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- टेलेफैक्स07926305136

NATION TAX MARKET

स्पीड पोस्ट

क फाइल संख्या : File No : V2(87)137&138/Ahd-South/2019-20/15052 TO 15057

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP- 025 & 026-2020-21
दिनाँक Date : 29-06-2020 जारी करने की तारीख Date of Issue 13/07/2020

आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)

ग Arising out of Order-in-Original No. 08/CX-I/Ahmd/ADC/KP/2019 दिनाँक: 31.07.2019 , issued by Addl.Commissioner, Central Tax, Ahmedabad-South

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

Maniar & Co.
Shafee Maniar
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 पूवोक्त 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 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 मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(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 केडिट 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 दिनाँक 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 रूपये या उससे कम हो तो रूपये 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.

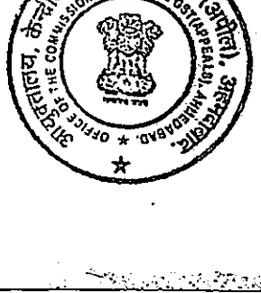
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

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 गें सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहगदाबाद 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. Registar 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 ओदश 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 हैं।

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 not withstanding 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 अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.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 in 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 अपीलो 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. Maniar & Co., Near Ajit Mills, Rakhial, Ahmedabad (hereinafter referred to as the "appellant1") and Shri Shafee Maniar, Managing Partner of M/s. Maniar & Co. (hereinafter referred to as the "appellant2") have filed the two appeals against the Order-in-Original No.08/CX-I/ADC/KP/2019 dated 31.07.2019 (hereinafter referred to as the "impugned order") passed by the Addl. Commissioner of CGST, Ahmedabad South Commissionerate (hereinafter referred to as the "adjudicating authority").

2(i). The facts of the case, in brief, are that the appellant1 is engaged in the manufacture of utility equipments for Municipal Corporation, PWD, Fire Department etc. and also in Auto body building. On the basis of intelligence, a search was conducted at the premises of appellant and it was found that they were not including the value of chassis while determining the admissibility of SSI exemption. Further, they also did not include value of scrap, cleared by them, in assessable value. On conclusion of investigation, a Show Cause Notice (hereinafter referred to as the "SCN") dated 06.11.2008 was issued by the Addl. Commissioner of Central Excise, Ahmedabad-I proposing demand of Rs.43,84,847/- alongwith interest and appropriating Rs.1,50,000/- already paid by the appellants against the said demand. Penalty was also proposed to be imposed upon appellant1 and appellant2 under the said SCN, looking to his involvement of appellant2. It was alleged in the SCN that the appellant1 has not included the value of duty paid chassis and/or engine (supplied by their customers), in the value of the goods manufactured (i.e. body building etc.) by them and thereby they have suppressed the material fact with an intention to evade payment of duty and to avail SSI exemption. The adjudicating authority vide the Order-in-Original No.64/Addl.Commr./2009 dated 01.04.2009 confirmed the demand of central excise duty amounting Rs.43,84,847/- alongwith interest and imposed penalty equivalent to excise duty amount upon the appellant1. Further, penalty of Rs.10,00,000/- was also imposed upon appellant2 vide the Order-in-Original No.70/Addl.Commr./2009 dated 14.05.2009.

2(ii). Being aggrieved with the said Orders-in-Original, the appellants preferred the appeals before the then Commissioner(Appeals), Central Excise, Ahmedabad who vide its Orders-in-Appeal No.9&10/2011(Ahd-I)Central Excise/MM/Commr(A)/Ahd dated 04.03.2011 upheld the said Orders-in-Original and rejected the appeals. The appellants filed appeals before the Hon'ble CESTAT against

the said Orders-in-Appeal. The Hon'ble CESTAT, Ahmedabad vide its Order No.A/10172-10173/2017 dated 24.01.2017 under Para-2 framed the issues as under :

"(i) Whether for deciding the eligibility of SSI exemption, value of chassis supplied by the customers are to be included in aggregate value of clearances for home consumption or not ?
(ii) Whether the appellant is entitled to cum-duty benefit, where they had not collected excise duty from their customers ?
(iii) Whether the appellant would be entitled to facility of CENVAT credit on the inputs used in the manufacturing of the goods, when they start paying central excise duty ?"

2(iii). The answer of the above three issues had gone in favour of the appellants as discussed by the Hon'ble CESTAT, Ahmedabad under para-6 of the said Order. In its order, the Hon'ble Tribunal finally under para-7 directed as under :

"The issue of quantification of demand of duty of central excise and the penalty, if any, has to be decided in the light of the observations and findings given above by the original adjudicating authority within four months of receipt of this order after giving necessary opportunity of personal hearing and submission of evidence as per law, to the appellant and for this purpose the matter is remanded to the original adjudicating authority".

