



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065- टेलिफैक्स 07926305136



स्पीड पोस्ट

- क फाइल संख्या : File No : V2(85)58/Ahd-South/2019-20/13788 to 13792
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-096-2019-20
दिनांक Date : 22-01-2020 जारी करने की तारीख Date of Issue 26/02/2020
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. 06/CX-II/Ahmd/JC/SG/2019 दिनांक: 22.04.2019 , issued by
Joint Commissioner, Central Tax, Ahmedabad-South
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
ADCO Controls
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 अधिन 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 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.



(क) 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 हैं।

(A) 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.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) 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।

(c) 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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



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

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

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

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

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

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

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

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

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस 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

M/s. Adco Controls, Plot No.5318, GIDC, Phase-IV, Vatva, Ahmedabad-382445 (hereinafter referred to as “appellant”) has filed the present appeal against the Order-in-Original No.06/CX-1/Ahmd/JC/SG/2019 dated 22.04.2019 (hereinafter referred to as “impugned order”) passed by the Joint Commissioner of CGST, Ahmedabad South Comm’rate, Ahmedabad (hereinafter referred to as “adjudicating authority”).

2(i). The fact of the case, in brief, are that the appellant’s premises was searched by the Central Excise Officers on 19.12.2013 and it was found that various quantities of goods were removed without payment of duty and there was also short payment of duty at the appellant’s end. It was further found that certain quantity of inputs on which cenvat credit was taken were removed without reversing the cenvat credit. One email dated 17.01.2013 was found sent to Shri Sikandar Singh, Proprietor of M/s. Asian Elevator Control & Automation, New Delhi who was purchasing goods from the appellant and showing the ledger account Debit Opening Balance of Rs.52,41,865/- and total debit balance of Rs.1,46,46,871/- during the period 01.08.2013 to 13.12.2013. The premises of one of such firm viz. M/s. Ritesh Trading Co., Opp. Plot No.5318, GIDC. Phase-IV, Near Ramol Chowki, Vatva, Ahmedabad-382445, was searched and the Panchnama dated 19.12.2013 was drawn. Some delivery challan files, delivery challan books and other documents related to the appellant were found in the premises of M/s. Ritesh Trading Co. and Shri Ritesh P. Davda, [Brother of Shri Ajay P. Davda (Proprietor of the appellant)] was unable to produce the invoices in respect of such documents kept in his premises. One such person Shri Pramodbhai of Secunderabad failed to submit the documents pertaining to the goods pertaining to the appellant (valued at Rs.5,39,600/-) found in his premises under search and thus the said goods were detained on 03.01.2014. However, the said goods were released provisionally on the request of the appellant on 02.07.2014. Similarly, premises of various firms and companies were searched and statements of the concerned proprietors and other persons were recorded. All this resulted into issuance of Show Cause Notice (hereinafter referred to as “SCN”) dated 31.03.2015 proposing (i) valuation of (a) cleared manufactured excisable goods to be determined as Rs.7,76,21,354/- and (b) cleared cenvat credit availed inputs to be Rs.1,40,060/- under Section 4 of Central Excise Act, 1944 read with Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000; (ii) demand of excise duty of Rs.94,99,770/- short/not paid by them; (iii) demand of cenvat credit of Rs.10,936/- availed on the inputs cleared under delivery challans; (iv) appropriation of an amount of Rs.59,90,942/- paid by the appellant towards the total demand of



Rs.95,10,706/- (v) confiscation of excisable goods valued at Rs.7,77,61,414/- (vi) redemption fine in lieu of confiscation (vii) interest at the applicable rate on such demand and (viii) imposition of penalties on appellant and on the Proprietor. Appellant requested for opportunity of cross-examination of persons whose statements were being relied upon under the said SCN however the same was denied by the adjudicating authority. Various opportunities of personal hearing were accorded to the appellant. Shri Aditya S. Tripathi, represented the appellant on 25.04.2017 and submitted that they shall submit the written reply within a week and will not sought further personal hearing. The written reply was submitted by the appellant on 16.06.2017. The adjudicating authority confirmed the determination of value of the goods; confirmed confiscation and imposed redemption fine in lieu of such confiscation; confirmed the demand alongwith interest and penalty and also appropriated the amount paid by the appellant against the total demand vide the Order-in-Original (hereinafter referred to as "OIO") No.32/CX-I-Ahmd/JC/KP/2017 dated 31.10.2017. The adjudicating authority did not impose any penalty on Shri Ajay P. Davda, Proprietor of the appellant since the penalty was already imposed on the proprietorship firm i.e. appellant.

