



सत्यमेव जयते

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

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



DIN : 20230164SW0000444B7D

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/CEXP/164,165,166,167/2022/7258-65

ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-126 to 129/2022-23
दिनांक Date : 11-01-2023 जारी करने की तारीख Date of Issue 13.01.2023

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

ग Arising out of OIO No. 29/CGST/Ahmd-South/JC/DP/2021 दिनांक: 27.12.2021 passed by Joint
Commissioner, CGST, Ahmedabad South

घ अपीलकर्ता का नाम एवं पता Name & Address
Appellant

1. M/s Unique Processors Pvt Ltd
85, Village Piplaj, Pirana Road,
Ahmedabad - 382405
2. Shri Naresh Ramkumar Mittal
Director, M/s Unique Processors Pvt Ltd
Mittal House, Behind Goyal Towers,
Atira Road, Ahmedabad - 380015
3. Shri Vijender Ramkumar Mittal
Director, M/s Unique Processors Pvt Ltd
Mittal House, Behind Goyal Towers,
Atira Road, Ahmedabad - 380015
4. Shri Rajesh Ramkumar Mittal
Director, M/s Unique Processors Pvt Ltd
Mittal House, Behind Goyal Towers,
Atira Road, Ahmedabad - 380015

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 :

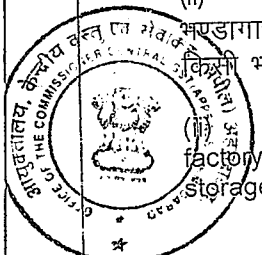
Revision application to Government of India:

(i) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को
उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी
मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry
of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001
under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1)
of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी
भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या
किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

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 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 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 दिनांक से तीन नास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इका मुख्य शीर्ष 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 होतो 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.

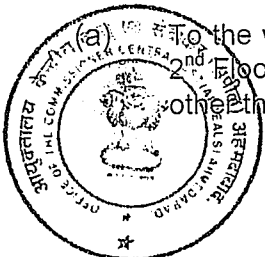
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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

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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रु.6.50 पैसे कान्यायालय 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.

- 14प सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामले में कर्तव्यमांग(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 सेवाकर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded)-

- a. (Section) खंड 11D के तहत निर्धारित राशि;
इण लिया गलत सेनवैट क्रेडिट की राशि;
बण 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.

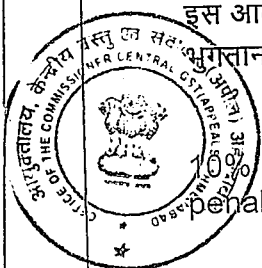
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (cclxxx) amount determined under Section 11 D;
(cclxxxi) amount of erroneous Cenvat Credit taken;
(cclxxxii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER-IN-APPEAL

Four appeals have been filed by the below mentioned appellants (hereinafter referred to as Appellant No.1 to 4, as per details given in table below) against the Order in Original No. 29/CGST/Ahmd-South/JC/DP/2021 dated 27-12-2021 [hereinafter referred to as "*impugned order*"] passed by the Joint Commissioner, CGST, Commissionerate : Ahmedabad South [hereinafter referred to as "*adjudicating authority*"].

S.No.	Name and address of the appellant	Appeal No.
1	M/s. Unique Processors Pvt. Ltd., 85, Village Piplaj, Pirana Road, Ahmedabad – 382 405. Appellant No. 1	GAPPL/COM/CEXP/164/2022
2	Shri Naresh Ramkumar Mittal, Director, M/s. Unique Processors Pvt. Ltd., Mittal House, Behind Goyal Towers, Atira Road, Ahmedabad – 380 015. Appellant No. 2	GAPPL/COM/CEXP/165/2022
3	Shri Vijender Rankumar Mittal, Director, M/s. Unique Processors Pvt. Ltd., Mittal House, Behind Goyal Towers, Atira Road, Ahmedabad – 380 015. Appellant No. 3	GAPPL/COM/CEXP/166/2022
4	Shri Rajesh Ramkumar Mittal, Director, M/s. Unique Processors Pvt. Ltd., Mittal House, Behind Goyal Towers, Atira Road, Ahmedabad – 380 015. Appellant No. 4	GAPPL/COM/CEXP/167/2022