3. The Department filed Tax Appeal No.759-760/2017 before the Hon'ble Gujarat High Court against the said order of the CESTAT which was dismissed on 08.03.2018 by the High Court as reported under 2018(16)GSTL 85(Guj). The order of the Hon'ble High Court has been accepted by the Department.

4(i). After hearing the appellants in remand proceedings, the adjudicating authority found that prior to F.Y. 2006-07, the appellant1 was falling within the SSI exemption limit; that since the goods falling under chapter CTH 8703, 8704 and 8705 were cleared at Nil rate by virtue of Notification No.6/2002-CE (Srl. No.212 & 217) prior to 01.03.2006, and by virtue of Notification No.6/2006-CE dated 01.03.2006 (Srl. No.39 & 52) w.e.f. 01.03.2006, the cenvat credit of inputs utilized in such goods was not eligible to the appellant1 under Rule 6(1) of the Cenvat Credit Rules, 2004; that the appellant1 was manufacturing both dutiable and exempted goods and therefore they were not entitled to cenvat credit for the goods which were exempted from excise duty; that the appellants did not submit the quantum of inputs used in dutiable goods and the goods cleared at NIL rate of duty therefore their claim for cenvat credit on entire quantity of inputs can not be entertained; that according to Rule 9 of the Cenvat Credit Rules, 2004, the cenvat can be taken on original invoice only whereas the appellants did not produce/submit original invoice towards their claim for cenvat credit and thus the benefit of cenvat credit can not be granted in absence of original invoices; that she principally is agreed to the fact that the appellants are entitled to cenvat credit towards the inputs used in the manufacture of dutiable goods; that she left the work relating to quantification of the cenvat credit to the jurisdictional Assistant/Deputy Commissioner of Central Excise to ascertain the correct credit admissible to the appellants.

4(ii). The adjudicating authority finally arrived at the central excise duty liability of Rs.12,63,787/- for the period 2006-07 and confirmed the same alongwith interest vide the impugned order. The amount of Rs.1,50,000/- already paid by the appellants was adjusted against the said demand. Penalty equivalent to excise duty was imposed upon the appellant1 under Section 11AC of the Central Excise Act, 1944 and Penalty of Rs.5,00,000/- was imposed upon appellant2 under Rule 26 of the Central Excise Rules, 2002 under the impugned order.

5. The appellants are in appeal before this authority against the said impugned order on the grounds that the amount paid from PLA, rebate adjustment and cenvat may be adjusted against the said demand; that they have calculated the amount of duty liability and has been shown in the said appeal; that there was difference of opinion on interpretation of statues and therefore the penalty imposed under Section 11AC is not justified; that they rely on the case laws as under in this respect :

(a) 2007(210)ELT 84(Tri-Ahmd.) in case of M/s. White Silico Pvt. Ltd.

(b) 2005(187)ELT 119(Tri-Del.) in case of M/s. Anand Metal Industries.

(c) 2007(207)ELT 241(Tri-Mumbai) in case of M/s. Ircon International Ltd.

They also submitted that the law, in so far as Section 11AC is concerned, has been settled in the judgement of the Supreme Court in Dharmendra Textiles reported in 2008(231)ELT 3(SC) and explained in Rajasthan Spinning & Weaving Mills Ltd. 2009(238)ELT 3(SC) laid down that Revenue has to prove the predicates of Section 11AC one of which is that the non-payment of duty was with an intent to evade payment of duty; that Section 11AC would be invoked only where duty of excise has not been paid by reason of fraud, collusion and willful mis-statement or suppression of facts.

6. Personal Hearing in the case was held on 22.06.2020. Shri Vipul Khandhar, Chartered Accountant, appeared on behalf of the appellants. He reiterated the submissions made in the appeal memorandum. He further stated that the firm had paid differential duty alongwith interest before issuance of Show Cause Notice and requested for waiver of penalty. He also made written submission in the form of synopsis during hearing and requested for consideration. In his written submission, he interalia contended that the adjudicating officer has remanded order for quantification which department has not done. As regards penalty on Director, he submitted that the principal company has already complied with law and hence penalty may be waived as there was no involvement of Director.

