



सत्यमेव जयते

## केंद्रीय कर आयुक्त (अपील)

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

केंद्रीय कर भवन,

7<sup>th</sup> Floor, GST Building,

Near Polytechnic,

सातवीं मंजिल, पोलिटेकनिक के पास,

Ambavadi, Ahmedabad-380015

आम्बावाडी, अहमदाबाद-380015

☎ : 079-26305065

टेलिफैक्स : 079 - 26305136



7070107075

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(74)76/Ahd-South/2018-19  
Stay Appl.No. /2018-19

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-074-2018-19  
दिनांक Date : 03-10-2018 जारी करने की तारीख Date of Issue

12/11/2018

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. 07/CE-I/Ahmd/JC/KP/2018 दिनांक: 9.05.2018 issued by Joint  
Commissioner, Div-South, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
Shri Mafatlal Harakchand Shah(Director. Shriram tubes)  
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।

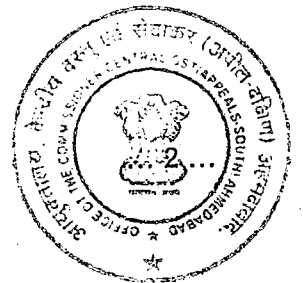
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit  
Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New  
Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, 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 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 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 हास्पिटल 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 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 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।

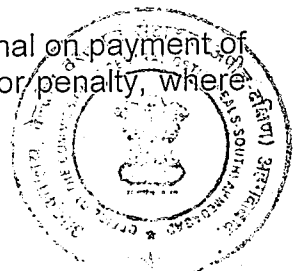
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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



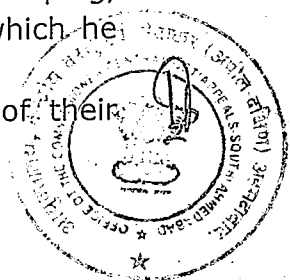
ORDER-IN-APPEAL

This appeal has been filed by Shri Mafatlal Harakhchand Shah, Director of M/s Shriram Tubes Pvt Ltd, 29, Gora Gandhi Building, 2<sup>nd</sup> Floor, 78/80, C.P.Tank Road, Mumbai [for short- "appellant"] against Order -in-Original No.07/CE-1/JC/KP/2018 dated 09.05.2018 [for short-'impugned order'] passed by the Joint Commissioner, Ahmedabad-South [for short-'adjudicating authority'].

2. Briefly stated, the facts of the case are that based on information that M/s Shriram Tubes Pvt Ltd, 29, Gora Gandhi Building, 2<sup>nd</sup> Floor, 78/80, C.P.Tank Road, Mumbai [for short-M/s STPL], the DGCEI, Ahmedabad unit has searched the premises of the M/s STPL on 13.12.2005. Based on following investigation, it was observed that M/s STPL had wrongly availed CENVT credit on the strength of invoices issued by M/s Annapurna Impex Pvt Ltd, Ludhiana (for short-M/s AIPL) and that the inputs against the invoices of M/s AIPL were never received by M/s STPL. Show cause notice dated 14.08.2007 issued to M/s STPL and to the appellant and other Directors of M/s STPL was decided vide Order-in-Original dated 17.02.2009, wherein, demand of duty of Rs.23,26,834/- along with interest was confirmed towards the appellant and Penalty of Rs.5,00,000/- was imposed on the appellant as well as to the other Directors of M/s STPL. After first and second round of litigation upto Hon'ble Tribunal, the case was final decided by the Hon'ble Tribunal, vide order No.A/11813-118114/2015 dated 11.12.2015, by remanding the case to the original adjudicating authority with direction to supply required relied upon documents. The case was finally decided by the adjudicating authority vide impugned order, by confirming the duty with interest and imposed penalty equal to the duty demanded. The adjudicating authority has also imposed penalty of Rs.23,26,834/- on the appellant under Rule 26 of Central Excise Rules, 2002 read with Rule 13 of CENVAT credit Rules, 2002.

