



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

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

केंद्रीय कर भवन,

7th Floor, GST Building,

Near Polytechnic,

सातवीं मंजिल, पोलिटेकनिक के पास,

Ambavadi, Ahmedabad-380015

आम्बावाडी, अहमदाबाद-380015

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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(38)30/Ahd-South/2018-19
Stay Appl.No. /2018-19

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-073-2018-19
दिनांक Date : 01-10-2018 जारी करने की तारीख Date of Issue

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. AC/05/Div-II/2017-18 दिनांक: 28.03.2018 issued by Assistant
Commissioner, Div-II, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Vardhman Chemicals
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, 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।

... 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 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.

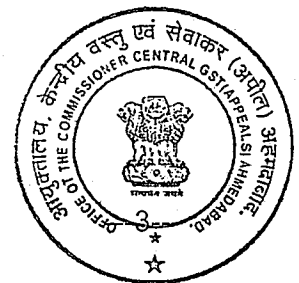
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 मैन्टल हॉस्पिटल कम्पाउण्ड, मेघाणी 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 पंढी 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 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।

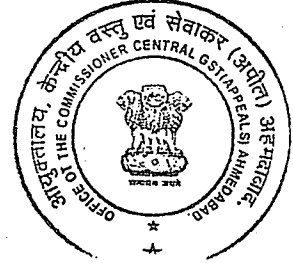
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

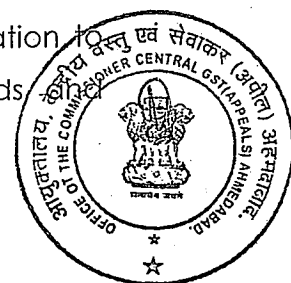


ORDER-IN-APPEAL

M/s. Vardhman Chemicals, Plot No.C-1/127,Phase-I,GIDC,Vatwa,Ahmedabad(henceforth, "appellant") has filed the present appeal against the Order-in-Original No.AC/05/Div-II/2017-18 dated 28.03.2018(henceforth,"impugned order") passed by the Assistant Commissioner, Central GST, Division-II, Ahmedabad-South(henceforth, "adjudicating authority").

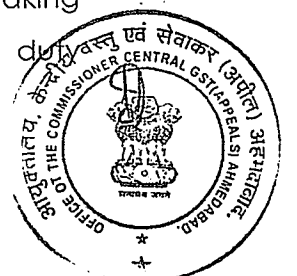
2. Brief facts of the case are that based on the intelligence that M/s. Laxmi Dye Chem(for short-'M/s Laxmi') & M/s.Harshlaxmi Chemisolve(for short-' M/s Harshlaxmi'),Ahmedabad having Dealer's registration with the department are selling imported/indigenous organic chemicals without bills to their buyers and passing on CENVAT credit without physical supply of the same to different manufacturers/dealers, the officers of Director General of Central Excise Intelligence, Zonal Unit, Ahmedabad("herein after referred to as "DGCEI") conducted simultaneous searches on 10.09.2014 at their premises. Follow up search was also conducted at the factory premise of the appellant on 11.11.2014. Investigation revealed that during the period from August 2010 to July 2014, the appellant had wrongly availed Cenvat credit of inputs Rs.13,38,729/- on the strength of cenvatable invoices issued by M/s.Laxmi and Rs.19,77,888/- on the strength of cenvatable invoices issued by M/s. Harshlaxmi without receiving goods in the factory premise. Show cause notice issued after the investigation for Rs.33,16,617/- was decided under impugned order disallowing Cenvat credit and appropriation of the same under rule 14 of Cenvat Credit rules,2004 read with Section 11A of the Central Excise Act,1944 alongwith interest and penalty.

3. The appellant preferred this appeal against impugned order contesting *inter alia*, that the Investigation was done on the basis of evidences which created doubt and authenticity was challenged. However, it was not appreciated by adjudicating authority;that the order has been passed without going in to facts and on the basis of certain note books saized from dealers' premises. Certain statements have been retracted. It appears to be biased and passed only on the basis of facts elaborated in show cause notice.; that nputs were purchased and use in the manufacture. The investigation failed to extend the investigation to the alleged buyers to whom the dealers had sold the goods



proceeded on the basis of statements which were recorded under threat, fear and duress; that 'Phenol' purchased was used in manufacture of 'admixture' which were cleared on payment of duty; that Shri Birendra Pande, Supervisor in the statement dated 11.11.2014 stated that the company had not used phenol in manufacture since last five year was working in the company since last eight months. This portion of investigation shows that it was recorded casually or under duress and hence it requires to be discarded from evidence; that reliance is placed on the statements which have been retracted. DGCEI has relied upon confessional statement of Shri Devanshu Kothari which is also supported by entries mentioned in the private record; that various judgements cited in this regard were not considered by the adjudicating authority.

