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

केंद्रीय जीएसटी, अपील आयुक्तालय,अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ीअहमदाबाद३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065 – टेलेफैक्स07926305136

DIN : **20221164SW0000777B28**

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/CEXP/49/2022 /1628 – 12

ख अपील आदेश संख्या Order-In-Appeal Nos.**AHM-EXCUS-001-APP-072/2022-23**
दिनाँक Date : **02-11-2022** जारी करने की तारीख Date of Issue 10.11.2022

आयुक्त (अपील) द्वारापारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of OIO No. **28/CGST/Ahmd-South/JC/RK/2021** दिनाँक: **28.10.2021** passed by Joint Commissioner, CGST, Ahmedabad South

ध अपीलकर्ता का नाम एवं पता Name & Address

Appellant

1. **M/s Umiya Steel Industries**
   Plot No. 4004, Phase-I,
   GIDC, Vatva,
   Ahmedabad - 382445

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 हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरें भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार मे 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 भीतरमूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए।उसके साथ खाता इ.का 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 संलग्नरकम 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

(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 होत 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू.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.

(47) 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)-

(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:

(cxxiv) amount determined under Section 11 D;
(cxxv) amount of erroneous Cenvat Credit taken;
(cxxvi) amount payable under Rule 6 of the Cenvat Credit Rules.

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

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

ORDER-IN-APPEAL

The present appeal has been filed by M/s. Umiya Steel Industries, Plot No.4004, Phase-I, GIDC, Vatva, Ahmedabad – 382 445 (hereinafter referred to as the appellant) against Order in Original No. 28/CGST/Ahmd-South/JC/RK/2021 dated 28.10.2021 [hereinafter referred to as "*impugned order*"] passed by the Joint Commissioner, CGST, Commissionerate : Ahmedabad South [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case is that the appellant were engaged in the manufacture of M.S. Bright Bars falling under Chapter 72 of the First Schedule to the Central Excise Tariff Act, 1985 and were availing the benefit of exemption under Notification No.8/2003-CE dated 01.03.2003. During patrolling on 28.1.2011, a vehicle carrying Rods/Bars was intercepted by the Preventive Officers and upon enquiry with the Driver of the said vehicle, it was learnt that the goods were loaded from the premises of the appellant but Delivery Challan No.285 dated 28.1.2011 in respect of the said goods were issued by M/s.Virkurpa Traders, 38, Punit Tenament, NH No.8, Odhav, Ahmedabad (hereinafter referred to as Virkrupa). Accordingly, investigation was initiated against the appellant and Virkrupa and it was revealed that the appellant had created a dummy Proprietorship firm in the name of Virkrupa at the residential address of Shri Dinesh A. Patel, one of the Partner of the appellant. It was found that there was no manufacturing activity and neither was there any godown at the declared premises of Virkrupa. The goods purchased and sold by Virkurpa were manufactured in the premises of the appellant. It appeared that this was done with the intention of splitting the aggregate clearance value of the appellant so as to keep availing the benefit of exemption under Notification No.8/2003-CE dated 01.03.2003 even after crossing the exemption limit. The total aggregate value of clearance of the appellant and Virkrupa exceeded Rs.1.50 crores during F.Y.2008-09 to F.Y. 2010-11. Thereby, it appeared that the appellant had evaded Central Excise duty amounting to Rs.21,86,698/- in respect of the goods cleared, under exemption, in excess of the exemption limit prescribed under the said Notification.

3. On conclusion of investigation, the appellant was issued a Show Cause Notice bearing No. IV/13-2/PI-V/Umiya/10-11 dated 21.7.2011 wherein it was proposed to :

a) Add the value of the goods manufactured by the appellant and cleared under the invoices of Virkrupa to the aggregate clearance value of the appellant and demand and recover Central Excise duty amounting to Rs.21,86,698/- under Section 11A(1) of the Central Excise Act, 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 25 of the Central Excise Rules, 2002.

d) Confiscate the goods cleared without payment of duty under Rule 25 of the Central Excise Rules, 2002.

e) Confiscate the M.S. Bright Bars weighing 4016 Kg. valued at Rs.1,61,906/- under Rule 25 of the Central Excise Rules, 2002.

f) Confiscate the seized vehicle valued at Rs.4,00,000/- which was provisionally released upon furnishing of B-11 Bond and cash security of Rs.16,700/- and appropriate the cash security.

