



सत्यमेव जयते

आयुक्त का कार्यालय, केंद्रीय वस्तु एवं सेवाकर लेखा परीक्षा अहमदाबाद,
3rd तल, जीएनएफसीटावर, पकवानचाररास्ता, एस.जी. हाइवे, अहमदाबाद
Office of the Commissioner of CGST, Audit Commissionerate-Ahmedabad,
3rd Floor, GNFC Tower, Pakwan Char Rasta, S.G. Highway, Ahmedabad.

पत्र सं. VI/1(b)/Tech-17/Adj-Appeal/17-18

दिनांक: 06.03.2018

Speed Post

सेवामें

आयुक्त (अपील)

वस्तु एवं सेवाकर, राजकोट,

गुजरात.

महोदय

विषय: - Transfer of files of Appeal Petitions after Order In Appeal -m/r

Please refer to the Board vide Order No. 05/2017- Service Tax issued vide F.No. 137/13/2017-ST dated 16.11.2017 by the Under Secretary (Service Tax), CBEC, New Delhi.

In view of the above, following six files are forwarded herewith;

Sr No.	Name of the Assesee	File No.	Date of OIA
✓ 1.	M/s Vrindavan Plaza Pvt Ltd	V2/235/BVR/2017	23.02.2018
✓ 2.	M/s Ganpatrai Jaigopal	V2/82/BVR/2017	23.02.2018
✓ 3.	M/s Gujarat Pipvav Port Ltd	V2/256/BVR/2017	23.02.2018
✓ 4.	M/s Sachdeva Industries	V2/32/BVR/2017	28.02.2018
✓ 5.	M/s Sachdeva Industries	V2/42/BVR/2017	28.02.2018
✓ 6.	Siddharth Bronz Products Ltd	V2/85/BVR/2017	28.02.2018

Kindly acknowledge the receipt.



संलग्नक : उपरोक्त

भवदीय
WCM.
सहायक आयुक्त(तकनीकी)
वस्तु एवं सेवाकर, लेखा परीक्षा
अहमदाबाद



::आयुक्त (अपील्स) का कार्यालय, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क:
O/O THE COMMISSIONER (APPEALS), CENTRAL GST & EXCISE,



द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

Tele Fax No. 0281 - 2477952/2441142

Email: cexappealsrajkot@gmail.com

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No. V2/85 /BVR/2017	मूल आदेश सं / O.I.O. No. R-304/Rebate/16-17	दिनांक / Date 30.01.2017
ख	अपील आदेश संख्या (Order-In-Appeal No.):		

BHV-EXCUS-000-APP-169-2017-18

आदेश का दिनांक / Date of Order;	28.02.2018	जारी करने की तारीख / Date of issue:	14.03.2018
------------------------------------	-------------------	--	-------------------

Passed by **Shri Suresh Nandanwar, Commissioner, Central Goods and Service Tax (Audit), Ahmedabad.**

अधिसूचना संख्या २६.१७/दिनांक (टी.एन) .शु.उ.के-२०१७/१० २०१७ के साथ पढे बोर्ड ऑफिस आदेश सं . १६/दिनांक .टी.एस-२०१७/०५११ के अनुसरण में २०१७.श्री सुरेश नंदनवार ,आयुक्त , केन्द्रीय वस्तु एवं सेवा कर (लेखा परीक्षा)की धारा १९९४अहमदाबाद को वित्त अधिनियम , १९४४के केन्द्रीय उत्पाद शुल्क अधिनि , के अंतर्गत दर्जे की अधारा गई अपीलों के सन्दर्भ में आदेश पारित करने के उद्देश्य से अपील प्राधिकारी के रूप में नियुक्त किया गया है.

In pursuance to Board's Notification No. 26/2017-C.Ex.(NT) dated 17.10.2017 read with Board's Order No. 05/2017-ST dated 16.11.2017, Shri Suresh Nandanwar, Commissioner, Central Goods and Service Tax (Audit), Ahmedabad has been appointed as Appellate Authority for the purpose of passing orders in respect of appeals filed under Section 35 of Central Excise Act, 1944 and Section 85 of the Finance Act, 1994.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से मूजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham :

घ **अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name & Address of the Appellants & Respondent :-**
M/s Siddharth Bronze Product P. Ltd., Plot No. 1, Rachana Indu. Estate, PO. Mamsa, Taluka Gogha

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क ,केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम ,1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है ।/
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए ।/
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- ३८००१६ को की जानी चाहिए ।/
Appeals other than as mentioned in para- 1(a) above to the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

- (iii) अपीलिय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवाली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलिय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलिय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

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.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/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 Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

- (B) अपीलिय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलिय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलिय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियों संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलिय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। /

