number of days remaining in the month from the date of such grant.*





(2) The sum payable under sub-paragraph (1) shall be calculated by application of the appropriate rate to the maximum number of cold rolling machines installed by or on behalf of such manufacturer in one or more premises at any time during three calendar months immediately preceding the calendar month in which the application under paragraph 2 is made.

(3) The sum shall be tendered by the manufacturer along with the application

4. **Manufacturer's declaration and accounts.** - (1) The manufacturer who has been granted permission under paragraph (2) above shall make an application in the form specified in Appendix-II to this notification to the Superintendent-in-charge of the factory for permission to remove the stainless steel pattis/pattas, or aluminium circles from his premises during the ensuing month, declaring the maximum number of cold rolling machines installed by him or on his behalf, in one or more premises at any time during three calendar months immediately preceding the said calendar month in which such application is made.

(2) If such application is not made to the Superintendent of Central Excise within the time limit laid down in sub-paragraph (1), the manufacturer shall, unless, otherwise directed by the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, and in exceptional circumstances, be liable to pay duty on his entire production of stainless steel pattis/pattas, or aluminium circles during the month or part thereof in respect of which the application was to be made, at the rate prescribed in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) read with any relevant notification issued under sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944).

(3) The manufacturer shall also intimate the Superintendent of Central Excise in writing of any proposed change in the number of cold rolling machines installed by him or on his behalf, and obtain the written approval of such officer before making any such change.

8. The allegation made in the show cause notice is that the appellant had availed the special procedure for 6 numbers of cold rolling machines for the period from 16.6.2015 to 15.6.2015 and thereafter for the period from 16.6.2016 to 15.6.2017; that the appellant however paid central excise duty only in respect of five cold rolling machines from December 2017 to February 2017; that even if the machines are closed/dismantled the appellant was liable to pay the appropriate rate of Rs. 40,000/- per machine per month for 6 machines which were installed in one or more premises at any time during three calendar months immediately preceding the calendar month in which the application under paragraph 2 is made.

9. The adjudicating authority in his impugned OIO held that the notification *ibid*, did not give the appellant option not to pay duty in respect of the cold rolling machines that were closed/dismantled; that the sum payable in terms of paragraph 3(1) of the notification, shall be calculated by application of the appropriate rate to the maximum number of cold rolling machines installed by or on behalf of such manufacturer in one or more premises at any time during three calendar months immediately preceding the calendar month.

10. I find that the condition stipulated in the notification is that the sum payable under sub-paragraph (1) shall pay a sum calculated at the rate specified in this notification, and such payment shall be in full discharge of his liability for duty leviable on his production of such cold rolled stainless pattas/pattis, or aluminium circles during the period for which the said sum has been paid. What is of significance is that in terms of para 3(2) of the notification *ibid*, the sum payable under sub-paragraph (1) shall be calculated by application of the appropriate rate to the maximum number of cold rolling machines installed by or on behalf of such manufacturer in one or more premises at any time during three calendar months immediately preceding the calendar month in which the application under paragraph 2 is made. Rule 4(3) further states that the manufacturer shall also intimate the Superintendent of Central Excise in writing of any proposed change in the number

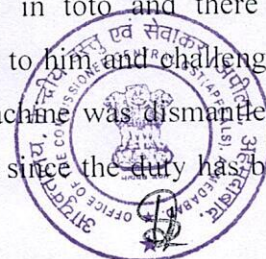




of cold rolling machines installed by him or on his behalf, and obtain the written approval of such officer before making any such change. Nothing is brought on record to show that the written approval of the proper officer was taken before making any such change. What is stated is that an intimation was given to the Range Superintendent. Even para 6 speaks of a situation wherein the production has ceased, which is not the case in the present dispute. The adjudicating authority is correct [para 10] wherein he holds that para 6 read with para 8 of the notification, is in respect of factories ceasing to work for a continuous period of not less than 3 months, which is not the case in the present dispute. Further as is already stated by the adjudicating authority Rule 15 of the Central Excise Rules, 2002 nowhere speaks of any abatement. Therefore, I find that the argument of the appellant, that since he had dismantled the machine for the period mentioned above, no duty was required to be paid for the said period.