3.1 The partners of the appellant, namely, Shri Veljibhia Ghelabhai Patel, Shri Ashok V. Patel, Shri Amratbhai Kanjibhai Patel and Shri Dinesh A. Patel as well as Shri Dinesh Ambaram Patel, Proprietor of Virkrupa were also called upon to show cause as to why penalty should not be imposed upon them under Rule 26 of the Central Excise Rules, 2002.

3.2 Shri Vipulbhai G. Patel, Owner of the vehicle seized, was also called upon to show cause as to why the seized vehicle should not be confiscated under Section 115 (2) of the Customs Act, 1962 as made applicable to Central Excise by Notification No.68/63-CE dated 04.05.1963 and why penalty should not be imposed upon him under Rule 26 of the Central Excise Rules, 2002.

4. The SCN was adjudicated vide OIO No. 23/Additional Commissioner/2012 dated 20.04.2012 wherein :

A) The clearances of M.S. Bright Bars effected by Virkrupa were ordered to be clubbed with that of the appellant for the period from F.Y.2008-09 to F.Y.2010-11.

B) Central Excise duty amounting to Rs.21,86,698/- was confirmed under Section 11A(2) of the Central Excise Act, 1944 along with interest under Section 11AB of the Central Excise Act, 1944.

C) Penalty amounting to Rs.21,86,698/- was imposed under Section 11AC of the Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002.

D) The M.S. Bright Bars weighing 4016 Kgs. valued at Rs.1,61,906/- were confiscated under Rule 25 of the Central Excise Rules, 2002. Option of redemption was given upon payment of fine amounting to Rs.30,000/-.

E) Penalty of Rs.50,000/- each was imposed upon Shri Veljibhai Ghelabhai Patel and Shri Ashok V. Patel, Partners of the appellant.

F) Penalty of Rs.50,000/- was imposed upon Shri Dinesh Ambaram Patel, Proprietor of Virkurpa.

G) The appellant was held to be eligible for cenvat credit subject to producing valid duty paying documents for verification before the jurisdictional Assistant Commissioner.

5. Being aggrieved with the said OIO dated 20.04.2012, the appellant preferred appeal before the Commissioner (Appeals-V), Ahmedabad, who vide OIA No.96to100/2012(Ahd-I)/CE/AK/Commr(A)/Ahd dated 23.10.2012 upheld the demand of central excise duty amounting to Rs.6,11,418/- after allowing cenvat credit amounting to Rs.15,75,280/-. The penalty under Section 11AC of the Central Excise Act, 1944 was also, accordingly, reduced to Rs.6,11,418/-.

6. The appellant filed an appeal against the said OIA dated 23.10.2012 before the CESTAT, Ahmedabad, who vide Order No. A/10740 & 10741/WB/AHD/2013 and M/12544 & 12545/WB/2013 dated 12.06.2013 remanded the matter back to the adjudicating authority.

7. The Department also filed an appeal before the CESTAT, Ahmedabad against OIA dated 23.10.2012. The Hon'ble Tribunal vide Order No. A/12047/2019 dated 28.10.2019 dismissed the appeals as withdrawn considering the amount involved in the appeal was less than Rs.50 lakhs.

8. In the remand proceedings, the case was decided vide the impugned order wherein the demand of central excise duty amounting to Rs.6,11,418/- was confirmed along with interest. Penalty equivalent to the duty confirmed was also imposed.