The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलिय प्राधिकरण (सेस्टैट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलिय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है।

- (i) धारा 11 डी के अंतर्गत रकम
- (ii) सेनवेट जमा की ली गई गलत राशि
- (iii) सेनवेट जमा नियमवाली के नियम 6 के अंतर्गत देय रकम

- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलिय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा। /

For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, 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, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,

Under Central Excise and Service Tax, "Duty Demanded" shall include :

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules

- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(C) **भारत सरकार को पुनरीक्षण आवेदन :**

Revision application to Government of India:

इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, ससद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

- (i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। /

In case of any loss of goods, where the loss occurs 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

- (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /

In case of rebate of duty of excise on goods exported to any country or territory outside India of an excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

- (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

- (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इयूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए हैं। /

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 such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

- (v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी 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.

- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। /

जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए। /

The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पेटी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers 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 lakh fee of Rs. 100/- for each.

- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। /

One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-1 in terms of the Court Fee Act, 1975, as amended.

- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। /

Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

- (G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलाधी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। /

For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in

ORDER-IN-APPEAL

M/s. Siddhartha Bronze Products Private limited, plot number. 9, Rachna Industrial Estate, PO. Mansa Taluka- Ghogha, Distt.-Bhavnagar, and Gujarat filed present appeal (hereinafter referred to as the appellant) before Commissioner (appeals-III) C.Ex. & Customs Rajkot, against OIO no. 304/Rebate/16-17 dated 30-01-2017 (hereinafter referred to as "the impugned order") passed by Assistant Commissioner, Central Excise, Division- Bhavnagar (hereinafter referred to as "the respondent"). The appellant is registered with Department having Central Excise Registration no. AADCS0289BEM006 and is engaged in manufacture of excisable goods viz. waste and scrap of copper alloys (Aluminum Bronze Propeller-AB2) falling under C.E.T.S.H. No. 74040019 of Central Excise Tariff Act 1985.

2. Brief facts of the case:-

2.1 A rebate claim for Rs. 13,01,850/- was filed by the appellant vide letter dated 28-12-2016 before the Assistant Commissioner, Central Excise, Division- Bhavnagar. The rebate claim documents were sent to Range Superintendent for scrutiny who recommended for acceptance of the said claim. Nonetheless the range superintendent had also informed that one detention notice was issued against M/s Siddhartha Bronze Products Pvt. Ltd. by the Assistant Commissioner, Customs Division, Bhavnagar. Vide said detention notice and letter dated 12-01-2017 of the superintendent, Custom House, Bhavnagar, it has been informed that an amount of Rs. 6,32,413/- (Customs duty of Rs. 120684+ interest of Rs. 5,11,729 up to 31-01-2017) was outstanding against the said party.

2.2 The adjudicating authority vide OIO number R-304/Rebate/16-17 dated 30.01.2017 passed the order as under:-

(i) Sanctioned rebate claim amounting to Rs. 13,01,850/-under section 111B of CEA 1944 read with Rule 18 of CER 2002.

(ii) Out of which Rs. 6,69,437 distributed in cash through RTGS/NEFT in the bank account of the claimant and the remaining amount of Rs. 6,32,413/- appropriated against the FAO dated 29-09-2005 & OIO number 75/CH/Denovo/2007 -08 dated 13-03-2008 issued by the Assistan. Commissioner, Customs Division, Bhavnagar.

2.3 Being aggrieved the appellant has impugned the aforesaid order of the Assistant Commissioner, by filing the present appeal number 85/BVR/2017 on 10th April 2017 mainly on the ground that since their appeal against the order of the Assistant Commissioner, Customs Division, Bhavnagar is pending no coercive action for recovery of dues could have been taken. It is contended by the appellant that:

- Final assessment order was passed on 29-09-2005 in their case by the Assistant Commissioner, Customs Bhavnagar. The appellant preferred

601

appeal against the said assessment before the Commissioner(A) Jamnagar .The appeal was disposed of vide OIA number 19/JMN/2006 dated 15-02-2006. The appellant preferred appeal against the said OIA dated 15-02-2006 before Hon'ble CESTAT, WZB, Ahmedabad. The same was disposed of by CESTAT WZB, Ahmedabad vide order no. A/2145/WZB/AHD/2007 dated 16-08-2007 by rejecting the appeal and remanded the case to the original authority for fresh decision. In terms of remand OIO No. 75/CH/DENOVO/2007-08 dated 13-03-2008 was passed by Assistant Commissioner, Customs Division, Bhavnagar confirming the demand of Rs. 4,20,684/- along with interest.