10.1 Moving on to the grounds raised by the appellant, I find that that the appellant had intimated the fact of change in the number of cold rolling machines installed and employed in a particular month to the Range Superintendent; that no duty is payable for the period when the machine is dismantled; that in terms of the proviso to para 3(1) and 4(1) of the notification *ibid*, duty can be charged only on the basis of actual number of cold rolling machines installed and employed; that tax is to be levied on the basis of maximum number of cold rolling machines installed and operated by and on behalf of such manufacturer immediately preceding three calendar months; that if in a particular month no machine is operated and no production took place there cannot be a levy of excise duty; that it is the appellant's contention that the expression 'installed' appearing in the notification necessarily refers to rolling machine which is actually being utilized as is clear from the use of expression utilized in the notification; that utilized necessarily mean used on continuation basis; that cold rolling machine should be installed and utilized in the appellant's factory.

10.2 The appellants contention however, seems to be not correct. Notification No. 17/2007-CE dated 1.3.2007, does not give any exemption for the closed cold rolling machines and hence every appellant who opted for the compounded levy scheme under the said notification should have made payment of central excise duty for the cold rolling machines for which the permission was sought and this includes closed cold rolling machine for which permission was sought in the first instance. Hence, the benefit of exemption from payment of duty for the cold rolling machines which were closed during the relevant period, cannot be granted. I further find that the appellant had installed six numbers of cold rolling machines and thereafter dismantled one cold rolling machine and paid central excise duty on only five cold rolling machine for the months of December 2016 to February 2017. As per condition 3(2) of the notification *ibid*, a manufacturer has to pay the duty on maximum number of cold rolling machines installed by him at any time during three calendar months immediately preceding the calendar month. The manufacturer who has opted for special procedure as provided under Rule 15 of the Central Excise Rules, 2004, has to follow all the condition as mentioned in the notification issued under Rule 15 in toto and there is no option with the manufacturer to avail the condition which is beneficial to him and challenge the condition which is not beneficial. The argument that one cold rolling machine was dismantled during the said period and therefore no duty should be demanded is incorrect since the duty has been demanded correctly.





The appellant's other contention is primarily relying on the case of Jupiter Industries [2006(206) ELT 1195]. The Hon'ble High Court of Rajasthan in paras 16 and 23 stated as follows:

16. Apparently sub-rule (2) of Rule 96B cannot be read independent by sub-rule (1) of Rule 96ZB. Thus read in all cases whatever may be situation, the tax is to be levied on the basis of maximum number of cold rolling machines installed and operated by and on behalf of such manufacturer in immediately preceding three calendar months. If that were so, the expression, immediately preceding three calendar months in which that application is made, the rule may become redundant. Rule 96ZC reads as under :-

**“Rule 96ZC. Manufacturer's declaration and accounts.** - (1) Such manufacturer shall, at any time during the calendar month immediately preceding any month or part thereof, as the case may be, in respect of which he has been permitted to avail himself of the provision of this section, take an application to the proper officer in the proper Form for leave to remove stainless steel patties or pattas, or aluminium circles from his premise during the ensuing month, declaring therein the maximum number of cold rolling machines installed by him or on his behalf, in one or more premises at any time during the calendar months immediately preceding the said calendar month.

(2) If such application is not made to the proper office within the time limit laid down in sub-rule (1), the manufacturer shall, unless, otherwise directed by the Commissioner, and in exceptional circumstances, be liable to pay duty on his entire production of stainless steel patties or pattas, or aluminum circles during the month or part thereof in respect of which the application was to be made, at the rate prescribed in the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) read with any relevant notification or notifications issued under sub-section (1) of Section 5A of the Act.

(3) Such manufacturer shall also intimate the proper officer in writing of any proposed change in the number of cold rolling machines installed by him or on his behalf, and obtain the written approval of such officer before making any such change.”

The scheme of Rule 96ZC is clear, if it is read in the context of principal charging section of parent Act.

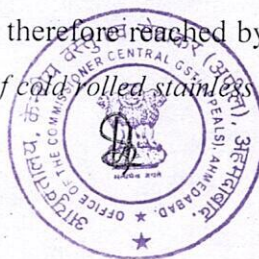
23. It goes without saying that, if in any particular month, no machine is operated and no production had taken place, there cannot be any levy of excise Duty. The manufacture of goods is condition precedent for charging of excise duty without which no levy can be made. Therefore, the rule cannot be made to go beyond the scope of charging provision. On the undisputed premises that no production had taken place from the cold rolling machine which has been removed on 29th May, 1998. In other words, no production has been taken place in respect of cold rolling machine which ceased to operate before the first July, 1996, no review could have been allowed in respect of estimated production in that machine. This is the simple logic which prevailed within the Tribunal and in our opinion rightly. No contrary view can be taken from the reading of the Rules also. We are, therefore, of the opinion that the conclusion reached by the Tribunal was valid.