7(i). I have carefully gone through the facts of the case, grounds of appeal in the Appeal Memorandum, and the submissions made at the time of personal hearing. It

is observed that the issues in the matter have already been decided by the Hon'ble CESTAT, Ahmedabad. The matter was remanded back to the adjudicating authority for limited purpose of quantification of demand and penalty based on Tribunal's order. The adjudicating authority has in para 24.1 arrived at the demand of Rs.12,63,787/- for F.Y. 2006-07 and accordingly re-quantified the demand alongwith interest and penalty. It is also pertinent to mention that the calculation of duty liability done by the appellant and submitted by them in their appeal memorandum at page-10 and in their written submission during the course of personal hearing shows the same figure Rs.12,63,787/- as arrived at by the adjudicating authority. From this, it is clear that there remains no dispute regarding the excise duty liability of Rs.12,63,787/- on part of the appellant1 and it attains finality.

7(ii). As regards extending the benefit of CENVAT, the adjudicating authority has in para 24.2 of the impugned order held that the appellant1 is not eligible for cenvat credit on the inputs used in manufacture of motor vehicles falling under C.H. 8703, 8704 and 8705 in terms of Condition No. 52 and 9 of the Notification No.6/2002-CE and No.6/2006-CE respectively. Further, since the goods falling under these CTHs are cleared at NIL rate of duty, cenvat credit of the inputs utilized in such goods is not admissible as per Rule 6(1) of the Cenvat Credit Rules, 2004. It was further held that the appellant1 was manufacturing both dutiable as well as exempted goods and hence they were not entitled to cenvat credit on inputs utilized in manufacture of goods cleared at NIL rate of duty. It was further held that since appellant1 has not submitted the quantum of inputs used in dutiable goods as well as goods cleared at NIL rate of duty, their claim for Cenvat on entire quantity of inputs can not be entertained. Since they had produced only Xerox copies of invoice and also not gave details of inputs used in the manufacture of dutiable goods, the matter of quantification of admissibility of actual Cenvat was entrusted to jurisdictional Assistant/Deputy Commissioner of Central Excise to correctly ascertain the quantum of admissible Cenvat. However, it is not coming out either from the records or from the submission of the appellants whether quantification of the cenvat admissible to the appellant1 has been finalized or not. It is observed that the impugned order was issued on 31.07.2019 and it is unclear regarding the finalization of cenvat which is not in consonance with the order of the Hon'ble Tribunal. Had the cenvat admissible to the appellant1 been finalized, it could have been adjusted against the said demand and only remaining demand was then remained to be demanded for recovery. It would have also have bearing on the interest payable thereon.

7(iii). It was also contended by the appellant1 that the amount paid by them towards the demand and the rebate adjusted against the said demand has also not been

considered in the impugned order leading to charging of higher interest. I find that the contention of the appellant appears to be genuine in as much as, if some amount has been paid by the appellant and some amount has been adjusted towards the said demand by the Department, that is required to be considered in the impugned order itself. The impugned order lacks detail on this aspect.

7(iv). So far as the penalty upon appellant1 is concerned, it is observed that the appellant himself has came forward with the calculation of outstanding demand of excise duty to the tune of Rs.12,63,787/- for the period 2006-07 which makes it explicit that there was short payment of duty on part of the appellant1 which was clear and was in knowledge of the appellant1. It is also coming out of the records that there was non-payment of excise duty on the scrap sold by the appellant1. The appellant1 is in the excise regime since long therefore it can not be expected from him regarding the non-payment of excise duty on sale of scrap. Even the invoices were not prepared for sale of scrap which clearly shows their deliberate intention of non-payment of duty. Therefore, the adjudicating authority has rightly imposed penalty upon the appellant1 under Section 11AC. The appellant1 has relied upon the judgement of Hon'ble Supreme Court in case of M/s. Rajasthan Spinning & Weaving Mills reported at 2009(238)ELT 3(SC) for waive of penalty imposed under Section 11AC of the Central Excise Act, 1944. However, in the same judgement the Apex Court has held that *"Authorities having no discretion on quantum and penalty equal to duty must be imposed once Section 11AC ibid is applicable – Penalty under Section ibid set aside by Tribunal on the ground of payment of duty before issue of show cause notice – Reason assigned by Tribunal to set aside penalty misconceived"*. It was further held by the Apex Court that *"Penalty under Section 11AC of Central Excise Act, 1944 whether not imposable when duty paid before issue of show cause notice – Conditions for penal liability spelt out in Section 11AC ibid – Payment of duty before or after notice can not alter liability to penalty"*.

From the above, it is clear that the penalty under Section 11AC has been rightly imposed upon appellant1 by the adjudicating authority.