3.2 They further contested that no shortage of material or finished goods were found, no cash transaction as alleged was recovered during the search. Entire case is based on assumption and presumptions; that statement taken under duress or pressure and the same were retracted later on. It is a settled law that retracted statement cannot be used as evidence and corroborative evidences required which are absent in this case; that entire case is built upon the basis of certain note books seized from premises of third party and statement of both the dealers. Raw material, electricity, workers, transportation of goods, payments from buyer etc factors are not considered, guidelines of the board are not followed by the adjudicating authority ;that notebook relied in the case was recovered from premise of M/s. Harshlaxmi during second search. Credit cannot be denied on the basis of private note book of third party; that information regarding use of 'phenol' in manufacture of 'Sinton Di' was given. In the instant case it is on record that inputs were received, payments were made through cheques and manufactured goods were cleared on payment of duty. Hence, demand needs to be set aside; that hands on diary recovered on 16.09.2014 from premises of Harshlaxmi during search which could have been recovered on 10.09.2014. This point out suspicion on investigation; that Books of account were duly audited by chartered accountants certifying purchase, consumption and sale of raw material wherein consumption of Phenol is shown; that investigating agency failed to establish as to what appellant did to huge cash received from M/s. Laxmi & M/s. Harshlaxmi as also failed to bring out what other ingredients were used were used; that the firm was making profit ranging from 8% to 12% in last five years and discharging duty



through account current also. If invoices were managed to avail Cenvat credit receipt of without goods, duty would have paid from CENVAT account only; that DGCEI through pressure on both the dealer made remark "E" or 'V"; that GPCB has given consent to store Phenol which can be stored in 200kg drum also ; that Director of the company Shri Sunil Kothari was forced to admit in his statement the portion of M/s. Laxmi M/s. Harshlaxmi ; that If the goods have been sold by dealers on cash basis to another party then such parties ought to have been brought on record, which is not done by investigating agency. They cited various case law in support of the ground advanced.

4. In the Personal hearing held on 24.08.2018 Shri Anil Gidwani, Tax consultant appeared on behalf of the appellant and reiterated the grounds of appeal.

5. I have carefully gone through the appeal wherein based on intelligence in respect of two dealers passing on CENVAT credit without physical delivery of goods, their premises alongwith the factory premises of the appellant were searched by DGCEI. Show cause notice issued after the investigation for Rs.33,16,617/- was decided under impugned order disallowing Cenvat credit holding that CENVAT credit has been availed without receipt of goods. It needs to be decided whether the goods i.e. phenol in respect of the invoices under question has actually been received in the factory, used in manufacture by the appellant and CENVAT credit involved has been availed rightfully.

6. The investigation conducted at the end of two dealers M/s.Laxmi and M/s. Harshlaxmi revealed that they received various types of imported/indigenous organic chemicals,sold the same to buyers based at Delhi,Panipat,Sonipat,etc under commercial invoices and issued cenvatable invoices against same goods to the manufacturers based at Vapi, Ankleshwar and Ahmedabad for passing on Cenvat credit without supply of goods. The notebook recovered which was maintained by M/s. Harshlaxmi & M/s. Laxmi contains all details of clearance of goods viz. invoice no, date, name of the party, amount, etc mentioning therein alphabet "E" in a column against some clearances. It revealed during investigation that said alphabet "E" represents the cases where only excise invoice has been issued without supply goods. Amount received through cheques against such cenvatable invoices were returned to said



parties in cash keeping 75% of total excise duty and VAT amount. The entire modus operandi was adopted for passing Cenvat credit to the assessee without physical supply of goods. It revealed that the appellant wrongly availed Cenvat credit to the tune of Rs. Rs.33,16,617/- based on such invoices issued by M/s. Harshlaxmi & M/s. Laxmi without accompanying the goods. In the statements Shri Devanshu Kothari authorized signatory of M/s. Harshlaxmi, Shri Lalit C shah Manager cum authorized signatory and Shri Manoj C Shah proprietor of M/s. Laxmi admitted that in majority of the cases they have shown clearance of cenvatable goods to manufacturers based at Vapi, Ankleshwar, Ahmedabad including the appellant, only on paper but the goods have actually been supplied to buyers based at Delhi, Mathura, Panipat, Sonipat etc. Shri Birendra pandey, Supervisor and Shri Sunil Kothari proprietor of the appellant firm have explained manufacturing process of 'Disperging agent' and 'Admixture' which are being manufactured by them using naphthaline, oleam, formal dehyde, coustic soda flakes as raw material and admitted categorically that 'phenol' on which Cenvat credit has been availed is not used in their factory as raw material for manufacturing finished goods. They further stated that 'phenol' is used in manufacture of 'Sinton Di' which they do not manufacture. During the investigation, they furnished details of Cenvat credit availed by their company on the basis of cenvatable invoices issued by M/s. Harshlaxmi & M/s. Laxmi dealers, wherein corresponding goods i.e. phenol, soda flakes, paradichloro benzene were not received. Shri Sunil Kothari has accepted that against the clearance wherever alphabet "E" in the notebook is shown, pertains to receipt of excise invoice without receipt of goods shown therein and voluntarily agreed to reverse such credit of Rs.33,16,617/- wrongly availed by them during the period from August 2010 to July 2014 and paid Rs.40,00,000/- towards duty & interest.

