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

रजिस्टर्ड डाक ए.डी. द्वारा

DIN: 20210364SW000042474B

क फाइल संख्या : File No : GAPPL/COM/CEXP/65/2020

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP- 80/2020-21**

दिनाँक Date : **18-03-2021** जारी करने की तारीख Date of Issue

श्री अखिलेश कुमार आयुक्त (अपील) द्वारा पारित

Passed by Shri. Akhilesh Kumar, Commissioner (Appeals)

ग Arising out of Order-in-Original No **MP/01/KN/DC/CGST/Div-V/Dem/2020-21 dated 18.06.2020** issued by Deputy Commissioner, CGST, Division-V,Gandhinagar Commissionerate.

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

M/s Sterling Abrasives Limited, Plot No. 45/46, GIDC Estate, Odhav Road, Ahmedabad-382415.

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 issued under the Central Excise Act 1944,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.

(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 मामलें 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 डयूटी 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।

(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 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) **केंद्रीय जीएसटी** अधिनियम, 2017 की धारा 112 के अंतर्गतः–

Under Section 112 of CGST act 2017 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. 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)

(7)

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

(iv) *(Section)* खंड 11D के तहत निर्धारित राशि;
(v) लिया गलत सेनवैट क्रेडिट की राशि;
(vi) 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:

(xliii) amount determined under Section 11 D;
(xliv) amount of erroneous Cenvat Credit taken;
(xlv) 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।

8(I) 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."

II. **Any person aggrieved by an Order-In-Appeal issued under** the Central Goods and Services Tax Act,2017/Integrated Goods and Services Tax Act,2017/ Goods and Services Tax(Compensation to states) Act,2017,may file an appeal before the appellate tribunal whenever it is constituted within three months from the president or the state president enter office.

ORDER-IN-APPEAL

This order arises on account of an appeal filed by M/s. Sterling Abrasives Ltd., Plot No. 45/46, GIDC Estate, Odhav Road, Ahmedabad-382415 (hereinafter referred as '*the appellant*') against the Order-in-Original No.MP/01/KN/DC/CGST/Div-V/Dem/2020-21 dated 18.06.2020 (hereinafter referred as '*the impugned order*') passed by the Deputy Commissioner, Central GST, Division-V, Commissionerate: Ahmedabad-South (hereinafter referred as '*the adjudicating authority*').

2. The facts of the case, in brief, are that the appellant was engaged in the manufacture of Grinding Wheels falling under CETH 6801 of the Central Excise Tariff Act, 1985. During the course of CERA audit of the records of the appellant for the period from F.Y. 2013-14 to F.Y 2017-18 (upto June 2017), an objection was raised vide LAR No. 121/17-18 dated 16.03.2018 that the appellant was not paying Central Excise duty on sale of dust, which was in the nature of scrap. Accordingly, a Show Cause Notice bearing No. V.CERA/03-12/Sterling/18-19 dated 23.08.2018 was issued to the appellant demanding Central Excise duty amount of Rs. 26,36,317/- leviable on the "dust" valued at Rs. 2,10,90,551/- cleared during the period from F.Y. 2013-14 to F.Y 2017-18 (upto June 2017), on the grounds that the dust generated during the manufacture process is an excisable product which is classifiable under Chapter 382490 of the Central Excise Tariff Act, 1985.

2.1 The adjudicating authority vide the impugned order confirmed the demand of Central Excise duty of Rs. 26,36,317/- under Section 11A (4) of the Central Excise Act, 1944 alongwith Interest at the appropriate rate and penalty of Rs. 26,36,317/- has also been imposed under Section 11AC (1) (C) of Central Excise Act, 1944 read with Rule 25 of Central Excise Rules, 2002, on the grounds reproduced below:

(i) The dust generated as scrap is a combination of binder, abrasive grains and ceramic bond which had undergone various manufacturing processes. All the materials binder, abrasives grains and ceramic bond are natural product and are classifiable under Chapter "382490" as "Chemical Product and Preparations of the Chemical or Allied Industries (including those consisting of mixtures of natural products) not elsewhere specified or included". The same view was taken by the CEGAT, Delhi in the case of Carborundum Universal Ltd Vs Collector of Central Excise dated 12.10.1992 (reported at 1993 ECR 666 Tri Delhi, 1993(63) ELT 548 Tri Delhi)

(ii) The dust generated while manufacturing grinding wheels was a process incidental or ancillary to the completion of a manufactured product. During the process of dressing (means

giving shapes by cutting edges or other parts of wheel) of grinding wheels, dust is generated which is incidental.

(iii) *The appellant has received a considerable amount against the sale of dust. Accordingly, the dust is marketable.*

(iv) *It was obligatory on the part of the appellant to show the full and correct value in their ER-3 returns and by not declaring the value of such goods have rendered themselves liable for penal action for suppression of fact which was with the intention to evade the payment of duty. Therefore, this fact was unearthed only when Audit was taken place and extended period of 5 year is invoked correctly.*

3. Aggrieved with the impugned order, the appellant has filed the present appeal mainly on the following grounds:

(i) The adjudicating authority has relied upon the decision of Hon'ble *CEGAT, Delhi in the case of Carborundum Universal Ltd Vs Collector of Central Excise dated 12.10.1992 (reported at 1993 (63) ELT 548 Tri Delhi).* But this case law is not for "dust" arising during the course of manufacture of grinding wheels. The product examined by the Tribunal in the said case was "grains" which were in the nature of crushed powder of scrap grinding wheels and graded as per the mesh size. It was claimed that there were some buyers who buy the graded grains for use in sand blasting, cleaning lithographic plates etc whereas in the present case, dust arising in their factory is neither used nor usable for such purposes. Accordingly, the product considered by the Tribunal in that case was totally different and hence, inapplicable and irrelevant to the present case.

(ii) The excise duty could be levied and recovered on waste and scrap only when there was a specific Heading or Sub-Heading or Entry for the same under the Tariff. There is no Entry or Heading or Sub-Heading for dust of grinding wheel under any chapter of the Tariff and considering this legal position, the Appellate Tribunal has also held in the case of Carborundum Universal Ltd. [1998 (103) ELT 363] that dust emerging during grinding and polishing of grinding wheels was only a natural waste and not excisable goods.

(iii) The Commissioner (Appeals), Ahmedabad had also held in the appellant's favour vide **OIA No. 237/2006** as regards non-excisability of such dust. The decision rendered by the Commissioner (Appeals) was not upturned by the higher forum and therefore, the adjudicating authority had no jurisdiction to

decide contrary. Moreover, the decision of the Hon'ble Tribunal in the case of Carborundum Universal Ltd. [1998 (103) ELT 363] which covered the issue of sale of dust in favour of the appellant was not even discussed in the impugned order. Thus, there was a gross violation of judicial discipline and proprietory, in terms of the following decisions:

- *Hon'ble Supreme Court in case of Union of India Vs. Kamlakshi Finance Corporation Ltd. [1991 (55) ELT 433 (SC)]*
- *Hon'ble High Court of Bombay in case of Eco Valley Farms & Foods Ltd. Vs. Commissioner of C.Ex., Pune-III [2013 (290) ELT 49 (Bom.)]*
- *Hon'ble Tribunal in case of Commissioner of Central Excise, Indore Vs. Shree Synthetics Ltd. [2006 (206) ELT 491 (Tri. Del.)]*

(iv) In past, the department had also raised an issue that the "dust" was a by-product in the nature of "excisable goods" but chargeable to NIL rate of duty and accordingly, an amount equal to 8%/10% of the sale value of such dust was required to be recovered from the appellant. But this issue has been decided by the Hon'ble Appellate Tribunal, Ahmedabad in favour of the appellant vide Order No. A/119/WZB/AHD/2010 dated 04.02.2010 underwhich it is held that the issue raised by the Revenue was squarely decided by the Tribunal in the cases of (i) DCW Ltd. Vs. CCE, Tirunelveli [2007 (218) ELT 579 (Tribunal-Chennai)] and (ii) Chengalrayan Cooperative Sugar Mills Ltd. Vs. CCE, Pondicherry [2007 (218) ELT 416 (Tribunal-Chennai)] that clearance of waste without payment of duty do not attract Rule 6(3)(b) of Cenvat Credit Rules, 2004.