2(ii). The appellant filed an appeal against the said OIO before this authority who vide its Order-in-Appeal No. AHM-EXCUS-001-APP-377-2017-18 dated 27.02.2018 remanded the matter back to the adjudicating authority on the ground that the opportunity of cross-examination of the persons as sought by the appellant may be provided to them. Appellant was also directed to raise the issue of CA certificate admissibility before adjudicating authority in the fresh hearing. Accordingly adjudicating authority was directed to decide the case afresh in the remand proceedings.

2(iii). Before the adjudicating authority, the appellant vide their letter dated 06.02.2019 submitted that they do not desire to cross-examine any witness whose statements were recorded during the investigation. During the course of personal hearing held on 14.03.2019 before the adjudicating authority, the authorized representative Shri Aditya S. Tripathi submitted that they do not desire to cross-examine the witnesses and requested a week time to file their final reply. The appellant finally submitted their reply dated 28.03.2019 on 29.03.2019.

2(iv). On the basis of available records, the defence putforth during the course of personal hearing and the written reply submitted by the appellant, the adjudicating authority vide the impugned order confirmed the demand of excise duty of Rs.94,99,770/- short paid and also confirmed the demand/recovery of Rs.10,936/- of cenvat credit, availed on inputs which were cleared under delivery challans; ordered to charge interest on the said demand; imposed penalties of Rs.94,99,770/- and Rs.10,936/-



on the appellant and imposed redemption fine of Rs.1,00,000/- in lieu of the goods so confiscated valued at Rs.5,39,600/- and refrain from imposing any redemption fine on the goods which were not available physically at the time of search. The adjudicating authority did not impose any penalty on Shri Ajay P. Davda, Proprietor of the appellant since the penalty was already imposed on the proprietorship firm i.e. appellant.

2(v). The appellant again preferred an appeal before this authority against the impugned order. The personal hearing in the matter was held on 17.12.2019. Shri Vijay Thakkar, Retired Asstt. Commissioner of CGST, represented the appellant and submitted a written submission. He reiterated the submission made therein and in the appeal memorandum.

3. I have carefully gone through the facts of the case available on records and submissions made by the appellant in the Appeal Memorandum as well as during personal hearing. The issue to be decided in the instant appeal is whether the demand as confirmed in the impugned order sustain or not.

4. The facts of the case reveal that the premises of the appellant was searched on 19.12.2013 and investigation in the matter was done at length. The discrepancies found in the matter were recorded in the table prepared by the officers and also shown and communicated to the appellant and finally SCN dated 31.03.2015 was issued to the appellant. Fair chances were also provided to the appellant to defend their case/matter. The records in the matter shows that when opportunity of personal hearing was given to the appellant, they vide their letter dated 09.04.2016 informed the adjudicating authority that they were contemplating to approach Settlement Commission for settlement of the present issue. However, despite various letters from the Department the appellant till 02.08.2016 didn't inform whether they approached the Settlement Commission or not. Therefore, opportunity of personal hearing was given to the appellant on 15.02.2017, 22.02.2017, 27.02.2017, 11.04.2017, 18.04.2017 and 25.04.2017. Shri Aditya S. Tripathi, representing the appellant, appeared on 25.04.2017 and submitted that they shall submit the written reply within a week and no further personal hearing would be required in the matter. However, no reply was submitted by the appellant till 12.06.2017 despite various letters and deadline issued by the adjudicating authority in the matter. The appellant finally filed their written reply dated 13.06.2017 only on 16.06.2017. All these facts clearly show that delay tactics were used by the appellant for one or other reason and thereby they gained time from 09.04.2016 to 15.06.2017 which is a period of over one year. Even a fair chance to cross-examine the witnesses was also provided to the appellant vide Order-in-Appeal No. AHM-EXCUS-001-APP-377-2017-18 dated



27.02.2018 as requested by them before this authority. It was the appellant, who finally waived their right for cross-examination. All these goes on to show that ample opportunities and sufficient time were provided to the appellant to defend their case. Therefore, the appellant's contention of violation of principal of natural justice does not hold water.