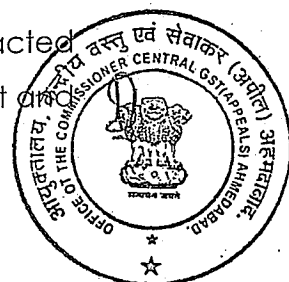
7. It is contested by the appellant that the impugned order has been passed on the basis of certain note books seized from dealers' premises without going in to facts, it appears to be biased and passed only on the basis of facts elaborated in show cause notice. However, I find that on comparison of the details shown in the notebook with sale invoices issued of dealers by the investigation agency, it matches with each other. Also, the fact admitted by Shri Sunil Kothari, proprietor that the clearance wherever alphabet "E" in the notebook is shown, pertains to receipt of excise invoice without receipt of goods. Showing clearance



cenvatable goods only on paper to the manufacturers situated at Vapi, Ankleshwar, Ahmedabad etc. for the purpose of passing on Cenvat credit and actual clearance taking place to the buyers at Delhi, Mathura, Alwar, Panipat etc stands admitted by Shri Lalit C Shah, Manager and Shri Shri Manoj C Shah, proprietor of M/s Laxmi under their statements recorded under Section 14 of Central Excise Act 1994. Further in the instant case Shri Sunil Kothari, proprietor and Shri Birendra Pandey, Supervisor of the appellant firm have categorically stated in their statement that 'phenol' is never used by them during last five years and the same is used in the manufacture of 'Sinton Di' only which they are not manufacturing. Therefore, the plea of the appellant that inputs were purchased and use in the in the finished goods manufactured by them is devoid of truth.

8. The other contention of the appellant that there were no corroborative evidence in the instant case; that no relied upon documents supplied by the investigating authority and DGCEI has failed to bring out the facts as to what were the other ingredients used to manufacture the finished goods if they had not purchased phenol and as to how they achieved a value addition, resulting into final payment of Central Excise duty through PLA in addition to Cenvat. I observe that all these contentions are vague in nature, looking into the facts and evidence brought out by the investigating authority. I find that the DGCEI has conducted searches in various locations and recorded statements of authorized persons such as the appellant, M/s Laxmi and M/s Harshlaxmi and other manufacturers and on the basis of valid documents withdrawn from the premises of the appellant and also from M/s Laxmi and M/s Harshlaxmi during the course of investigation, they worked out the amount of CENVAT credit wrongly taken by the appellant. Further all the relied upon documents were supplied by DGCEI along with the show cause notice which was acknowledged by the appellant. Thus, from the evidence narrated by the investigating authority, it is clear that the entire availment of credit is only on the strength of documents without actual receipt of the goods.

9. It is also contested that the adjudicating authority relied on the statement which have been retracted. In this regard I find that since the statement dated 11.11.2014 of Shri Sunil Kothari, proprietor was retracted under letter dated 10.09.2015 taking such long time is an afterthought



cannot help or dominate over the confessions made by others in this regards. The proceeding under Section 14 of CEA is a judicial proceeding and if any retraction of the confession has to be made, the same should be made before the same authority who originally recorded the statement immediately. In *Zaki Ishrati v. Commissioner of Customs & Central Excise, Kanpur* [2013 (291) E.L.T. 161 (All.)], the Hon'ble Allahabad High Court has held that subsequent retraction cannot take away the effect of the statement; if the retraction is not addressed to the officer to whom the statement was given. Such belated retractions made later on cannot take away the evidentiary value of their original statements.