2. Briefly stated, the facts of the case are that Appellant No.1 were engaged in processing of Grey Fabrics and were also getting the Grey Fabrics processed from M/s. Rajesh Textile Industries, Ahmedabad and exporting them as a Merchant Exporter by executing B1 Bond. On the basis of an investigation, Appellant No.1 were issued SCN No. SD/INT/HQIU/285/95 dated 17.7.1997 by the Commissioner of Customs, Mumbai wherein it was alleged that Appellant No. 1 had not exported the goods as Merchant Exporter and had diverted the goods in the local market. It was also alleged that Appellant No.1 had forged export documents in



order to show fulfilment of export obligations under the DEEC scheme. The SCN demanded Customs duty amounting to Rs.95,30,963/-, proposed confiscation of goods and imposition of penalty on Appellant No.1. The investigation also revealed that the goods, cleared by Appellant No.1 for export without payment of central excise duty, were diverted to the local market by resorting to forgery of export documents to show completion of export obligation under DEEC scheme.

2.1 On the basis of the above said SCN dated 17.07.1997, Appellant No.1 was issued Show Cause Notice No.DGAE/BZU/101/12(4)18/95 dated 24.05.1999 wherein it was proposed to :

- A. Demand central excise duty amounting to Rs.16,44,688/- under Section 11A(1) of the Central Excise Act, 1944 read with Rule 14A of the Central Excise Rules, 1944.
- B. Recover interest under Section 11AB of the Central Excise Act, 1944.
- C. Impose penalty under Section 11AC of the Central Excise Act, 1944 read with Rule 14A and Rule 209 of the Central Excise Rules, 1944.

2.2 The said SCN dated 24.05.1999 was also issued to Appellant Nos. 2 to 4 proposing imposition of penalty under Rule 209A of the Central Excise Rules, 1944.

2.3 The SCN dated 17.07.1997 issued under the Customs Act, 1962 was adjudicated and the proposals made therein were confirmed vide OIO No. 84/2007-CAC/CC/KS dated 30.06.2007. Being aggrieved, Appellant No.1 filed an appeal before the Hon'ble Tribunal, who vide Order No. A/95 to 124/08/WB/CStB/C-I dated 21.01.2008 remanded the case back to the adjudicating authority. In the remand proceedings, the proposals were again confirmed vide OIO No. 67/2009/CAC/CC/KS dated 30.03.2009. The matter was again carried in appeal by Appellant No.1 before the Hon'ble Tribunal. The Hon'ble Tribunal vide Order No. A/577 to 614/2011/CsTB/C-I dated 24.11.2011 again remanded the case back to the adjudicating authority. In the second round of remand proceedings, the case was



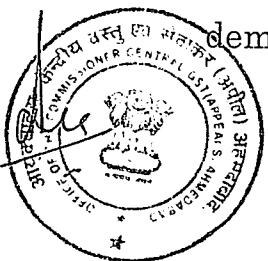
adjudicated vide OIO No. 93/2014 dated 05.09.2014 and the proposals made in the SCN were confirmed.

