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::आयुक्त (अपील-III) का कार्यालय,केंद्रीय उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS-III), CENTRAL EXCISE,
द्वितीय तल, केन्द्रीय उत्पाद शुल्क, भवन / 2nd Floor, Central Excise, Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,
राजकोट / Rajkot- 360001



Tele Fax No. : 0281 – 2477952/2441142 Email cexappealsrajkot@gmail.com

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/84 /BVR/2016	22/Demand/15-16	09.03.2016,

ख अपील आदेश संख्या (Order-In-Appeal No.):

BHV-EXCUS-000-APP-003-2017-18

आदेश दिनांक / Date of Order :	25.04.2017	जारी करने की तारीख / Date of issue:	27.04.2017
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**श्री उमा शंकर, आयुक्त (अपील-III) द्वारा पारित /
Passed by Shri Uma Shanker, Commissioner (Appeals-III)**

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित: /

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 Appellant/ Respondent :-**
M/s. Kalpana Steel Works, Old Bundar Road, Near Krishna Way Bridge, Bhavnagar

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 मामलों 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 अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, ओ-20, न्यू मेन्टल होस्पिटल कम्पाउंड, मेघानी नगर, अहमदाबाद-380016, को की जानी चाहिए।/
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad: 380016, in case of appeals other than as mentioned in para- 1(a) above
- (iii) अपीलीय 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 माँग, ब्याज की माँग 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 अपीलीय 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 अपीलीय 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) अपीलीय 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 माँग, ब्याज की माँग 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 अपीलीय 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 अपीलीय 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 प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय 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 अपीलीय प्राधिकरण (सेस्टेट) 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 अपीलीय 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 नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगा।/
For an appeal to be filed before the CES
TAT, 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, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद 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-35 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 on 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 क्रेडीट 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 समयावधि 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 पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय नयाधिकरण को एक अपील या केन्द्रीय 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, 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 filed 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-I 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 संबंधित मामलों को सम्मिलित करने वाले नियमों की और 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, अपीलार्थी 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

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:: ORDER ::

M/s Kalpana Steel Workds, old BunderRoad, Near Krishna way bridge, opp. Bocil, Bhavnagar (*hereinafter referred to as 'appellant'*) has filed the present appeal against Order-In-Original No. 322/Demand/ 15-16 dated 09.03.2016 (*hereinafter referred to as "impugned order"*) passed by the Assistant Commissioner, Central Excise, City Division, (*hereinafter referred to as "adjudicating authority"*).

2. The facts of the case in brief are that the appellant are registered excise assessee and availing benefit of Notification No. 08/2003-CE dated 01.03.2003. During the course of Audit it was observed that the appellant has inputs in balance as on 31st March during the priod from 2010-11 to 2012-13 and they have to pay an amount equivalent to Cenvat Credit involved on the inputs as such lying in stock under Cenvat Credit Rules, 2004 (*hereinafter referred to as "the Rules"*). It was observed from the balance sheet of the appellant that the appellant were required to reverse/ pay the Cenvat credit contained in stock of goods on value declared in the balance sheet. The appellant was issued a show cause notice demanding total Cenvat credit/ an amount equivalent to the Cenvat credit of Rs.2,19,904/- under Section 11A of the Central Excise Act, 1944 (*hereinafter referred to as "the act"*) . The matter was decided afresh by the adjudicating authority vide impugned order wherein adjudicating authority has confirmed the demand of Rs.1,05,815/- pertaining to the year 2010-11 and 2011-12 along with interest under the Act and penalty under Rule 15(2) of the Rules and dropped the demand of Rs.1,14,089/- pertaining to the period 2012-13.