2. Being aggrieved with the decision of the adjudicating authority, the appellant has filed the instant appeal on the grounds that:-

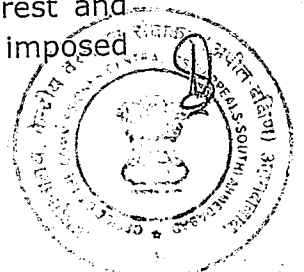
- The adjudicating authority has straight away indicted in the operative part of the impugned order the fact about imposition of penalty on the appellant; that no discussion on the role, if any, played by the appellant and there is not finding by the adjudicating authority for justifying the imposition of penalty.
- The adjudicating authority has failed to appreciate that from the facts and circumstances of the case, the appellant cannot by any stretch of imagination, be considered to have acquired possession of, or any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing etc of the dutiable goods which he know or had reason to believe were liable to confiscation.
- The appellant has relied on various case laws in support of their arguments.



3. Hearing in the matter was held on 05.09.2018. Shri Wellindon Christian, Advocate appeared for the same and reiterated the grounds of appeal. He further explained that the impugned order does not discuss anything about the appellant but imposed penalty; that as per Rule 13 of Cenvat Credit Rule, 2002 and Rule 26 of Central Excise Rules, 2002, penalty cannot be imposed on the appellant.

4. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memorandum as well as during the course of personal hearing. At the outset, I observe the chronological history of the instant appeal is as under:

- [i] On 13.12.2005, DGCEI has booked an offence case relating to wrongly availment of CENVAT credit by M/s STPL on the strength of invoices issued by M/s AIPL and that the inputs against the invoices of M/s AIPL were never received by M/s STPL.
- [ii] Based on the investigation, show cause notice dated 14.08.2007, covering the period of 2003-04 and 2004-05, was issued to M/s STPL as well as to the appellant, being a Director of M/s STPL and also to other Director of M/s STPL.
- [iii] Vide OIO dated 17.02.2009, the case was adjudicated and confirmed the duty amounting to Rs.23,26,834/- with interest and confirmed equivalent penalty on M/s STPL. The OIO also imposed penalty of Rs.5,00,000/- on the appellant as well as on other Directors of M/s STPL.
- [iv] The Commissioner (Appeals) vide OIA dated 17.12.2009 dismissed the appeals filed by M/s STPL and the appellant as well as other Directors for non compliance of Section 35 of Central Excise Act, 1944.
- [v] The Hon'ble CESTAT, Ahmedabad, vide order dated 16.11.2010 has remanded the case to the original authority for fresh decision.
- [vi] Vide OIO dated 22.12.2011, the case was again decided by the Additional Commissioner, wherein, duty amounting to Rs. Rs.23,26,834/- with interest and confirmed equivalent penalty on M/s STPL. The OIO also imposed penalty of Rs.3,00,000/- on the appellant as well as Rs.5,00,000/- on other Directors of M/s STPL.
- [vii] Vide OIA dated 16.08.2012, the Commissioner (Appeals) has uphold the OIO dated 22.12.2011.
- [viii] M/s STPL and the appellant preferred an appeal before Hon'ble Tribunal, Ahmedabad and the Hon'ble Tribunal vide order dated 11.12.2015 again remanded the case to the original adjudicating authority for fresh decision, after supplying relied upon documents to M/s STPL and the appellant.
- [ix] After following the directions of the Hon'ble Tribunal, the adjudicating authority has again confirmed the duty demanded with interest and imposed penalty equal to the duty on M/s STPL and also imposed Rs.23,26,934/- on the appellant.



Being the aggrieved with the imposition of penalty of Rs.23,26,934/- under Rule 26 of CER and under Rule 13 of CCR, 2002 on the appellant, the present appeal is for decision before me. Therefore, the limited point to be decided by me is to whether the penalty imposed by the adjudicating authority towards the appellant is correct or otherwise.