2.5 SCN dated 24.05.1999 issued under the Central Excise Act, 1944 was adjudicated vide OIO No. 006/JC/2008 dated 31.01.2008 issued by the Joint Commissioner, erstwhile Central Excise, Ahmedabad-I and the proposals in the SCN were confirmed. Being aggrieved, the appellants filed appeal before the Commissioner (Appeals), who vide OIA No.114-117/2008 dated 08.07.2008 upheld the OIO. The appellants carried the matter before the Hon'ble Tribunal, Ahmedabad who vide Order No. A/404 to 407/WZB/AHD/2009 dated 03.02.2009 remanded the case back to the Commissioner (Appeals). In the remand proceedings, the Commissioner (Appeals) vide OIA No. AHM-EXCUS-001-APP-08 to 011-2017-18 dated 30.05.2017 observed that as the SCN issued under the Customs Act, 1962 was decided and, therefore, remanded the case back to the adjudicating authority to consider the OIO dated 05.09.2014 passed in the proceedings under the Customs Act, 1962 and give specific findings on each Shipping Bill.

3. In the remand proceedings, the matter was adjudicated vide the impugned order wherein the demand of Central Excise duty amounting to Rs.16,44,688/- was confirmed along with interest. Penalty equivalent to the duty confirmed was imposed on Appellant No.1. Penalty amounting to Rs.1 Lakh each was imposed on Appellant Nos.2 to 4.

4. Being aggrieved with the impugned order, Appellant No.1 has filed the instant appeals on the following grounds :

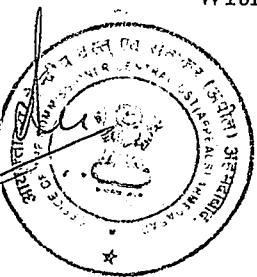
- i. The impugned notice dated 25.05.1999, from which the present dispute stems out, was issued only on the basis of the Notice dated 17.07.1997 issued by the Customs. It is only on account of the allegations made in the SCN issued by Customs that no exports have been made in respect of five Shipping Bills, that a corresponding demand of excise duty was made vide SCN dated 25.05.1999.



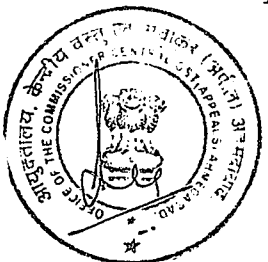
- ii. There is no other basis for demanding duty of excise. No independent investigation has been put on record in support of the demand of excise duty.
- iii. The Commissioner (Appeals) vide Order dated 30.05.2017 also remanded the case for fresh adjudication on the basis of OIO dated 05.09.2014. This buttresses the point that the present dispute is completely contingent upon the outcome of the proceedings arising out of SCN dated 17.07.1997.
- iv. The SCN dated 17.07.1997 issued by Customs is *per se* void *ab initio*. Therefore, the present proceedings which are completely dependent upon the void SCN dated 17.07.1997 is also automatically void and null. This is because the Commissioner of Customs (Preventive) neither had the authority nor the jurisdiction to issue such a SCN in the first place.
- v. Prior to 08.11.2011, the Commissioner of Customs (Preventive) did not have the jurisdiction and authority under the Customs Act, 1962 to issue a SCN as it was not the 'proper officer' under Section 2 (34) of the Customs Act, 1962. Reliance is placed upon the judgment in the case of CC Vs. Sayed Ali – 2011 (265) ELT 17 (SC).
- vi. Even with the introduction of sub-section (11) of Section 28 w.e.f. 16.09.2011 with retrospective effect, the Commissioner of Customs (Preventive) still cannot be considered the proper officer under Section 28 for the period prior to 08.04.2011.
- vii. Reliance is also placed upon the judgment in the case of Canon India Pvt. Ltd. Vs. Commissioner of Customs passed in Civil Appeal NO. 1827 of 2018.
- viii. The impugned order has been passed in violation of the principles of natural justice. The adjudication of the SCN dated 24.05.1999 commenced after an inordinate delay of around nine years and after 14 years from the date of transaction. The remand proceedings ordered by the Hon'ble Tribunal vide Order dated 03.02.2009 was re-adjudicated by the Commissioner (Appeals) after a gap of around eight years.