9. Being aggrieved with the impugned order, the appellant have filed the present appeal on the following grounds :

i. The adjudicating authority has erred in holding the Hon'ble Tribunal had remanded the matter on two counts i.e. allowing them to argue on doubling of sales figures and availability of cenvat credit. However, the Hon'ble Tribunal had at Para 5 of their order remanded the matter back, keeping all issues open. Therefore, the impugned order suffers from infirmity as the merits of the case have not been discussed at all.

ii. The adjudicating authority has also erred in holding that the cenvat credit has already been verified and quantified. However, the Hon'ble Tribunal had remanded the case for re-verifying the correctness of cenvat credit.

iii. The adjudicating authority has erred in observing that they cannot come up with new figures for determining eligibility of cenvat credit. They had from the very beginning, vide letter dated 01.11.2011, claimed cenvat credit amounting to Rs.21,00,674/-. As against this cenvat credit amounting to Rs.15,75,280/- was allowed and they had challenged this before the Hon'ble Tribunal.

iv. On merits they had submitted that the other unit is not a dummy unit but an actually existing unit. No finding has been given whether the goods traded by Virkurpa were manufactured by them and thus, it has not been proved that the goods sold by Virkrupa were manufactured by them.

v. Sales invoices of Virkrupa show that they have sold M.S. Bars also. Therefore, without admitting any liability, they submit that the entire value of clearance of Virkrupa cannot be said to be M.S. Bright Bars manufactured by them.

vi. There is no evidence to show that the goods seized from the vehicle were manufactured by them. Though their factory was searched, no variation in stock of finished goods or raw materials were found.

vii. When Virkrupa had acutally purchased M.S. Bars and sold to various customers, the clubbing of their value with that of Virkrupa is bad in law.

viii. All their partners as well as the Proprietor of Virkrupa had filed affidavits of rebuttal categorically denying that no goods pertaining to Virkrupa were manufactured in their factory.

ix. There is no evidence to suggest that the goods purchased by Virkrupa were actually received in their factory. Merely because one of their partners looked after the sales of both the firms, it cannot be concluded that the goods sold by Virkurpa were manufactured in their factory.

x. The adjudicating authority has not considered their contention that no goods of Virkrupa were recovered from their premises during the search proceedings.

xi. The department has not proved any mutuality of interest and flow back of money with evidence. In the absence of financial flow back and common funding, the units will be treated as independent units. They rely upon the various judicial pronouncements in this regard.

xii. The investigation has infact proved the existence of Virkrupa. Suppliers had confirmed in their statements that they had supplied goods to Virkrupa and received payment by cheque. The buyers of Virkrupa had confirmed that they had received goods and made payment to Virkrupa only.

xiii. The statements which have been retracted should not be taken as evidence. They rely upon the various judicial pronouncements in this regard.

xiv. It is settled law that if clearances of two units are to be clubbed, SCN is to be issued to both the units. In the present case, no SCN has been issued to Virkrupa. Therefore, the SCN issued to them demanding duty on the clearances of Virkrupa is bad in law. They rely upon the various judicial pronouncements in this regard.

xv. As it has not been proved that Virkrupa was a dummy unit and the goods cleared by Virkrupa were manufactured in their factory, the

impugned order confiscating the goods and demanding duty by clubbing clearance of both the firms is not sustainable.

xvi. They were denied natural justice by not allowing the cross examination of the investigating officers and the dealers who had deposed against them. It is settled principle that person whose statement is relied upon as evidence should be made available for cross examination. They rely upon the judicial pronouncements on this issue.

xvii. The adjudicating authority has also erred in confirming the demand on the entire value of clearances of Virkrupa inasmuch as the said trader had traded M.S. Bars, M.S. Black Bars and M.S. Rough Bars also. The clearance value of these goods are not includible for computing the aggregate clearance value.

xviii. The adjudicating authority has erred in imposing penalty under Section 11AC of the Central Excise Act, 1944. The Hon'ble Supreme Court has held that mere failure to furnish information is not suppression of facts and extended period cannot be invoked. They had not withheld any information from the department and also not provided any false information with intent to evade payment of duty. Therefore, there cannot be any suppression and hence, penalty under Section 11AC should not be imposed.

xix. The SCN has not enumerated on what counts they had suppressed facts. Mere mention of the word 'suppression' does not make a case for invoking extended period. They rely upon the judicial pronouncements in this regard.