5. It is observed from the case records that the appellant failed to correlate the invoices issued by them to M/s. Asian Elevators Controls & Automation in respect of the entries found in the ledger under correspondence with M/s. Asian Elevators Controls & Automation. Had the goods been removed under invoices, the appellant could have been able to correlate it with the entries reflected in the ledger mailed to M/s. Asian Elevators Controls & Automation. The Rule 11 of the Central Excise Rules, 2002 clearly says that no excisable goods should be removed from a factory or warehouse without any invoice. However, it is evidencing from the records that the goods were removed without issuing the invoices at the relevant point of time in violation of the said rule. Not only that, it was also found that the same were not reflected in their return. Even the documents pertaining to the appellant was recovered from the premises of his brother which can not be said to be justified. When non/short payment of excise duty was found and violation of the Act and Rules had been noticed which came out from the records of the appellant itself, it was on part of the appellant to prove that there was no short or non-payment and the amount of excise duty had been properly paid by them. It is further to say that when proper documents were provided to the appellant regarding the delivery challans referred under SCN, it was the appellant who had to show that the delivery challans were properly correlated with the invoices issued in respect of such delivery challans which they failed to do so. It was also contended by the appellant that some of the delivery challans were cancelled, however, the appellant failed to prove it by producing some documentary evidence. When the excise duty has been calculated on the basis of some documents, oral cross argument in defence can not be accepted and the oral arguments should be proved with some documentary evidences. Moreover, the certificate dated 09.06.2016 of the Chartered Accountant upon which reliance has been placed by the appellant, a detail discussion has been given by the adjudicating authority categorically for not accepting the same and I am also in agreement with the contention putforth by the adjudicating authority for not accepting the same. It is pertinent to mention here some of the wordings observed by the adjudicating authority as under :

"The above certificate has been issued on the specific request of the assessee and it does not create any liability on us also shall not be considered as legal opinion"

The records of the case also reveal that this was a clear case of clandestine removal with other discrepancies which was proved by the Department beyond any doubt. The



adjudicating authority has also properly explained and discussed the matter in detail to arrive at the decision in the impugned order. The duty amount arrived at by the Department was based on the documents seized during the course of investigation and which were also in the knowledge of the appellant itself. Thus it can be well inferred that the demand of duty was confirmed on the basis of the records available in the matter and therefore I uphold the demand of excise duty under the impugned order. There was also failure on part of the appellant to prove the proper discharge of duty regarding the clearance of inputs on which cenvat was availed.

6(i). Regarding the contention of the appellant in respect of cum duty benefit, it will be proper to see the Section 4, relevant for the purpose. Section 4 and Section 12B reads as under :

“SECTION 4. Valuation of excisable goods for purposes of charging of duty of excise. — (1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall -

(a) in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value;

(b) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed.

[**Explanation. —** For the removal of doubts, it is hereby declared that the price-cum-duty of the excisable goods sold by the assessee shall be the price actually paid to him for the goods sold and the money value of the additional consideration, if any, flowing directly or indirectly from the buyer to the assessee in connection with the sale of such goods, and such price-cum-duty, excluding sales tax and other taxes, if any, actually paid, shall be deemed to include the duty payable on such goods.]

SECTION 12B. Presumption that the incidence of duty has been passed on to the buyer. — Every person who has paid the duty of excise on any goods under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such duty to the buyer of such goods.”

6(ii). From the above, it is clear that the Assessable Value/sale amount of the goods is required to be considered as the Value/amount including the excise duty. Thus, benefit of cum duty is available to the appellant. Due to unavailability of invoices, the assessable value of the goods in question was arrived at by the Department by taking the value of similar goods that were cleared under the invoices of the nearest date. The appellant is also in agreement with the valuation of goods being taken by the Department in the instant case. Since the cum duty benefit is available, the amount of duty will be required to be calculated afresh in view of this. Moreover the full incidence of such duty would be deemed to have been passed to the buyer of such goods according to Section 12B.

6(iii). The Circular No.1053/2/2017-CX dated 10.03.2017 referred by the appellant in their grounds of appeal at page-18 is not at place as it is not found to have any relevance with the present case where the SCN has been issued after following the procedure prescribed in the matter. Further the contention raised by the appellant in



respect of principal of natural justice has already been discussed in para 4 and 5 supra therefore no further discussion is required in this respect.

7(i). Another contention which has been raised by the appellant is that they have not been granted the option to pay reduced penalty imposed under Section 11AC in the impugned order. Section 11AC reads as under :

“SECTION 11AC. Penalty for short-levy or non-levy of duty in certain cases. — (1) The amount of penalty for non-levy or short-levy or non-payment or short-payment or erroneous refund shall be as follows :-

(a) where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, for any reason other than the reason of fraud or collusion or any wilful mis-statement or suppression of facts or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, the person who is liable to pay duty as determined under sub-section (10) of section 11A shall also be liable to pay a penalty not exceeding ten per cent. of the duty so determined or rupees five thousand, whichever is higher :

Provided that where such duty and interest payable under section 11AA is paid either before the issue of show cause notice or within thirty days of issue of show cause notice, no penalty shall be payable by the person liable to pay duty or the person who has paid the duty and all proceedings in respect of said duty and interest shall be deemed to be concluded;