- The appellant preferred an appeal in the matter before Hon'ble Commissioner (A) Jamnagar against aforesaid OIO dated 13-03-2008. The same was rejected by Commissioner (A) vide OIA no. 137/Commr(A)JMN/2009 dated 24-11-2009.
- The appellant preferred an appeal against the said OIO dated 24-11-2009 before Hon'ble CESTAT, Ahmedabad. The same was disposed of by CESTAT vide order number A/1229/WZB/AHD/2010 & S/971/WZB/AHD/2010 dated 16-08-2010 and directed the appellants to make pre-deposit & approach the Commissioner (A) to decide the case afresh on merits.
- The appeal in the matter was again rejected by Commissioner (A) vide OIA number 30/Commr. (A)/ JMN/ 2011 dated 26-04-2011.
- The appellant yet again preferred an appeal against the said OIA before CESTAT, Ahmedabad vide appeal no. C/238 of 2011. CESTAT Ahmedabad vide order number A/1959/WZB/AHD/2011 & S/1469/WZB/AHD/2011 dated 31-10-2011 remanded the matter to Commissioner (A), Customs, Jamnagar (Now Ahmedabad) to decide the same on merits, after the appellants have deposited an amount of Rs. 1.5 lakhs within eight weeks from the date of the order.
- However, on 30-01-2017, the Assistant Commissioner Central Excise, City Division, Bhavnagar passed order number R-304/Rebate/16-17 sanctioning a refund claim of the aforesaid appellant. Out of the sanctioned amount, Rs. 6,32,413/- was appropriated, which arose from Final Assessment Order dated 29-09-2005 and OIO No. 75/CH/Denovo/2007-08 dated 13-03-2008 issued by A.C. Customs, Bhavnagar, in terms of Detention Notice issued by the Assistant Commissioner, Customs Division, Bhavnagar.
- Consequentially, an appeal was filed by M/s Siddhartha Bronze Products Pvt. Ltd, Bhavnagar before Commissioner (A)-III, central Excise, and Rajkot on 10 April 2017 against the aforesaid order dated 30-01-2017, appropriating the amount as above, which has been registered as Appeal number V2/ 85/BVR/2017.
- On the same day of filing of appeal, the appellants also filed an application for condonation of delay of 10 days, in filing of the aforesaid appeal.

3. The above appeal has been transferred to the undersigned for disposal vide Board's order number 05/2017-Service Tax issued vide file number 137/13/2017- Service Tax dated 16 November 2017. Therefore, Personal hearing in the matter was held on 06-02-2018 wherein Shri Madhav Kumar Vadodariya, consultant appeared on behalf of the appellant and reiterated the written submission and grounds of appeal. 68

4. **Discussion and Findings:-**

4.1 I have gone through the Appeal Memorandum, in particular the grounds of appeal, the submissions made by the Appellant from time to time and the materials on record.

4.2 At the outset I will take up the application for condonation of delay. It is contended that as their C.A. who was handling the matter was preoccupied with other adjudication matters and reply to the notices issued by the Income Tax department, in other cases, the appeal has been filed beyond 10 days from the last date of filing the appeal and has requested for condonation of delay. They have also relied on various judgments including those of the Hon'ble Apex court holding that under the normal circumstances delay in filing appeal may be condoned in the interest of justice. I find that Proviso to Section 35(1) of the Central Excise Act, provides as follows:

"Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days."

4.3 I find that the delay of 10 days in filing of the appeals is required to be condoned in light of the submissions made by the applicant and accordingly I Condon the delay and take up the appeal for decision.

4.4 The only point questioned in this appeal is whether the impugned order appropriating a sum of Rs. 6,32,413/- is legal and proper. At the outset I find that the said amount has been appropriated by the Assistant Commissioner, Bhavnagar, responding to the detention notice issued by the Assistant Commissioner, Customs Division, Bhavnagar.

4.5 The appellants have mainly contended that since their appeal, against the OIO number 75/CH/Denovo/2007 -08 dated 13-03-2008 of the Assistant Commissioner of Customs, Bhavnagar, is pending before the Commissioner (Appeals), Jamnagar (Now Ahmedabad), in terms of directions issued by CESTAT, Ahmedabad vide order dated 30.11.2011, the recovery under section 142(1) (C) of the Customs Act, 1962 is not proper and not tenable in law. It is also contended that the detention notice issued by the Assistant Commissioner of Customs, Bhavnagar is also bad in law as he has not granted any hearing or issued any show cause notice prior to issuance of the notice of detention.