10. It is pleaded that raw materials, electricity, workers, transportation of goods etc factors are not considered and guidelines of the board are not followed by the adjudicating authority. I find that as per the provisions of rule 9(5) of Cenvat Credit Rules, 2004, manufacturer of the final product required to maintain proper record for receipt, consumption, disposal of the inventory of inputs which the appellant failed to do. Their plea that no shortage of material or finished goods were found, no cash transaction as alleged was recovered during the search and entire case is based on assumption and presumptions cannot be considered as entire modus operandi adopted jointly by the dealers and the appellant has been categorically accepted by them. They further stated that that Books of account were duly audited by chartered accountants certifying purchase, consumption and sale of raw material wherein consumption of 'phenol' is shown and investigating agency failed to establish as to what appellant did to huge cash received from M/s. Laxmi Dye Chem M/s. Harshlaxmi Chemisolve as also failed to bring out what other ingredients were used were used. In this regard I find that investigation agency succeeded in detecting the modus operandi adopted by the dealers in respect of passing on Cenvat credit. Receipt of only invoices without receipt of goods was confirmed by the concern proprietors/persons of the appellant and both the dealers and hence it cannot be accepted that all evidences including cash flow needs proof of tracking it by the investigation authority. I observe that it is a fact that all the allegations involved in the instant case was admitted by the authorized persons of the appellant, M/s Laxmi and M/s Harshlaxmi and also by the transporters in their statements recorded by DGCEI.



Ans. : Sir, I admit to have received 102.220 MTs M.S. Ingots from M/s. Hanumant Ingots Pvt. Ltd., Raipur without cover of CEX invoices, and we have also not accounted for the receipt of the said quantity of M.S. Ingot in our books of accounts. Further, I would like to add that we have used the said quantity of M.S. Ingots in further manufacture of hot re-rolled products viz. M.S. Angle and have subsequently cleared the said re-rolled products clandestinely without payment of CEX duty. I also voluntarily undertake to pay the CEX duty on 95.450 MTs of Re-rolled products viz. M.S. Angles (considering that the input output ratio to be 93.38% (as in the ER-6 Return for the month of July, 2013) manufactured out of the 102.220 MT of M.S. Ingots received from M/s. Hanumant Ingots Pvt. Ltd., Raipur. I calculate the CEX duty on the basis of our sales of M.S. Angle in the month of July, 2013 by taking the average value of M.S. Angle to be Rs. 30,636/- (as shown in the E.R.-I Return of July, 2013) which works out to Rs. 3,61,432/- (including Edn. Cess) and I undertake to pay the said amount of CEX duty along with interest and 25% of the duty amount as penalty tomorrow."

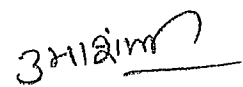
7. Since the Director has categorically admitted non-accountal of raw material and clandestine removal of the finished goods and the statements has not been retracted before the Central Excise Officers, I am of the view that Central Excise duty along with interest and penalty confirmed against the appellant by the authorities below is proper and justified. However, I find that the Central Excise Duty along with interest confirmed in the adjudication order dated 15-12-2014 received by the appellant on 26-12-2014 was paid by the appellant on 19-1-2015. Since the entire duty along with interest amount was deposited by the appellant within one month from the date of receipt of the Adjudication Order, the benefit of reduced amount of penalty provided under Section 11AC of the Central Excise Act, 1944 should be available to the appellant. Therefore, the adjudicating authority is directed to quantify the reduced amount of penalty, which shall be paid by the appellant.

12. With reference to imposition of penalty on the appellant firm, I find that the appellant was guiltfully and fraudulently involved in availment of CENVAT credit illegitimately and the error committed is not bonafide one and hence imposition of penalty under Rule 15 of Cenvat Credit rules, 2004 read with Section 11AC of Central Excise Act, 1994 under the impugned order need not require any interference.

13. In view of aforesaid discussion, I uphold the impugned order and reject the appeal.

14. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

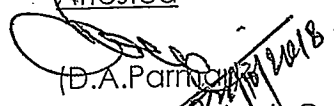
The appeal filed by the appellant stands disposed of in above terms.

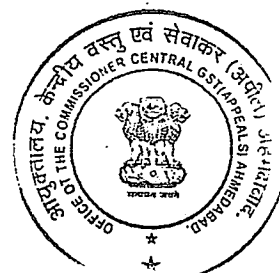

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Date:

Attested


(D.A. Parron)
Superintendent, Central Tax (Appeals)
Ahmedabad.



By R.P.A.D.

To,

M/s. Vardhman Chemicals,

Plot No.C-1/127,Phase-1,GIDC,Vatwa,Ahmedabad.

Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner of Central Tax, Ahmedabad-south.
3. The Additional Commissioner, Central Tax (System), Ahmedabad-south.
4. The Asstt./Deputy Commissioner, Central Tax, Division-II, Ahmedabad-south.
5. Guard File.
6. P.A.

