



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 380015  
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015  
☎ 07926305065 - टेलिफैक्स 07926305136



DIN : 20221164SW000000E1AD

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/CEXP/48/2022 *11925-29*
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-073/2022-23  
दिनांक Date : 07-11-2022 जारी करने की तारीख Date of Issue 21.11.2022
- आयुक्त (अपील) द्वारा पारित  
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. 28/CGST/Ahmd-South/JC/RK/2021 दिनांक: 28.10.2021 passed by Joint Commissioner, CGST, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

1. Shri Dinesh Ambaram Patel  
Proprietor of M/s Virkrupa Traders  
38, Punit Apartment, NH No. 8,  
Odhav, Ahmedabad - 384205

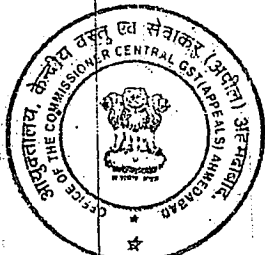
कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

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) केंद्रीय 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, 4<sup>th</sup> 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 प्रकिया के दौरान हुई हो।
- (ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.



(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित 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 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 रुपये या उससे कम होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं 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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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 Appellate 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.

- (48) 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.

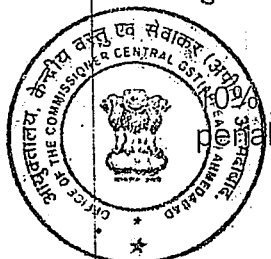
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (cxxvii) amount determined under Section 11 D;
- (cxxviii) amount of erroneous Cenvat Credit taken;
- (cxxix) 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।

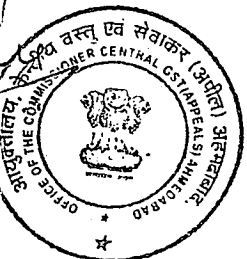
In view of above, an appeal against this order shall lie before the Tribunal on payment of of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER-IN-APPEAL

The present appeal has been filed by Shri Dinesh Ambaram, Patel, Proprietor of M/s. Virkrupa Traders, 38, Punit Apartment, NH No.8, Odhav, Ahmedabad – 382 405 (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 M/s.Umiya Steel Industries, Ahmedabad (hereinafter referred to as Umiya) 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 of the jurisdictional Central Excise and upon enquiry with the Driver of the said vehicle, it was learnt that the goods were loaded from the premises of Umiya but Delivery Challan No.285 dated 28.1.2011 in respect of the said goods were issued by the appellant. Accordingly, investigation was initiated against Umiya and the appellant and it was revealed that Umiya had created a dummy Proprietorship firm in the name of the appellant at the residential address of the appellant, who was also, one of the Partner of Umiya. It was found that there was no manufacturing activity and neither was there any godown at the declared premises of the appellant. The goods purchased and sold by the appellant were manufactured in the premises of Umiya. It appeared that this was done with the intention of splitting the aggregate clearance value of the Umiya 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 Umiya and the appellant exceeded Rs.1.50 crores during F.Y.2008-09 to F.Y. 2010-11. Thereby, it appeared that Umiya 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, Umiya 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 :

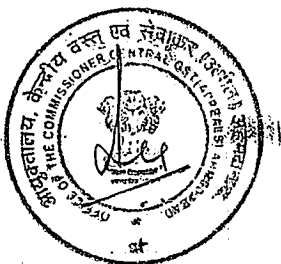
- a) Add the value of the goods manufactured by Umiya and cleared under the invoices of the appellant to the aggregate clearance value of Umiya and demand and recover Central Excise duty amounting to Rs.21,86,698/- under Section 11A(1) of the Central Excise Act, 1944.
- b) Recover Interest under Section 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 Umiya, Shri Veljibhia Ghelabhai Patel, Shri Ashok V. Patel, Shri Amratbhai Kanjibhai Patel and Shri Dinesh A. Patel as well as the appellant 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 seized vehicle, 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 the appellant were ordered to be clubbed with that of Umiya 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 Umiya under Rule 26 of the Central Excise Rules, 2002
- F) Penalty of Rs.50,000/- was imposed upon the appellant under Rule 26 of the Central Excise Rules, 2002.
- G) Umiya 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, Umiya, its two partners, and the appellant preferred appeal before the Commissioner (Appeals-V), Central Excise, 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/- against Umiya after allowing cenvat credit amounting to Rs.15,75,280/-. Penalty under Section 11AC of the Central Excise Act, 1944 was also accordingly reduced to Rs.6,11,418/-. The penalty against the appellant was upheld for aiding and abetting Umiya in evasion of Central Excise duty. The penalty on the partners of Umiya was set aside.