10. Personal Hearing in the case was held on 31.10.2022. Shri M.H.Raval, Consultant, appeared on behalf of appellant for the hearing. He reiterated the submissions made in appeal memorandum. He also submitted a written submission during the hearing and reiterated the submissions made therein.

11. In their additional written submissions filed on 31.10.2022, the appellant reiterated the submissions made in their appeal memorandum.

12. I have gone through the facts of the case, submissions made in the Appeal Memorandum and the material available on records. The dispute involved in the present appeal relates to clubbing of clearances of the

appellant with that of Virkrupa and consequent confirmation of demand of central excise duty. The demand pertains to the period F.Y. 2008-09 to F.Y. 2010-11.

13. The impugned order has been passed in the remand proceedings ordered by the Hon'ble Tribunal vide Order No. A/10740 & 10741/WB/AHD/2013 and M/12544 & 12545/WB/2013 dated 12.06.2013. The relevant part of the said order is reproduced below :

> "4. On perusal of the records, we find that the issue involved in this case is regarding clubbing of clearances of the manufacturing unit and the Trading but the Revenue authorities are of the view that trading unit is nothing but façade created by the assessee to avail ineligible benefit of exemption. Learned counsel would submit that even if assuming, but not accepting, that the case of the Revenue is correct, the appellant is eligible for cenvat credit of the inputs which were received for the manufacturing, and also there is doubling of sales figures taken over by the department insamuch as, the sale of trading is considered as manufactured and cleared by the appellant but the Revenue authorities have not considered the very same produced were sold by the manufacturing unit. We find that all these issues need to be explained by the appellant to the lower authorities. We find that the appellant's claim for cenvat credit, when the matter came earlier, was sent back to the authorities for verification. On going through the verification report, we find that the authorities have accepted that the appellant is eligible for cenvat credit as per their letter dated 16.05.2013, produced before us by the learned departmental representative. The dispute regarding correctness of the cenvat credit which was availed by the appellant and the record presented before the authorities or not, is a question which required verification by the lower authorities. Tribunal being the second appellate authority cannot go into correctness thereof or otherwise. Hence, we deem it fit to set-aside the impugned order and remand the matter back to the adjudicating authority.
>
> 5. At the same time, we find that appellant needs to be put to some condition to hear and dispose these matters by the adjudicating authority. Accordingly, in order to ensure that appellant appears before the adjudicating authority and submit all record which are in his favour and the evidences he would like to rely upon to defend their case, we direct the appellant to deposit an amount of Rs.1,00,000 (Rupees one lakh only) within a period of eight weeks from today and report compliance thereof before the adjudicating authority on 13.08.2013. Subject to such compliance being reported, the adjudicating authority will take up the appeals for disposal after following the principles of natural justice. We make it clear that we have not expressed any opinion on the merits of the case and kept all the issues open."

13.1 From the order of the Hon'ble Tribunal above, it is clear that in the remand proceedings, the adjudicating authority was required to examine contention of the appellant regarding doubling of the sales figures and also the claim of the appellant for cenvat credit. However, the remand proceedings were not restricted to these two issues as the Hon'ble Tribunal had made it clear in their order that all the issues are kept open.

14. Regarding the issue of doubling of sales figures, I find that adjudicating authority has recorded his finding at Para 15 of the impugned order that the appellant have not given any evidence or worksheet in support of their contention on doubling of sales figures. In terms of the Order of the Hon'ble Tribunal, the appellant was required to submit all the records and evidences in support of their stand. However, as the appellant have failed to submit the relevant records and evidences, the adjudicating authority was left with no option but to decide the case on the basis of the available records. However, in the interest of fairness and justice, I am of the considered view that the appellant be given one more opportunity. Accordingly, the appellant are directed to submit the records and evidences in support of their contention before the adjudicating authority within 15 days of the receipt of this order. The adjudicating authority shall decide the matter afresh after verification of the details and documents submitted by the appellant.