Subsection 1(a) of Section 142 of the Customs Act, 1962 reads thus:

"142. Recovery of sums due to Government. -

(1) Where any sum payable by any person under this Act including the amount required to be paid to the credit of the Central Government under section 28B is not paid, -



(a) the proper officer may deduct or may require any other officer of customs to deduct the amount so payable from any money owing to such person which may be under the control of the proper officer or such other officer of customs; or"

4.6 Therefore it is seen that the detention notice issued by the Assistant Commissioner, Customs Division, Bhavnagar is in consonance with the above provisions for recovery of sums due and arising out of FAO dated 29-09-2005 & OIO number 75/CH/Denovo/2007 -08 dated 13-03-2008 issued by him.

4.7 However I find that the counsel of the appellants during the course of personal hearing held on 06.02.2018, submitted written submissions and also produced a copy of stay order dated 26.06.2006 in Appeal No. C/459/06 filed by the appellants against OIA number 19/JMN/2006 dated 15.02.2006. However, I find that the said appeal has been finally disposed of by the CESTAT, Ahmedabad vide order dated 16.08.2007 by rejecting the appellant's claim and remanding the case for fresh decision. Consequent to the remand order dated 16.08.2007 of CESTAT, an order OIO No. 75/CH/DENOVO/2007-08 dated 13-03-2008 was passed by Assistant Commissioner, Customs Division, Bhavnagar confirming the demand of Rs. 4,20,684/- along with interest, against which an appeal was preferred before the Commissioner (A), who vide order in Appeal 24.11.2009 dismissed the appeal for non-compliance of the order of pre-deposit.

4.8 On further appeal the CESTAT vide order dated 16.08.2010 directed the appellant to deposit Rs. 1.5 lakhs within four weeks and directed the Commissioner (A) to hear the case on merits on compliance of the order of deposit. The appellant paid the amount of Rs. 1.5 lakhs in terms of the directions of the tribunal, however belatedly and therefore their appeal was once again rejected by Commissioner (A) vide order in Appeal dated 26.04.2011. On further approaching the CESTAT, vide order dated 31.01.2011 CESTAT directed the appellant to deposit an additional amount of Rs. 1.5 Lakhs within eight weeks and report compliance to the Commissioner (A), who on noting the compliance, shall proceed to hear the appeals and pass order on merits.

4.9 Appellants herein contend that in terms of CESTAT's directions they had deposited the amount of Rs. 1.5 lakhs vide GAR-7 challan CIN 00200071512201100115 dated 15.12.2011 and informed about the deposit to Commissioner (A), Customs, Jamnagar vide their letter dated 19.02.2013. They have enclosed the copies of the challan and their letter dated 19.02.2013 with their appeal memo. In fine they have contended that since their appeal is pending before the Commissioners (A), Customs, Jamnagar (now Ahmedabad) the recovery of the amounts vide the impugned order is not tenable in law. The genuineness of the challan on EASIEST has been verified and found that payment as contemplated has been made.

4.10 Further to the above, the Commissioner (Appeals), Customs, Ahmedabad & Commissioner of Customs, Jamnagar were requested vide letter dated 13.02.2018 & 26.02.2018 to intimate the status of the appeal in terms of CESTAT's order dated 31.10.2011. However, no response is received in the matter till the date of passing of this order.


4.11 In view of the above I find that the impugned order in original number R-304/Rebate/16-17 dated 30.01.2017 passed by the Assistant Commissioner, Central Excise, City Division, Bhavnagar, in so far as it appropriates the

amount of Rs. 6,32,413/-, is not sustainable in light of the fact that the order in original No. 75/CH/DENOVO/2007-08 dated 13-03-2008 passed by Assistant Commissioner, Customs Division, Bhavnagar confirming the demand of Rs. 4,20,684/- along with interest, has not attained finality. This all the more so when there is an apparent stay against the said order, as the amount to be paid as ordered by the CESTAT for restoration of appeal, has been paid. Further, in terms of Board's circular number 967/1/2013-CX dated 01.01.2013 & circular number 1035/23/2016-CX dated 04.07.2016, as there is an apparent stay, no recovery could have been made. 66

5. In view of the foregoing discussion and findings, I pass the following order.

ORDER.

I uphold the appeal filed by the appellant and direct the Assistant Commissioner, Central Excise, City Division, Bhavnagar to pay the amount of Rs. 6,32,413/-, unduly appropriated, in cash.


(Suresh Nandanwar)
Commissioner
Central Tax Audit,
Ahmedabad.

F.No.V2/85/BVR/2017

Date: 28.02.2018.

To,
M/s. Siddharth Bronze Product P.Ltd.
No.9, Rachana Industrial Estate,
PO. Mamsa, Taluka-Gogha,
Dist. Bhavnagar.

Copy to :

1. The Chief Commissioner, CGST, Ahmedabad.
2. The Commissioner, CGST, Bhavnagar.
3. The Assistant Commissioner, CGST, Division, Bhavnagar.
4. The Assistant Commissioner (System), CGST, Bhavnagar.
5. Guard file.