(v) The adjudicating authority while confirming the demand exceeded her jurisdiction to classify "dust" under CTH 382490 of the Tariff, as the Show Cause Notice was issued for recovery of excise duty on sale of dust for the relevant period but to classify under CTH 382490 of the Tariff was not even proposed therein. Even otherwise, CTH 382490 cannot be considered for the clearance of the dust because CTH 382490 of the Tariff deals "others" and the "dust" generated from grinding wheels is not covered therein. The adjudicating authority has also not mentioned how "dust" would fall under the said CTH and accordingly, primary burden to prove classification of dust is not discharged by the adjudicating authority.

(vi) The Hon'ble Supreme Court has settled the proposition of law in the case of Indian Aluminium Co. Ltd reported in 1995 (77) ELT

268 (SC) that any waste or scrap materials that fetches some price in the market is not in the nature of excisable goods and this principle is thereafter followed by the Appellate Tribunal and also various Courts of Law. The factory is set up and established for manufacturing of grinding wheels, which are the intended final products and hence, there is no "manufacturing process" for dust. Accordingly, the impugned order holding that the process for manufacturing of grinding wheels and dust up to a certain stage is without any basis and justification.

(vii) As regards the Show Cause Notice invoking larger period of limitation, there is no suppression of facts on the part of the appellant because the proceedings that resulted in OIA No. 237/2006 and also the final order of the Appellate Tribunal dated 04.02.2010 duly establish that the jurisdictional officers were aware about emergence of dust in the appellant's factory and also about its sale without payment of any excise duty thereon. Further, the proceedings were also initiated against the appellant in the past on the basis that dust was "exempted goods"; and therefore alleging that the department has come to know about the practice of selling dust without payment of duty only during the course of CERA Audit is incorrect and unjustified. Accordingly, there is no justification in the action of invoking extended period of limitation against the appellant in the impugned order.

4. Personal hearing in the matter was held on 21.01.2021. Shri Amal Dave, Advocate, appeared on behalf of the appellant. He re-iterated submissions made in the Appeal Memorandum. He also submitted that the case has been decided in their favour in past by the Commissioner (Appeals) as well as Tribunal and the adjudicating authority has passed order without considering the settled legal position by higher appellate authority.

5. I have carefully gone through the facts of the case, submissions made in the Appeal Memorandum as well as submissions made at the time of personal hearing and evidences available on records. I find that the issues to be decided in this case are as under:

(i) Whether Central Excise duty is leviable on "dust" classifying under Chapter 382490, which has been arising during the course of manufacturing of "Grinding Wheels" falling under Chapter Head 6801 of the First Schedule to CETA, 1985?

(ii) Whether extended period of limitation is invokable in the present case?