- ix. The Commissioner (Appeals) vide OIA dated 30.05.2017 remanded the matter back to the adjudicating authority. It was only in December, 2021, after four years from the OIA, the SCN dated 24.05.1999 was adjudicated vide the impugned order. A cumulative delay of 22 years from the date of the SCN has taken place in the adjudication.
- x. Because of the delay, all the documents and records are either probably lost or misplaced or are unavailable as their operations have been shut for more than 20 years.
- xi. Inordinate delay in adjudication is unreasonable, arbitrary and unlawful as the same is in violation of the principles of natural justice. Reliance is placed upon the judgment in the case of Transworld Shipping Services Pvt. Ltd. Vs. CC – 2018 (361) ELT 176 (Mad.); J Sheikh Parith Vs. CC – 2020 (374) ELT 15 (Mad.); Parle International Ltd. Vs. UOI & Ors. – 2021 (375) ELT 633 (Bom.); Siddhi Vinayak Syntex Pvt. Ltd. s. UOI – 2017 (352) ELT 455 (Guj.); Shivkrupa Processors Pvt. Ltd. Vs. UOI – 2018 (362) ELT 0773 (Guj.); Surendralal Girdharilal Mehta Vs. CC – 2018 (364) ELT 81 (Cal.) Yangir Properties and Trading Ltd. Vs. CC – 2019 (368) ELT 412 (Guj.) and Meghmani Organics Ltd. Vs. CC – 2019 (368) ELT 433.
- xii. Owing to the inordinate delay in adjudication, they had in the course of the hearing apprised that the records were not traceable at their end and accordingly requested for copies of the same. However, the adjudicating authority held that the documents were available with the appellant for a long time and that the request was only to delay the adjudication.
- xiii. The adjudicating authority has erred in following the findings of OIO dated 05.09.2014 to confirm the demand and in doing so has erred in relying upon the statements of various persons whose cross examination was not allowed. Since the present SCN was issued only on the basis of the Customs SCN, it was incumbent upon the adjudicating authority to have permitted cross-examination of the witnesses.

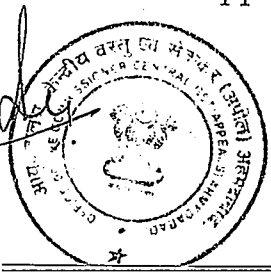


- xiv. As the impugned order has been passed on the basis of Order dated 05.09.2014 of the Commissioner of Customs, they rely upon all the submissions made by them in their Appeal No. C/85004/15 filed by before the Hon'ble Tribunal.
- xv. It was also incumbent upon the adjudicating authority to independently apply his mind and not merely rely upon the findings arrived at by the Commissioner of Customs in Order dated 05.09.2014. Apart from SCN dated 17.07.1997, no independent investigation was undertaken nor any independent evidence was led to show that they had diverted the goods to the local market.
- xvi. The onus was on the department to prove that the goods were cleared in the local market. No evidence as to receipt of any sale proceeds or the goods having been found in the local market has been led by the department.
- xvii. As the adjudication of the SCN dated 24.05.1999 was solely dependent upon the outcome of the proceedings of the SCN dated 17.07.1997 issued by Customs, the adjudicating authority ought to have waited for the outcome of their appeal before the Hon'ble Tribunal.
- xviii. With the introduction of Section 35F of the Central Excise Act, 1944 w.e.f. 16.08.2014, there is no statutory requirement for filing separate stay application as compliance of Section 35F is considered sufficient for stay of the operation of an impugned order in an appeal filed before the Appellate Tribunal. Thus, once an appeal is filed and admitted before the Hon'ble Tribunal, the order impugned in such an appeal is eclipsed from its operation and is rendered ineffective from taking any action on the basis of the same.
- xix. Since the demand itself is unsustainable, no interest is payable in the instant case and neither is the order imposing penalty under Section 11AC tenable. Further, Rule 14A is not attracted as the goods under the five Shipping Bills were exported. Therefore, the finding that they had dealt with offending goods and had reasons to believe are liable for confiscation is untenable.