The Court also relied upon Rule 96 of the Central Excise Rules, 1944, viz.[relevant extracts]

**RULE 96ZB. Discharge of liability for duty on payment of certain sum**

(1) Having regard to the average production of cold rolled stainless steel patties : pattas falling under Chapter 72 or aluminum circles falling under chapter 76 of the Schedule to Central Excise Tariff Act, 1985 (5 of 1986), in India per month or per year for cold rolling machines installed for the processing of stainless steel pattis/pattas, or aluminum circles and any other relevant factor, the Central Government may, by notification in the Official Gazette, fix, from time to time, the rate of duty per month or per year, per each such cold rolling machines, subject to such conditions and limitations hereinafter laid down, and if a manufacturer whose application has been granted under rule 96ZA pays a sum calculated according to such rate of duty in the manner and subject to the conditions and limitations herein- after laid down, such payment shall be a full discharge of his liability for duty leviable on his production of such cold re-rolled stainless steel pattis/pattas, or aluminum circles during the period for which the said sum has been paid :

The Hon'ble Court was of the view that Rule 96ZB(2) cannot be read in isolation of sub-rule (1), the charging section, which stipulates that having regard to the average production of cold rolled stainless steel patties/pattas, the Central Government, may by notification fix from time to time, the rate of duty per month or per year etc. . The conclusion therefore reached by the Hon'ble Court was on the basis of “having regard to the average production of cold rolled stainless steel patties/pattas falling





under chapter 72". However, when compared with the present charging section, para 3 of the notification *ibid*, the above terminology is missing. In fact, the notification is a code in itself and therefore, it is not possible to assume anything other than what is stated in the notification. No words can be added or substituted, so as to give a specific meaning. In-fact the Hon'ble Tribunal in the case of Sethi Metal Industries [2013(294) ELT 603] upheld the view of the Commissioner that the judgements relied upon by the appellants in the said case were not applicable because the same were pertaining to the erstwhile Rules 96ZA to 96ZGG of the Central Excise Rules, 1944 where a separate procedure was prescribed.

10.3 The appellant has also relied upon the case of Acme Industries [2011(269) ELT 523], Raj and Sand Deeps Ltd [2005(191) ELT 539], Dayaram Printing & Dyeing Mills [2004(178) ELT 261], National Ceramic Works [2010(261) ELT 642], Ambuja Metal Industries [2010(256) ELT 763], Shailesh Dyeing and Printing Mills [2008(231) ELT 458]. On going through these cases, I find that these cases are pertaining to the period prior to when notification No. 17/2007-CE dated 1.3.2007 was in vogue and therefore following the reasoning of the Hon'ble Tribunal in the case of Sethi Metal Industries, *ibid*, I hold that these cases are not applicable to the present dispute.

11. In view of the foregoing, I find no reason to interfere with the findings of the adjudicating authority and the impugned OIO is upheld and the appeal is rejected.

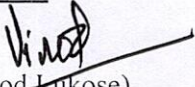
11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
11. The appeal filed by the appellants stands disposed of in above terms.

उमा शंकर  
(उमा शंकर)

प्रधान आयुक्त (अपील्स)

Date : 29 .3.2019

Attested

  
(Vinod Lukose)  
Superintendent (Appeal),  
Central Tax,  
Ahmedabad.

By RPAD.

To,  
M/s. M.A.Enterprise,  
Plot No. 508, Phase-IV,  
GIDC, Vatwa,  
Ahmedabad-45.

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Commissioner, Central Tax, Central Tax, Ahmedabad South Commissionerate.
3. The Assistant Commissioner, Central Tax, Division II, Ahmedabad South Commissionerate.
4. The Assistant Commissioner, System, Central Tax, Ahmedabad South Commissionerate.
- ✓ 5. Guard File.
6. P.A.







*Handwritten mark or signature.*