5.1 It is observed from the case records that the appellant was engaged in the manufacture of Grinding Wheels falling under Chapter 6801 of the First Schedule to CETA, 1985 and "dust" was being generated during the course of manufacturing of their said finished goods. Such "dust" was being cleared by the appellant without payment of Central Excise duty, considering the same as non-excisable item. Subsequent to the objection raised by CERA Auditors, a Show Cause Notice demanding Central Excise duty to the tune of Rs. 26,36,317/- on the clearance of such "dust" cleared by the appellant during the period from F.Y. 2013-14 to F.Y 2017-18 (upto June 2017). The adjudicating authority vide impugned order, mainly relying on the decision of Hon'ble CEGAT, Delhi in the case of Carborundum Universal Ltd Vs Collector of Central Excise dated 12.10.1992 (reported at 1993 (63) ELT 548 Tri Delhi) held that "*the dust generated as scrap is a combination of binder, abrasive grains and ceramic bond which had undergone various manufacturing processes. All the materials binder, abrasives grains and ceramic bond are natural product and are classifiable under Chapter "382490" as "Chemical Product and Preparations of the Chemical or Allied Industries (including those consisting of mixtures of natural products) not elsewhere specified or included".* The adjudicating authority vide the impugned order also contended that the conditions of manufacturing and marketability are fulfilled in the present case, which makes the product in question an "excisable goods".

5.2 In the present case, the appellant has relied upon the decision of the Hon'ble Customs, Excise and Gold Appellate Tribunal-Tamil Nadu issued on date 14.07.1998 in the case of Carborandum Universal Ltd. [1998 (103) ELT 363]. In the said case, Hon'ble CEGAT held that:

> *"3. The short point involved is whether the fine powdery substance called "Dust Collector Fine" which emerges during the grinding and polishing of grinding wheels is*
>
> *(a) "goods" and therefore excisable; and*
>
> *(b) if so, its actual classification under CETA, 1985.*
>
> *9. We have carefully considered the arguments on both sides. We find that the circular of CBEC referred to supra does not cover the subject product because the process of manufacture detailed therein is different. Also the product's nature is different being standardised and having been consciously manufactured at will. Whereas 'Dust Collector Fine' is a heterogenous mixture of non standardised particles and not consciously manufactured, instead it is willy-nilly collected as waste product.*
>
> *10. Therefore, the only question left for consideration is that merely because it is being admittedly sold, therefore is it 'goods'? Only if it is held*

to be 'goods', then the next question of its classification under CETA, 1985 arises and not vice versa. The law is clearly now laid that merely because an item falls within a particular tariff description, it is not 'goods'. Ld. Advocate argues that it is sold as waste. We find that this item is akin in nature to floor sweepings arising out working of metals etc. on machine tools. The only difference being that these may or may not be collected in receptacles. That depends from plant to plant. But in neither case, they are consciously produced under controlled conditions and pre-determined processes. Instead both arise compulsorily and are collected willy-nilly. Even floor sweepings of ferrous or non-ferrous nature are sold sometimes. But while it is true that an item to be 'goods' must be marketable i.e. capable of being sold, yet everything that is sold is not necessarily 'goods'. While the first proposition is well settled law, the converse is not true. This is all the more true in our country where recycling is a flourishing industry and almost all kinds of waste are sold. The ld. Collector (Appeals) arrives at a similar conclusion in the impugned order that such a waste product cannot be an article of ceramic, mica etc. etc., and therefore cannot fall under 68.07.