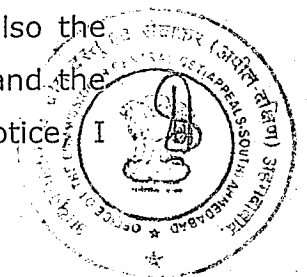
5. From the chronological events of the case, I find that the issue involved in the case is very old i.e in the year 2005 and after that much litigation was taken place with original adjudicating authority, Appellate Authority and also with Hon'ble Tribunal. Finally, the adjudicating authority has imposed penalty on the appellant amounting to Rs.23,26,934/-. The adjudicating authority has enhanced the penalty from Rs.3,00,000/-. The appellant has contended that the adjudicating authority has enhanced the penalty without passing a speaking order with regard to the role played by the appellant in connection with wrong availment of CENVAT credit by M/s STPL. On perusal of the records, I find that the then adjudicating authorities were well discussed the role of the appellant in the OIO and accordingly they imposed penalty of Rs.5,00,000/- vide OIO dated 17.02.2009 and Rs.3,00,000/- vide OIO dated 21.12.2011. However, such discussion is absent in the impugned order.

6. Further, as discussed above, I find that the adjudicating authority has enhanced the penalty imposed from Rs.3,00,000/- to Rs.23,26,934/- on the appellant which is bad in law. The Hon'ble Tribunal in the case of M/s Engineers Combine [2001 (131) E.L.T. 90 (Tri. - Del.)], wherein has held that:

*"2.It was not permissible for the Commissioner to increase the penalty amount in a remand proceedings ordered on an appeal of the assessee. That part of the order is clearly illegal. The appellant's claim that they had paid the entire amount but the Commissioner has not taken into account about Rs. 7 lakhs, also is required to be gone into. In these circumstances, we do not find any justification to direct the appellant to pre-deposit the duty or penalty amount. Stay application of the appellant is accepted and recoveries of the duty and penalty are stayed. Matter to come up for hearing on 5th March, 2001."*

Further, the decision of Hon'ble Tribunal in the case of M/s Jogani Tyres (India) [2003 (161) 196-Tri. Mum] has also held that "...We further note that the Commissioner has substantially increased penalties in his second order. This is not permissible in law. Accordingly, we waive deposit of the penalties imposed on the applicants and stay their recovery."

7. In view of foregoing discussion and following above legal background, I am of the opinion that penalty cannot be increased by remand proceedings. Further, looking into the facts and circumstances of the case and also the case is under litigation since 2005, I do not find any merit to remand the case again to the adjudicating authority. From the impugned notice,



observe that the appellant is also responsible and played role in fraudulent availment of CENVAT credit by M/s STPL. The appellant have full knowledge about the procurement of invoices from M/s Annapurna Impex Pvt Ltd, Ludhiana. Therefore, the appellant cannot escape from his responsible in the case of fraudulently availment of CENVAT credit by M/s STPL. In the circumstances, the appellant is liable for penalty under Rule 26 of Central Excise Rules. However, I take a lenient view in the matter and accordingly, I reduce the penalty to Rs.1,00,000/- on the appellant.

8. In view of above discussion, I partly allow the appeal filed by the appellant and set aside the impugned order. The appeal stands disposed of in above terms.

*उमा शंकर*

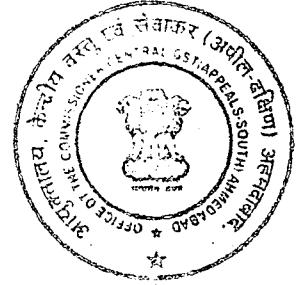
(उमा शंकर)

आयुक्त (अपील्स)

Date : 03.10.2018

Attested

*Mohan V.V.*  
(Mohan V.V)  
Superintendent (Appeal),  
Central Tax, Ahmedabad.



By RPAD.

To,  
Shri Mafatlal Harakhchand Shah,  
Director of M/s Shriram Tubes Pvt Ltd,  
29, Gora Gandhi Building,  
2<sup>nd</sup> Floor, 78/80, C.P.Tank Road, Mumbai

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Principal Commissioner, Central Tax, Ahmedabad-South.
3. The Joint Commissioner, Central Tax, Ahmedabad-South
4. The Assistant Commissioner, System, Central Tax, Ahmedabad South.
5. The Assistant Commissioner, CGST, Ddiv-III, Ahmedabad South
6. Guard File.
7. P.A.