7(v). As regards the penalty imposed on appellant2 under Rule 26 of the Central Excise Rules, 2002 is concerned, it is observed that no demand pertains to the period prior to 2006-07. However, for the period 2006-07, penalty has also been imposed upon the appellant1. It is observed from the case records that the involvement of appellant2 can be limited to the sale of scrap which was not accounted for, which is factual and undisputed fact. There is no value available for the period 2006-07 for sale of scrap and the sale of scrap figure for the period 2005-06, available in Hon'ble CESTAT's order is Rs.3,14,122/-. Rule 26 of the Central Excise Rules, 2002 says :

"Penalty for certain offences. — [(1)] Any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or these rules, shall be liable to a penalty not exceeding the duty on such goods or [two thousand rupees], whichever is greater.

[Provided that where any proceeding for the person liable to pay duty have been concluded under clause (a) or clause (d) of sub-section (1) of section 11AC of the Act in respect of duty, interest and penalty, all proceedings in respect of penalty against other persons, if any, in the said proceedings shall also be deemed to be concluded.]

[(2) Any person, who issues -

(i) an excise duty invoice without delivery of the goods specified therein or abets in making such invoice; or
(ii) any other document or abets in making such document, on the basis of which the user of said invoice or document is likely to take or has taken any ineligible benefit under the Act or the rules made thereunder like claiming of CENVAT credit under the CENVAT Credit Rules, 2004 or refund, shall be liable to a penalty not exceeding the amount of such benefit or five thousand rupees, whichever is greater.]"

Since, the appellant2 involved in the sale of scrap without issuing invoices and without payment of central excise duty, the penalty upon the appellant2 has been rightly imposed by the adjudicating authority. However, looking to the quantum of liability, the amount of penalty of Rs.5,00,000/ appears to be on higher side. Therefore, the same may be determined in consonance with the excise duty involved in the sale of scrap for the year 2006-07 so far as appellant2 is concerned. Hence, the matter needs to be remanded back to the adjudicating authority to determine the penalty in terms of relevant legal position.

8. From the above, it is clear that the adjudicating authority did not decide the issue pertaining to Cenvat credit available to the appellant1 and proceeded to decide the issue that pertains to demand, interest and penalty only. When the adjudicating authority chose to decide the matter, the issue pertaining to Cenvat was also required to be attended/decided alongwith the other issues. It is also not clear from the records whether the issue of cenvat has been decided till date or not. The CESTAT in its para 6.3 of the order said that

(Relevant Part)
"the appellant is making payment of duty of central excise on the manufacture, once they crossed the SSI exemption limit. When there is payment of duty for the goods manufactured, there cannot be any reason not to offer the facility of CENVAT credit for the inputs used for such manufacturing..... Once the appellant has crossed the SSI exemption benefit and starts paying central excise duty on their manufacturing they would be entitled to the factility of CENVAT credit on the inputs used for their manufacturing".

From this it is clear, that the said impugned order lacks details on the aspect of Cenvat and failed to follow the direction fully as given in order of the Hon'ble CESTAT. The directions of the higher authority were required to be followed fully and

therefore leaving an issue unattended though directed by the higher authority makes the order not proper and justified. The impugned order should have attended all the issues simultaneously. Had all the issues been considered, the adjudicating authority could have seen the actual liability of the appellants and the amount available to the appellant1 in the form of Cenvat could have been adjusted towards the said demand. There too might be a situation, where the appellants would not have to pay any duty or interest under the impugned order.

9. In view of the foregoing discussion, I set aside the impugned order and remand the matter back to adjudicating authority to pass the order afresh considering the direction of Hon'ble CESTAT and decide all the issues in the same order. Both the appeals are decided by way of remand to the adjudicating authority. The appellants are also directed to submit the proper documents for availment of cenvat credit in the matter.

29 June, 2020.

(Akhilesh Kumar)
Commissioner (Appeals)

Date: .06.2020

Attested

10/07/2020

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

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

1. M/s. Maniar & Co.,
   Near Ajit Mills, Rakhial,
   Ahmedabad
2. Shri Shafee Maniar,
   Managing Partner of M/s. Maniar & Co.
   Near Ajit Mills, Rakhial,
   Ahmedabad

Copy to :-
1. The Principal Chief Commissioner, CGST & Central Excise, Ahmedabad Zone.
2. The Pr.Commissioner/Commissioner, CGST & Central Excise, Ahmedabad South Comm'rate.
3. The Addl. Commissioner, CGST & Cen.Excise, Ahmedabad South Comm'rate.
4. The Asstt. Commissioner, System, CGST & Central Excise, Ahmedabad South Comm'rate.
5. Guard File.
6. P.A. File.