6. The appellant and Umiya 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

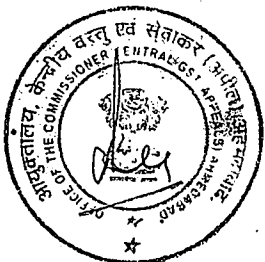


No.A/12047/2019 dated 28.10.2019 dismissed the appeals as withdrawn considering the amount involved in the appeal was less than Rs.50 lakhs.

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 against Umiya along with interest. Penalty equivalent to the duty confirmed was also imposed on Umiya. Penalty amounting to Rs. 50,000/- was imposed on the appellant.

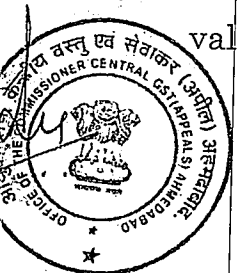
9. Being aggrieved with the impugned order, the appellant has filed the present appeal on the following grounds :

- i. Umiya is a partnership firm manufacturing excisable goods and availing SSI exemption upto clearance value of Rs.150 lakhs. The demand is confirmed for the goods cleared by them, a Proprietorship firm, engaged in trading of goods. Both the firms have different entity and existence and cannot be clubbed by treating one unit is a dummy unit or non-existent unit. In the present case, they are engaged in trading of goods and not a dummy unit.
- ii. No finding has been given whether the goods traded by them were manufactured by Umiya and thus, it has not been proved that the goods sold by them were manufactured by Umiya.
- iii. Their sales invoices show that they have sold M.S. Bars also. Therefore, their entire value of clearance cannot be said to be M.S. Bright Bars manufactured by Umiya.
- iv. There is no evidence to show that the goods seized from the vehicle were manufactured by Umiya. Though the factory of Umiya was searched, no variation in stock of finished goods or raw materials were found.
- v. They had actually purchased M.S. Bars and sold it to various customers, therefore, the clubbing of their value with that of Umiya is bad in law.
- vi. They as well as all the partners of Umiya had filed affidavits of rebuttal categorically denying that no goods pertaining to them were manufactured in the factory of Umiya.
- vii. There is no evidence to suggest that the goods purchased by them were actually received in the factory of Umiya. Merely because one of the partners of Umiya looked after the sales of both the firms, it cannot be



concluded that the goods sold by them were manufactured in the factory of Umiya.

- viii. The adjudicating authority has not considered their contention that no goods of belonging to them were recovered from the premises of Umiya during the search proceedings.
- ix. 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.
- x. The investigation has infact proved the existence of their firm. Suppliers had confirmed in their statements that they had supplied goods to them and received payment by cheque. Their buyers had confirmed that they had received goods and made payment to them only.
- xi. The statements which have been retracted should not be taken as evidence. They rely upon the various judicial pronouncements in this regard.
- xii. 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 them. Therefore, the SCN issued to the Umiya demanding duty on their (appellant's) clearances is bad in law. They rely upon the various judicial pronouncements in this regard.
- xiii. As it has not been proved that they were a dummy unit and the goods cleared by them were manufactured in the factory of Umiya, the impugned order confiscating the goods and demanding duty by clubbing clearance of both the firms is not sustainable.
- xiv. 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.
- xv. The adjudicating authority has also erred in confirming the demand on the entire value of their clearances inasmuch as they 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.