11. We note that the Hon'ble Delhi High Court in their judgment in Modi Rubber [1987 (29) E.L.T. 502] have held that waste/scrap obtained not by any process of manufacture (same as our discussion above regarding conscious manufacture or otherwise) but in the course of a manufacturing process (of tyres/tubes etc.) are not excisable, even though they are capable of fetching some price. Our conclusion above is fully supported by this case-law. Further in the case of HMM Ltd. [1989 (40) E.L.T. 422] the Hon'ble Tribunal have relied upon this judgment of Hon'ble Delhi High Court and held that coal cinder is a waste material and merely because it can fetch some price, it does not become excisable goods. Similarly, in the case of Asiatic Oxygen as reported in 1989 (44) E.L.T. 718 the Tribunal has held that carbide sludge is industrial waste and not excisable goods. The Tribunal has again followed the decision of Modi Rubber (supra) in the case of Singareni Collieries Co. Ltd. as in 1988 (34) E.L.T. 671 (T) wherein it was held that saw dust and sawn paratty arising in the course of sawing of wooden logs are not 'excisable goods' even though they are partly captively consumed and partly sold. Similarly, the Tribunal followed Modi Rubber (supra) in 1990 (47) E.L.T. 55 (T) (Kamath Packaging Pvt. Ltd.). In a similar vein, in the case of M/s. Orient Collector Of C. Ex. vs Carborandum Universal Ltd. on 14 July, 1998 Indian Kanoon - http://indiankanoon.org/doc/1189560/ 2Ceramics & Industries Ltd. [1993 (65) E.L.T. 426] the Tribunal held that broken glazed tiles were not excisable goods merely because of its sale for a nominal price. The additional ground therein was that the said product would not fall under 6909.90 (not being tiles) or under the residuary item (being waste material not capable of re-cycling). Again the Tribunal has followed Modi Rubber and Kamath Pacakaging (supra) in case of Alok Udyog Vanaspati & Plywood Ltd. as in 1994 (74) E.L.T. 261 (T) and held that Cinder ash etc., arising as waste in manufacture of final products, although fetch a price in market as waste, are not liable to duty.

12. In this view of the above discussions and precedential laws, we clearly find that the "dust collector fine" in this case is also industrial waste and even if it fetches a nominal price, it is not excisable goods, there being no sub-heading for waste/scrap of abrasive materials in the Central Excise Tariff Act, 1985. Therefore, the impugned order-in-appeal merits no interference and the Revenue appeals fails. It is rejected accordingly."

In the present case also, it is observed that the "dust" has emerged during the course of manufacturing of their final product viz. Grinding Wheel, particularly during the last process of manufacturing namely dressing of such grinding wheels. No contrary facts have been produced by the adjudicating authority. Accordingly, I find that the present case is squarely covered by the said judgment of Hon'ble CEGAT, Tamilnadu according to which "dust collector fine" is declared as non excisable goods.

5.3 Further, it is observed that the adjudicating authority placed reliance on the decision of the CEGAT, Delhi in the case of Carborandum Universal Ltd Vs Collector of Central Excise dated 12.10.1992 [1993(63) ELT 548 Tri Delhi] and taken a view that all the materials binder, abrasives grains and ceramic bond were natural product classifiable under hearing no. 382490 as "Chemical Products and Preparations of Chemical or Allied Industries". I find that Hon'ble CEGAT, Delhi in the case of Carborandum Universal Ltd Vs Collector of Central Excise [1993(63) ELT 548 Tri Delhi] held as reproduced below:

***"27.** From the above it is clear that Heading 3801 would embrace within its scope those miscellaneous products which consist of mixtures of natural products. The main inputs of the subject goods have been mentioned by the appellants to be Aluminium Oxide, Silicon Carbide, Flint/Quartz, Emery and Garnet. Collector (Appeals) has rejected the plea for classification of these products under Chapter 28 on the ground that the goods are not marketed as Aluminium Oxide or Silicon Carbide and are obtained by crushing the waste materials that arise out of manufacturing grinding wheels. He has also held that the items are bonded with clay. He has also taken into account the Chapter Notes to Chapter 38, according to which, all types of products such as antiknock preparations, oxidation inhibitors, gum inhibitors, viscosity improvers, anti-corrosive preparations, pickling preparations for metal surfaces, finishing agents, dye-carriers are all covered by this Chapter. The subject goods being mixtures of natural products have been appropriately held to fall under sub-heading 3801.90. We do not see any reason to differ with this finding and accordingly reject the appeal."*

On going through the facts mentioned in the said judgment of Hon'ble CEGAT [1993(63) ELT 548 Tri Delhi], I find that the issue under consideration was of "excisability" and "classification" of the final product namely "abrasive grains" variously described as "Cumite" which was being

manufactured by the appellant out of process scrap of grinding wheels by crushing it into powder and graded as per mesh size and sold as "grains" for use in sand blasting, cleaning lithographic plates etc. Whereas, in the present case, it is not disputed by the adjudicating authority as regards the fact that the product under consideration is "dust" arise during the manufacturing of grinding wheel and no further addition or grading etc. or any further process is being carried out on it, before selling of the same. Considering the facts on record, it is observed that the above judgment of Hon'ble CEGAT is not squarely applicable to the present case. Further, the adjudicating authority could not be able to produce any other justification for classifying the "dust" under CTH 382490. Accordingly, I do not find the impugned order passed by the adjudicating authority is sustainable on merits.