5. Being aggrieved, Appellant Nos.2 and 3 have filed the present appeals on the following grounds :

- They rely upon the statement of facts and grounds of appeal of Appellant No.1
- The adjudicating authority has erred in holding that the dispute is pertaining to 11 Shipping Bills, whereas in the entire order, the case made out against Appellant No.1 is pertaining to only five Shipping Bills. It is, thus, evident that the impugned order has been passed in complete disregard of the factual position.
- They have not indulged themselves in preparing any bogus/forged Shipping Bills, Bills of Lading and other related documents. No evidence have been led to show that they were part of the fraud committed by Shri Pokharkar.
- Considering the submissions of Appellant No.1 that the goods have been exported, the finding that they had dealt with the offending goods, which had not been exported, is untenable.
- There is no documentary evidence to show that they have been dealing with the offending goods. The penalty imposed on them because they were Directors of Appellant No.1 deserves to be set aside.
- Penalty under Rule 209A can only be imposed on a 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 dealing with excisable goods which he knows or has reasons to believe are liable for confiscation.
- There has been no act of omission or commission on their part in relation to any goods which are liable for confiscation.
- Their statement have not been recorded. This clearly shows that the officers were of the view that they were not involved in the offences supposedly committed by them otherwise, they would have atleast attempted to unearth the truth by recording a statement.
- Reliance is also placed upon the submissions of Appellant No.1 in their Appeal No. C/90112/2014 filed before the Hon'ble Tribunal. Reliance is also placed upon the submissions in Appeal No. C/85004/2015 of Appellant No.1 before the Hon'ble Tribunal.



6. Appellant No. 4 has filed the present appeal on the following grounds :

- He relies upon the statement of facts and grounds of appeal of Appellant No.1
- The adjudicating authority has erred in holding that the dispute is pertaining to 11 Shipping Bills, whereas in the entire order, the case made out against Appellant No.1 is pertaining to only five Shipping Bills. It is, thus, evident that the impugned order has been passed in complete disregard of the factual position.
- He has not indulged himself in preparing any bogus/forged Shipping Bills, Bills of Lading and other related documents. No evidence have been led to show that he was part of the fraud committed by Shri Pokharkar.
- Considering the submissions of Appellant No.1 that the goods have been exported, the finding that he had dealt with the offending goods, which had not been exported, is untenable.
- There is no documentary evidence to show that he has been dealing with the offending goods. The penalty imposed on them because he was Director of Appellant No.1 deserves to be set aside.
- Penalty under Rule 209A can only be imposed on a 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 dealing with excisable goods which he knows or has reasons to believe are liable for confiscation.
- There has been no act of omission or commission on his part in relation to any goods which are liable for confiscation.
- In his statement recorded by the Customs Officers, he had categorically stated that he had not indulged in preparing any bogus/forged documents and that all the exports made Appellant No.1 were genuine. The statements were recorded under Section 108 of the Customs Act, 1962 and hence cannot be ignored.
- Reliance is also placed upon the submissions of Appellant No.1 in their Appeal No. C/90112/2014 filed before the Hon'ble Tribunal. Reliance



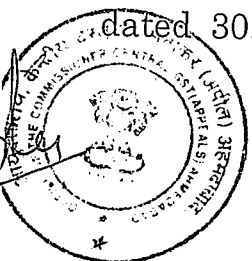
is also placed upon the submissions in Appeal No. C/85004/2015 of Appellant No.1 before the Hon'ble Tribunal.

7. Personal Hearing in the case was held on 16.12.2022 through virtual mode. Shri Kartik D. Dedhia, Advocate, appeared on behalf of the Appellants for the hearing. He reiterated the submissions made in appeal memorandum in respect of all the four appeals.

8. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the submissions made at the time of personal hearing as well as the material available on records. The impugned order has been passed in the remand proceedings ordered by the Commissioner (Appeals), Ahmedabad vide OIA No.AHM-EXCUS-001-APP-08 to 011-2017-18 dated 30.05.2017. The relevant portion of the said order is reproduced as below :

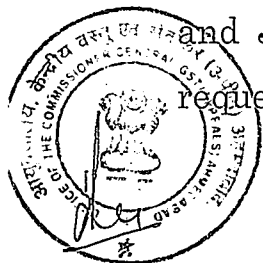
“9. During the course of personal hearing, the advocate of the appellant requested that the matter be remanded back to the original adjudicating authority for denovo adjudication. In view of the infirmities pointed out supra, I find that justice would be rendered, if the matter is remanded back to the original authority. The original authority is therefore, directed to take into consideration the OIO passed by Mumbai Customs in the matter while deciding the issue. Further, the adjudicating authority will pass a specific finding in respect of all the shipping bills, in respect of which the department alleges that thee exports were bogus and on which central excise duty is being demanded. Needless to state, the adjudicating authority will adhere to the principles of natural justice, before finalizing the matter.”

8.1 The Appellants have contended that there has been an inordinate delay in the adjudication of the case. In this regard, it is observed that in the first round of adjudication proceedings, the Appellants were called for personal hearing in January, 2001. However, vide letters dated 23.01.2001, the appellant requested that the matter not be decided till the SCN issued by Customs is decided. Therefore, adjudication of the SCN was kept in abeyance and transferred to the Call Book. Subsequently the appellant were again called for personal hearing during December, 2004, March, 2005, August, 2005 and February, 2006. Every time the appellants requested for adjournment and also requested that the matter be kept pending till the Customs SCN is decided. The SCN issued by Customs was decided vide OIO dated 30.06.2007, which was received by the adjudicating authority on



28.12.2007. Accordingly, the appellants were called for personal hearing in January, 2008. However, the appellants again vide letters dated 12.01.2008 and 24.01.2008 requested adjournment on the grounds that their appeal against the OIO dated 20.06.2007 is pending before the CESTAT. In view of these facts, it is abundantly clear that it was the appellants who delayed the adjudication proceedings and sought adjournments as well as requested that the adjudication be kept pending till the outcome of the proceedings in the SCN issued by Customs. The adjudicating authority has apparently acceded to the request of the appellants and adjudicated the matter only after the SCN issued by Customs was decided. Therefore, the contention of the appellants that there was an inordinate delay in adjudication of the SCN is not worth consideration and, is accordingly, rejected.

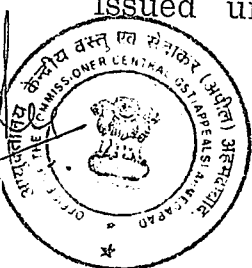
9. The appellants have also contended that due to the inordinate delay in adjudication of the SCN, the records and documents were not traceable at their end and requested the adjudicating authority for the same. In this regard, it is observed that the appellants had, prior to 29.10.2021, never informed the adjudicating authority in this regard and neither sought any documents. The appellants were granted a personal hearing on 15.07.2021 in the course of which no request for any document was made before the adjudicating authority. It was only in the course of the personal hearing held on 29.10.2021, that the appellants for the first time claimed that the documents were not available with them and requested for copies from the adjudicating authority. At the outset, it needs to be stated that all the documents pertaining to the case were supplied to the appellants and, therefore, the adjudicating authority was under no obligation to supply the same documents again to the appellants. Be that as it may, it is apparent from the records and event of dates that the appellants have right from the beginning sought to delay and derail the adjudication proceedings on one or the other pretext. If the appellants were indeed non in possession of the documents, they could have sought them from the adjudicating authority when they were called for a personal hearing during February, April, May and June, 2021. Even during the hearing held on 15.07.2021, no such request for documents was made by the appellants. It was only on



29.10.2021 that the appellants for the first time came up with the request for documents. Therefore, I am of the considered view that this is yet again another pretext by the appellants only to delay and derail the adjudication proceedings. Consequently, I am of the considered view that there is no merit in the contention of the appellants regarding the documents not being available with them and not being supplied by the adjudicating authority.