3. Being aggrieved, the appellant has preferred the present appeal on the grounds that:

- (i) That the demand has been made on the basis of the closing stock of the value declared in the balance sheet and

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adjudicating authority has not consider that the value shown in the balance sheet is pertaining to the purchase of non excisable goods only; that they have submitted copies of invoices alongwith the written submission dated 15.02.2015; that the adjudicating authority has not verified the said bills; that vide their letter dated 29.02.2016 had proved that the value of the goods was of Rs.8,70,550/- was nothing but the purchase of non excisable goods only; that they also proved that amount of Rs.8,57,114/- pertaining to the Financial year 2011-12 was the value of purchase of non excisable goods; that they have already paid the amount of Rs.37,571/- alongwith interest amount of Rs.16,898/- vide challan no. 60015 dated 30.09.2014; that adjudicating authority has not accepted the said payment without any sustainable ground; that the said payment was made in consultation with the range superintendent and it was declared in their reply dated 16.12.2015; that adjudicating authority was required to get verified such information from the concerned range superintendent.

(ii) That impugned order was passed without proper investigation of the case on the basis of audit report and non central excise records i.e. Daily Production Register, Register of receipt of Cenvatable inputs, ER-3 returns; that balance sheet is not the exclusive evidence to prove the charged of demand in the present case; that no effective findings have been given by the adjudicating authority.

(iii) That the demand does not falls under the purview of Section 11A but covered under the provisions of Rule 11(2) read with Rule 14 of the Cenvat Credit Rules, 2004 and hence the matter has been decided beyond the facts and circumstances of the case.

(iv) That there was no suppression as much as department was aware that they were availing SSI exemption and an amount of Rs.50,757/- and Rs.39,034/- was lapsed on account of cenvat credit allowed in respect of inputs lying in stock etc as on 31st March for the financial year 201011 and

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2011-12 and also ER-3 returns were filed by them.

4. Personal hearing in the matter was held on 22.02.2017 which was attended by Shri N K Maru, Consultant, on behalf of the appellant. He reiterated the ground of the appeal and made written submission. He also submitted that benefit of payment made for FY 2011-12 was denied in OIO. In the written submission mainly contains summary of grounds of appeal and it is also vehemently contended that findings given at Para 13 of the impugned order is not proper and legal as much they have submitted the purchase register only for purchase of Central Excise goods pertaining to the period from 23.01.2011 to 31.03.2011.

5 I have carefully gone through the facts of the case, impugned order, the grounds of appeals, and the submissions made during the personal hearing. I find that the crux of the matter is value of inputs lying in stock shown in the balance sheet and related documents/details to ascertain the reversal amount under Transitional provisions under Rule 11(2) of Cenvat Credit Rules, 2004. The appellant has categorically advanced the argument that the adjudicating authority has not considered their submissions to arrive at factual position. I find that the adjudicating authority has observed that on verification of computer generated purchase register (party-wise) for the period 23.01.2011 to 31.03.2011 he find that it did not reflect any purchase of non-excisable goods. Whereas, countering that, the appellant produced a hand written copy of purchase register alongwith copies of Invoices showing purchase of Non-excisable goods before me. Copy of register is reproduced below :-

2010/11

PARTY	DT.	BILL NO	W.T.	AMT.
గోవింద్ ఎంపీ. కే.ఎం.	25/3/11	209	946/4	4305
గోవింద్ ఎంపీ. కే.ఎం.	25/3/11	9308	52	2334
ఎం. పి. కే.ఎం. కే.ఎం.	27/3/11	9277	4	3034
పి.ఎం.ఎం. ఎంపీ. కే.ఎం.	28/3/11	9772	232	34664
ఎం. పి. కే.ఎం. కే.ఎం.	21/3/11	9969	220/2	9389
గోవింద్ ఎంపీ. కే.ఎం.	29/3/11	9359	239	8579
గోవింద్ ఎంపీ. కే.ఎం.	9/3/11	9357	230	3220
గోవింద్ ఎంపీ. కే.ఎం.	9/3/11	9373	271	4837
గోవింద్ ఎంపీ. కే.ఎం.	9/3/11	9333	323	11532
ఎం. పి. కే.ఎం.	26/3/11	9982	230	2229
గోవింద్ ఎంపీ. కే.ఎం.	3/4/11	9768	937	5857
గోవింద్ ఎంపీ. కే.ఎం.	7/3/11	9753	525	30042
ఎం. పి. కే.ఎం. కే.ఎం.	9/3/11	9995	223/2	1514
ఎం. పి. కే.ఎం. కే.ఎం.	21/2/11	9033	204/5	7059
ఎం. పి. కే.ఎం.	7/2/11	334	972/1	76348
ఎం. పి. కే.ఎం.	7/2/11	9002	621	3043
ఎం. పి. కే.ఎం.	1/2/11	893	2738	50883
గోవింద్ ఎంపీ. కే.ఎం.	21/2/11	9360	71	7572
ఎం. పి. కే.ఎం.	12/9/11	479	223/2	4828
ఎం. పి. కే.ఎం.	19/9/11	405	43/3	3789
ఎం. పి. కే.ఎం.	21/9/11	373	982	7377
ఎం. పి. కే.ఎం.	11/9/11	927	2723/140	928224
			22251440	297475