15. Regarding the issue of the appellant's claim for cenvat credit, I find that the adjudicating authority has held at Para 20 of the impugned order that "*I find that the Unit has argued that their cenvat eligibility was to the tune of Rs 21,00,674/- and their duty liability would only be Rs 86,024/-. I find that the cenvat credit has already been verified and quantified on the basis of documents submitted by the Unit at the material time. Therefore, the issue of eligibility of cenvat credit is over after the quantification has been made. The Unit cannot come up with new figures for determining a fresh extended eligibility of cenvat credit. The worksheets provided cannot be given any cognizance at this stage*".

15.1 I find that it is matter of record that the appellant had, in their written reply dated .01.11.2011, claimed cenvat credit amounting to Rs.21,00,674/- and the same is recorded at Para 31.18 of OIO dated 20.04.2012. However, the department had quantified the cenvat credit admissible to the appellant as amounting to Rs.15,75,280/- and the same was allowed by the Commissioner (Appeals-V), Ahmedabad vide OIA dated 23.10.2012. The OIA was challenged by the appellant before the CESTAT, Ahmedabad and the Hon'ble Tribunal had remanded the matter back to the adjudicating authority for necessary verification.

15.2 It is observed that despite the factual matrix of the issue and the specific directions of the Hon'ble Tribunal, the adjudicating authority has totally disregarded the order of the Hon'ble Tribunal and considered the matter as closed after the verification and quantification was carried out earlier. In terms of the directions of the Hon'ble Tribunal, the adjudicating authority was bound to verify the claim of the appellant for cenvat credit. However, the adjudicating authority has not taken cognizance of the worksheets submitted by the appellant regarding their claim for cenvat credit and neither has he undertaken any verification of the appellant's claim for cenvat credit. This is an act of judicial indiscipline on the part of the adjudicating authority.

15.3 The appellant have, along with their additional written submissions dated 31.10.2022, submitted details of the duty paid inputs purchased by them as well as by Virkrupa. However, mere submission of details without corresponding documents does not in any way help their case. In any event, these details and documents were required to be submitted by them before the adjudicating authority for necessary verification. Therefore, the appellant are hereby directed to submit all the necessary details and documents before the adjudicating authority within 15 days of the receipt of this order. The adjudicating authority shall decide the claim of the appellant for cenvat credit afresh after verification of the details and documents submitted by the appellant.

16. The appellant had also raised other issues before the adjudicating authority. However, the adjudicating authority has rejected the contentions on the grounds that the remand order of the Hon'ble Tribunal was only on two counts i.e. doubling of sales figures and quantifying the eligibility of cenvat credit. However, the adjudicating authority has clearly erred in not considering the other issues raised by the appellant inasmuch as the Hon'ble Tribunal had, while remanding the case back to the adjudicating authority, made it clear that all the issues are kept open. Among the many other issues raised by the appellant, I find that one very critical issue raised by the appellant is regarding Virkrupa not being made a noticee in the SCN while proposing to club the clearances of the appellant with the clearances of Virkrupa. This issue is required to be addressed by the adjudicating

authority before deciding the issue of clubbing the clearances of the appellant with that of Virkrupa. The demand of central excise duty would depend upon the decision on this issue.

17. In view of the facts discussed herein above, I am of the considered view that the matter is required to be remanded back to the adjudicating authority for adjudication afresh in light of the observations and directions contained in Para 14, 15.3 and 16 above. The appellant are directed to produce before the adjudicating authority all the necessary details and documents in support of their contentions within 15 days of the receipt of this order. Accordingly, the impugned order is set aside and remanded back to the adjudicating authority. The appeal filed by the appellant is allowed by way of remand.

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

The appeal filed by the appellant stands disposed of in above terms.

(Akhilesh Kumar)
Commissioner (Appeals)
Date: 02.11.2022.

Attested:

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

BY RPAD / SPEED POST

To

M/s. Umiya Steel Industries,
Plot No.4004, Phase-I,
GIDC, Vatva,
Ahmedabad – 382 445 — Appellant

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.