10. The appellants have also contended that the proceedings in the Customs SCN is void *ab inito* as the Commissioner of Customs (Preventive) neither had the authority nor the jurisdiction to issue SCN in the first place. They have relied upon the judgments of the Hon'ble Supreme Court on this issue. In this regard, it is observed that issue of whether the Commissioner of Customs (Preventive) had jurisdiction and authority to issue the SCN, under Customs Act, 1962, is not relevant to the present proceedings initiated under the Central Excise Act, 1944. The SCN issued to the appellants under the Central Excise Act, 1944 was not predicated upon the SCN under the Customs Act, 1962. It is undisputed that the present SCN issued to the appellants is based upon the evidences unearthed in the course of the investigations carried out under the Custom Act, 1962. Without going into the merits of the appellants contention regarding the Customs SCN being issued without authority and jurisdiction, I am of the view that irrespective of the legality of Customs SCN, the evidences unearthed in the course of the investigations do not lose their evidentiary value. Therefore, the present proceedings under the Central Excise Act, 1944 based upon the evidences unearthed during investigation of the Custom case has to be evaluated and decided independent of the legality of the Customs proceedings.

11. The appellants have contended that the statements relied upon have no evidentiary value as cross examination of the witnesses was not allowed in the Custom proceedings. In this regard, it is observed that there is no material on record to indicate that the appellants had sought cross examination of the witnesses from the authority adjudicating the SCN issued under the Central Excise Act, 1944. Even in their appeal



memorandum, the appellants have not claimed that they had at any point of time sought cross examination of the witnesses in the proceedings under the Central Excise Act, 1944. Having delayed the adjudication proceedings on one or the other ground, the appellants are now belatedly seeking cross examination of the witnesses which is nothing but another tactic to derail and vitiate the adjudication process. Accordingly, I do find any merit in the contention of the appellants regarding the statements having no evidentiary value and, accordingly, reject the same.

12. Regarding the contention of the appellants that no independent investigation was undertaken not any independent evidence was led to show that they had diverted the goods meant for export to the local market, it is observed that export of goods is under the provisions of the Customs Act, 1962 and the Regulations framed thereunder. It has been clearly established from the statements of the personnel of the shipping companies, who issued the Bill of Lading on the basis of which the goods are shipped on Board and exported, that the Bill of Lading issued by them in respect of Appellant No. 1 was cancelled and/or that the goods were not received against the Bill of Lading. Further, the Export General Manifest filed by the shipping company also showed that no exports had taken place in respect of the Shipping Bills filed by Appellant No.1. It is pertinent to mention that even the Custom House Agent (CHA), who is authorized by Appellant No.1, had in his statements admitted that no goods were received and no exports had taken place in respect of the Shipping Bills under dispute. All these evidence amply demonstrate that the goods cleared by Appellant No.1, without payment of Central Excise duty, for export were diverted to the domestic market and not exported. The contentions of the appellants that there was no evidence to prove that the goods have been diverted to the local market are, therefore, without any merit and, accordingly, rejected.

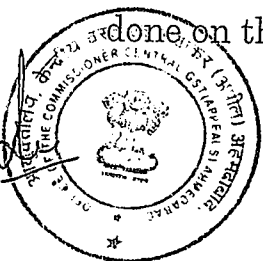
13. The appellants have also contended that as their appeal, against the OIO passed in the Customs proceedings, was pending before the Hon'ble Tribunal, the adjudication proceedings in the SCN issued to them under