The appellant has also clarified in their written submission made during the personal hearing that they have submitted the purchase register only for purchase of Central Excise goods pertaining to the period from 23.01.2011 to 31.03.2011 before the adjudicating authority as requested for. However, the same is not before me. Thus, I find that there appears mismatch in the communication, submission and production of documents. I further find that the adjudicating authority has inter-alia observed as under:-

"The purchase register furnished by the noticee does not reflect any purchase of any non-excisable goods during the January-2011 to Mrch-2011 from those supplier, whose copies of invoices were furnished by the noticee in para supra during the said period. As there is no co-relation with

the copies of invoices of non-excisable purchase with the purchase register (party wise) is established I find that the noticee has suppressed the material fact from the department"

Thus, it transpires from the above facts that the matter is half cooked due to ambiguity in submission of documents before the adjudicating authority. I also, find force in the appellant's plea that balance sheet only can not be considered to arrive at the demand in the given circumstances. Thus, I find that the matter required to be looked into afresh to consider all the facts on records.

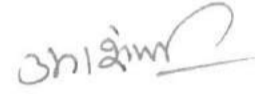
6. As regards details and payment made in respect of 2011-12, the adjudicating authority has rejected the submission of the appellant holding that payment was not genuine and authentic in absence of details of calculation from the appellant. I find that this could not be ground to reject the claim as much payment is not in question. Also, the appellant took a plea that the payment was made after discussion with the Range Superintendent and same was disclosed vide reply dated 16.12.2015. However, at the same time it is not forthcoming that whether any calculation and/or details were submitted before the adjudicating authority or otherwise. In this backdrop, I am of the view that rejecting a payment without factual verification will lead to injustice to the appellant at the same time appellant is required to furnish each and every piece of information and evidence in support of their claim. Therefore, in the fitment of the things I am of the view that the matter requires to be decided afresh.

7. In view of the above, I remand the matter back to the adjudicating authority who will examine all aspects with direction to come up with speaking order after considering all the evidence and facts on records in this regard. The appellant is directed to produce all the relevant/ necessary evidence, documents, clarification and calculations in support of their claim before the adjudicating authority

8. Accordingly, I set aside the impugned order and allow the appeal by way of remand to the adjudicating authority to decide the matter afresh.

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

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



(उमा शंकर)

आयुक्त (अपील्स - III)

By R.P.A.D.

To,
M/s Kalpana Steel Workds,
old BunderRoad,
Near Krishna way bridge,
opp. Bocil,
Bhavnagar

मेसर्स कल्पना स्टील वर्क्स
ओल्ड बंदर रोड
कृष्णा वे ब्रिज के नजदीक
'बोसिल' के सामने
भावनगर

Copy to:

1. The Chief Commissioner, Central Excise, Ahmedabad.
2. The Commissioner, Customs and Central Excise, Bhavnagar.
3. The Assistant Commissioner, C.Excise City Division, Bhavnagar.
4. The Dy. Commissioner (Sys.), Central Excise, H.Q. Bhavnagar.
5. The Superintendent, AR-1, Bhavangar.
6. PA to Commissioner (Appeals- III), Central Excise, Ahmedabad.
7. Guard File.