- xvi. Penalty is attracted in case the person concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing or in any other manner deals with excisable goods which are liable for confiscation. In the present case, the department has failed to prove that the goods were liable for confiscation. Therefore, no penalty under Rule 26 should have been imposed upon them.
- xvii. The SCN nor the impugned order enumerated their role in clandestine removal of goods. They had not physically dealt with transporting, removing, depositing, keeping, concealing, selling or purchasing goods. Only because he happened to be the partner of the firm it is not lawful to impose penalty under Rule 26 when he had not physically dealt with the goods.
- xviii. The adjudicating authority has already penalized him by imposing penalty under Section 11AC on the partnership firm Umiya. Therefore, imposing penalty under Rule 26 would be double jeopardy. Reliance is placed upon the decision in the case of Kamdeep Marketing Pvt. Ltd. - 2004 (165) ELT 206.
- xix. There are documentary evidences of their purchase and sales of goods and it is settled law that documentary evidence prevails over oral statement.
- xx. Since no goods are liable for confiscation, no penalty can be imposed on them. They rely upon the various 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 Umiya and imposition of penalty on the appellant under Rule 26



of the Central Excise Rules, 2002. The dispute pertains to the period F.Y. 2008-09 to F.Y. 2010-11.

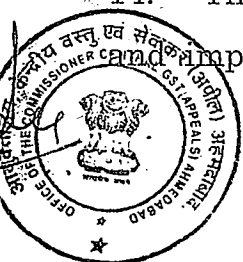
13. I find that the impugned order has been passed in the remand proceedings ordered by the Hon'ble Tribunal, Ahmedabad vide Order No. A/10740 & 10741/WB/AHD/2013 and M/12544 & 12545/WB/2013 dated 12.06.2013. The relevant part of the said order is reproduced below :

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

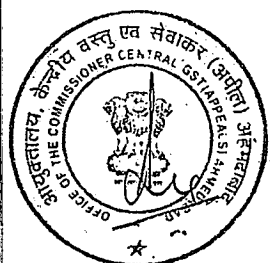
14. The appellant had in their appeal memorandum contested the clubbing and imposition of penalty on various grounds. They have contended that



mutuality of interest, common funding and financial flow back was not proved; the investigation itself establishes that they were a existing unit and not a dummy unit; no goods belonging to them were found in the premises of Umiya; no SCN has been issued to them for clubbing their clearances with that of Umiya etc. However, it is seen that there is no record of the contentions of the appellant in the impugned order and only the submissions of Umiya have been recorded at Para 12 of the impugned order. The submissions of the appellant are similar to that of Umiya. The adjudicating authority has rejected the contentions of Umiya 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 their firm not being made a noticee in the SCN proposing to club the clearances of the appellant with that of Umiya. 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 Umiya. The demand of central excise duty, confiscation of the goods and imposition of penalty would be consequent to the decision on this issue.

14.1 The impugned order was also challenged by Umiya by way of an appeal before this authority. The appeal was decided vide OIA No.AHM-EXCUS-001-APP-072/2022-23 dated 02.11.2022 and the appeal was allowed by way of remand and the adjudicating authority was directed to consider the issues, enumerated in Para 14 above, and decide the case afresh. Therefore, it would be in the fitness of things if the present appeal is also remanded back for denovo proceedings in light of the observations in Para 14 above.

15. 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 above. The appellant are directed to produce before the adjudicating authority all the necessary details and documents in support of their contentions and also make their written submissions, if already not filed,



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.

16. 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*  
( Akhilesh Kumar ) 2022..

Commissioner (Appeals)

Date: .11.2022.

Attested:

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



BY RPAD / SPEED POST

To

Shri Dinesh Ambaram Patel,  
Proprietor of M/s. Virkrupa Traders,  
38, Punit Apartment,  
NH No.8, Odhav,  
Ahmedabad - 382 405

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.