Central Excise Act, 1944 should have been kept in abeyance. They have further contended that once an appeal, filed in terms of Section 35B read with Section 35F of the Central Excise Act, 1944, is admitted by the Hon'ble Tribunal, the order impugned in such appeal is eclipsed from operation and is rendered ineffective from taking any action on the basis of the same. In this regard, it is observed that once pre-deposit is made in terms of Section 35F of the Central Excise Act, 1944, the department is precluded from seeking to recover the dues from the appellant. However, unless the operation of the order impugned is stayed, the implementation of the order is not stayed, only recovery in terms of the order is stayed. Therefore, merely because the appellants have filed appeals before the Hon'ble Tribunal against the order passed in the Customs proceedings, it would not render the said order inoperable for proceedings under quasi-judicial proceedings in another case. Therefore, I do find any merit in the contention of the appellants as regards adjudicating the matter during pendency of the appeal filed before the Hon'ble Tribunal against the OIO passed in the Customs proceedings.

14. Regarding the contention of Appellant No.1 that no interest is payable and no penalty imposed is untenable as the demand itself is unsustainable, I am of the considered view that there is no infirmity in the impugned order confirming the demand of central excise duty confirmed and consequently, Appellant No.1 are liable to interest as well as penalty and the impugned order has rightly ordered recovery of interest and imposed penalty under Section 11AC of the Central Excise Act, 1944 read with Rule 14A of the Central Excise Rules, 1944.

15. As regards imposition of penalty on Appellant Nos. 2 to 4 under Rule 209A of the Central Excise Rules, 1944, it is observed that these appellants are Directors of Appellant No.1 and it was on their directions and instructions that the goods cleared for export, without payment of duty, were diverted to the local market. Further, the non-export of the goods and the fabrication of the documents showing that the goods were exported was done on the directions of these appellants. Therefore, these appellants have



concerned themselves in the removal of goods, purportedly for export, without payment of duty and its subsequent diversion to the local market which renders the good liable for confiscation. Accordingly, Appellant Nos.2 to 4 are liable for penal action under Rule 209A of the Central Excise Rules, 1944. In view thereof, I do not find any infirmity in the impugned order imposing penalty under Rule 209A of the Central Excise Rules, 1944 on Appellant Nos. 2 to 4. Consequently, I uphold the imposition of penalty on Appellant Nos. 2 to 4.

16. In view of the facts as discussed hereinabove, I uphold the impugned order and reject the appeals filed by Appellants No. 1 to 4.

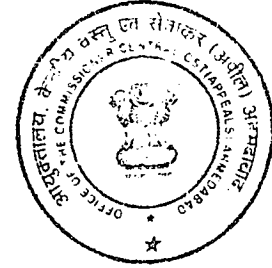
17. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeals filed by the Appellants stands disposed of in above terms.

Akhilesh Kumar
 11 January 2023
 (Akhilesh Kumar)
 Commissioner (Appeals)
 Date: 11.01.2023.

Attested:

(Signature)
 (N.Suryanarayanan. Iyer)
 Superintendent(Appeals),
 CGST, Ahmedabad.



BY RPAD / SPEED POST

To

M/s. Unique Processors Pvt. Ltd.,
 85, Village Piplaj, Pirana Road,
 Ahmedabad – 382 405.

Appellant No.1

Shri Naresh Ramkumar Mittal, Director,
 M/s. Unique Processors Pvt. Ltd.,
 85, Village Piplaj, Pirana Road,
 Ahmedabad – 382 405.

Appellant No.2

Shri Vijender Rankumar Mittal, Director,
 85, Village Piplaj, Pirana Road,
 Ahmedabad – 382 405.

Appellant No.3

Shri Rajesh Ramkumar Mittal, Director,

Appellant No.4

85, Village Piplaj, Pirana Road,
Ahmedabad – 382 405.

The Joint Commissioner,
CGST,
Commissionerate : Ahmedabad South.

Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Ahmedabad South.
3. The Assistant Commissioner (HQ System), CGST, Ahmedabad South.
(for uploading the OIA)
- ✓ 4. Guard File.
5. P.A. File.