6. In the present case, on going through the OIA No. 237/2006 (Ahd-II) CE/Raju/Commr (A) dated 18.07.2006 passed by the Commissioner (Appeal-III), Ahmedabad, it is observed that issue of excisability and classification of the same product i.e. "dust powder" claiming under CTH 6805 of the Tariff was also initiated by the department demanding Central Excise duty from the appellant for the clearances from the period from F.Y. 2001-2002 to F.Y 2004-2005 (upto Sept.04). The Commissioner (Appeal-III), Ahmedabad vide OIA No. 237/2006 (Ahd-II) CE/Raju/Commr (A) dated 18.07.2006 set aside the demand of the department.

6.1 Further, on going through the copy of Order No. A/119/WZB/AHD/2010 dated 04.02.2010 passed by the Hon'ble CESTAT, Ahmedabad and produced by the appellant, it is observed that the department had also raised a demand from the appellant in terms of Rule 6 (2) of Cenvat Credit Rules, 2004, in respect of the clearance of "dust" as non-excisable goods and no duty was payable thereon.

6.2 Accordingly, it is observed that the issue of excisability of "dust" was already taken up by the department in past which was settled by the Commissioner (Appeals) at the material time. Further, at a later stage accepting the clearance of "dust" as a non-dutiable/exempted product, a demand in terms of Rule 6 (2) of Cenvat Credit Rules, 2004 was also raised by the department which was settled by Hon'ble CESTAT as discussed above. Hence, considering the said facts on record, the contention of the department that the clearance of the dust without payment of any Central Excise duty by the appellant were not known to the department cannot be accepted. So, the show cause notice issued by the department to the appellant in the present case invoking the extended period on the grounds of suppression of facts does not sustain on the grounds of limitation. Accordingly, I do not find the impugned order passed by the adjudicating authority sustainable on the grounds of limitation also.

7. Accordingly, on careful consideration of facts of the case alongwith relevant legal provisions, judicial pronouncements and submission made by the appellant, I find that the demand Central Excise duty to the tune of Rs.26,36,317/- confirmed by the adjudicating authority vide the impugned order fails to survive on merits before law as well as on the grounds of limitation and hence deserves to be set aside. When demand fails, there cannot be any question of interest or penalty.

8. Accordingly, I allow the appeal filed by the appellant and set aside the impugned order passed by the adjudicating authority confirming the demand of Central Excise duty to the tune of Rs. 26,36,317/- alongwith interest leviable thereon as well as the penalty of Rs. 26,36,317/- imposed under Section 11AC (1) (c) of the Central Excise Act, 1944 readwith Rule 25 of Central Excise Rules, 2002.

9. अपीलकर्ता द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है।

The appeals filed by the appellant stand disposed off in above terms.

18th March, 2021..

(Akhilesh Kumar)
Commissioner (Appeals)

Date: March, 2021

Attested

(M.P.Sisodiya)
Superintendent(Appeals),
CGST, Ahmedabad.

BY SPEED POST TO:

M/s. Sterling Abrasives Ltd.,
Plot No. 45/46,
GIDC Estate,
Odhav Road, Ahmedabad-382415

Copy to:-

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Ahmedabad-South.
3. The Deputy/Asst.Commissioner, CGST, Division-V, Ahmedabad-South.
4. The Asst.Commissioner, CGST (System), HQ, Ahmedabad-South.
5. Guard file.
6. P.A. File