(b) where any duty as determined under sub-section (10) of section 11A and the interest payable thereon under section 11AA in respect of transactions referred to in clause (a) is paid within thirty days of the date of communication of the order of the Central Excise Officer who has determined such duty, the amount of penalty liable to be paid by such person shall be twenty-five per cent. of the penalty imposed, subject to the condition that such reduced penalty is also paid within the period so specified;

(c) where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by reason of fraud or collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, the person who is liable to pay duty as determined under sub-section (10) of section 11A shall also be liable to pay a penalty equal to the duty so determined :

Provided that in respect of the cases where the details relating to such transactions are recorded in the specified record for the period beginning with the 8th April, 2011 up to the date on which the Finance Bill, 2015 receives the assent of the President (both days inclusive), the penalty shall be fifty per cent. of the duty so determined;

(d) where any duty demanded in a show cause notice and the interest payable thereon under section 11AA, issued in respect of transactions referred to in clause (c), is paid within thirty days of the communication of show cause notice, the amount of penalty liable to be paid by such person shall be fifteen per cent. of the duty demanded, subject to the condition that such reduced penalty is also paid within the period so specified and all proceedings in respect of the said duty, interest and penalty shall be deemed to be concluded;

(e) where any duty as determined under sub-section (10) of section 11A and the interest payable thereon under section 11AA in respect of transactions referred to in clause (c) is paid within thirty days of the date of communication of the order of the Central Excise Officer who has determined such duty, the amount of penalty liable to be paid by such person shall be twenty-five per cent. of the duty so determined, subject to the condition that such reduced penalty is also paid within the period so specified.”

7(ii). On reading the above Section, it is clear that the option of reduced penalty is available to the appellant subject to the condition specified in therein. An option, which has been provided to the assessee by law itself, the same would be available to any assessee even when such option is not given to the assessee in the order. Thus, the option of reduced penalty is available to the appellant subject to the condition stipulated therein.

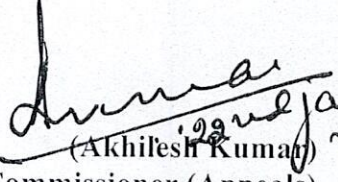
8. It has been further contended by the appellant that the SCN for the confiscation was issued after 6 months of seizure of goods and therefore the goods was required to be released unconditionally without imposition of redemption fine. It has been submitted by the appellant that power to seize the goods is vested in view of Section 105, 110, 115 [excluding clause (a) and (e) of sub-section (1),] clause (a) of Section 118,



Sections 119, 120, 121 and 124, [clause (b) and sub-clause (c) of sub-section (1) of Section 142] and 150] of the Customs Act, 1962 and in view of Section 110(2) the SCN for confiscation of goods placed under seizure has to be issued within six months of the date of seizure. However, it has been observed that the second proviso of the same Section provides that where any order for provisional release of the seized goods has been passed under Section 110A, the specified period of six months shall not apply. Here in the present case the goods in question were detained on 03.01.2014 which were released provisionally 02.07.2014 on the specific request of the appellant itself vide their letter dated 30.06.2014 i.e. within six months. Thus the redemption fine has been rightly imposed by the adjudicating authority in the impugned order and same is upheld.

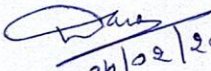
9. In view of above, I find that the demand has been rightly confirmed by the adjudicating authority in the impugned order and same has been upheld. It goes without saying that the interest would also be chargeable on the demand so upheld in this order. However, as discussed in para 6(ii) supra, since the cum duty benefit is available to the appellant the duty amount would be required to be calculated afresh in view of this. Since the duty amount would change in the matter, the interest amount would also change and as per the discussion in para 7(ii) supra due to the option of reduced penalty available to the appellant subject to fulfillment of condition prescribed in the law, the amount of penalty would also change.

10. With the direction contained in para 9 above, the matter is remanded to the adjudicating authority for calculation of demand, interest and penalty afresh and issuance of order in this respect. With this direction, the present appeal of the appellant stands disposed of in above manner.


(Akhilesh Kumar)
Commissioner (Appeals)

Date : 22.01.2020

Attested


04/02/2020

(Jitendra Dave)
Superintendent (Appeal)
CGST, Ahmedabad.



BY R.P.A.D. / SPEED POST TO :

M/s. Adco Controls,
Plot No.5318, GIDC, Phase-IV,
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4. The Addl./Jt. Commissioner, CGST & Cen. Excise, Ahmedabad South Comm'rate.
5. The Dy./Asstt. Commissioner, CGST & Cen. Excise, Division-III, Ahmedabad South Comm'rate.
- ✓ 6. Guard File.
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