



::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 / 2<sup>nd</sup> Floor, GST Bhavan,

रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

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रजिस्टर्ड डाक ए. डी. द्वारा :-

क अपील / फाइल संख्या /  
Appeal / File No.  
V2/115/BVR/2017

मूल आदेश सं /  
O.I.O. No.  
BHV-EXCUS-000-JC-070-16-17

दिनांक /  
Date  
28.02.2017

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

**BHV-EXCUS-000-APP-254-2017-18**

आदेश का दिनांक / Date of  
Order: 28.03.2018

जारी करने की तारीख /  
Date of issue:

04.04.2018

Passed by **Shri Gopi Nath, Additional Director General (Audit), Ahmedabad Zonal Unit, Ahmedabad.**

अधिसूचना संख्या २६/२०१७-के.उ.शु. (एन.टी.) दिनांक १७.१०.२०१७ के साथ पठे बोर्ड ऑफिस आदेश सं. ०५/२०१७-एस.टी. दिनांक १६.११.२०१७ के अनुसरण में, श्री गोपी नाथ, अपर महानिदेशक ऑडिट, अहमदाबाद जोनल यूनिट को वित्त अधिनियम १९९४ की धारा ८५, केंद्रीय उत्पाद शुल्क अधिनियम १९४४ की धारा ३५ के अंतर्गत दर्ज की 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 Gopi Nath, Additional Director General of Audit, Ahmedabad Zonal Unit, 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 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 Appellants & Respondent :-**

**M/s Vinubhai Steel Co. P. Ltd., F/A, Ruvapari Road, Bhavnagar - 364 001 .**

इस आदेश(अपील) से व्यक्ति 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, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को की जानी चाहिए।/

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> Floor, Bhaumali Bhawan, Asarwa 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) नियमावली, 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 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 नियमावली, 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 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/-.

- (ii) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमावली, 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 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.

- (iii) 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) सेल्वेट जमा की ली गई गलत राशि
- (iii) सेल्वेट 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 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 को 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, 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 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 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) सनिश्चित 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 तरीख 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 पट्टी 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, 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-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](http://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](http://www.cbec.gov.in)



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**ORDER-IN-APPEAL**

This order arises on account of an appeal filed by M/s Vinubhai Steel Co. Pvt. Ltd., Plot No. F/A, Ruvapari Road, Bhavnagar-364 001 (herein after referred to as 'the appellant' for the sake of brevity) against an Order-In Original No. BHV-EXCUS-000-JC-70-2016-17 dated 28.02.2017 (herein after referred to as the 'impugned order' for sake of brevity) passed by the Joint Commissioner, Central Excise & Service Tax, Bhavnagar (herein after referred to as the 'Adjudicating Authority' for sake of brevity).

2. Briefly stated the facts of the case are that -

(i) the appellant are engaged in the manufacture of various Rolled Products i.e. Bars, Rods etc. of Iron & Steel falling under Chapter 72 of the Central Excise Tariff Act, 1985 and was not holding any registration at the material time. The appellant had manufactured the finished rolled products from the raw materials of ship breaking materials falling under Chapter Heading No.72.30 & 73.27 of the Central Excise Tariff Act, 1985, purchased from Ship Breaking Yards, which have been cleared at NIL rate of duty. The appellant was not eligible for the benefit of the Notification No. 202/88-CE dated 20.05.1988 (herein after referred to as 'the said notification' for short) since the input of ship breaking materials are neither specified in the said notification nor duty paid as the ship breaking materials were exempted under Notification No. 44/93 CE dated 28.02.1993. Thus, the appellant had wrongly cleared their finished Rolled Products for the period from 01.03.1993 to 31.10.1993 according to the provisions of the said notification.

(ii) The Range Superintendent vide their letter dated 14.05.1993 intimated the appellant to obtain Registration under Central Excise Rules,1944 and to follow the procedure under the Central Excise Act/Rules and also vide letter dated 28.10.1993 asked the appellant to intimate the quantity of their products cleared from 01.03.1993 on wards. However, the appellant did not respond to the said letters.

(iii) The Range Superintendent vide Show Cause Notice dated 26.11.1993 called upon to the appellant as to why Central Excise Duty levied for the period from 01.03.1993 to 31.10.1993 amounting to Rs. "to be ascertained" on the finished goods manufactured and cleared deliberately without payment of Central Excise Duty should not be recovered from them under Rule 9(2) of Central Excise Rules,1944 read with Section 11A of the Central Excise Act, 1944 by invoking the provision of five years instead of six months.

(iv) The Order-In-Original No. 08/BVR/Addl/Commr/2010 dated 25.02.2010 was issued ( herein after referred to as "the first OIO" for short) wherein the demand of Central Excise Duty of Rs. 23,26,672/- was confirmed under the provisions of Section 11A of the Central Excise Act, 1944 read with Rule 9 (2) of Central Excise Rules,1944 and also imposed



penalty of Rs. 5000/- on the appellant under Rule-173Q, (1) (a), (c) & (d) of Central Excise Rules, 1944.

(v) On being an appeal filed against the first OIO, the Commissioner (Appeals) vide Order-In-Appeals dated 02.08.2010 issued on 18.08.2010 (herein after referred to as "the first OIA" for short) upheld the first OIO and rejected the appeals filed by the appellant.

(vi) On being an appeal filed against the first OIA, the Hon'ble CESTAT, Ahmedabad vide its order No. A/2279/WZB/AHD/2011- & S/1734/WZB/AHD/2011 dated 20.12.2011 remanded the case back to the Adjudicating Authority with direction to give an opportunity to the appellant for producing defence in respect of production of goods..

(vii) The Adjudicating Authority in a remand proceedings, under the impugned order confirmed the demand of central Excise Duty of Rs. 23,26,672/- under the provisions of Section 11A of the Central Excise Act, 1944 read with Rule 9(2) of Central Excise Rules, 1944 and also imposed penalty of Rs. 5000/- on the appellant under the provisions of Rule-210 of erstwhile of Central Excise Rules, 1944.

3. Aggrieved, the appellant had filed present appeal. The grounds of appeal as per appeal memorandum and written submission dated 16.03.2018, interalia are as under:-

(i) At the outset, they adopt and reiterate to avoid repetition, the various pleas/grounds made by them in their reply to impugned SCN filed earlier before the Adjudicating Authority in the first round of adjudication proceedings.

(ii) That they had made various submission and oral arguments before the Adjudicating Authority. However, the Adjudicating Authority had clearly overlooked the same and, mechanically confirmed the demand under the impugned order. Therefore, the impugned order is non speaking order which has been passed in gross violation of principles of equality, fair play and natural justice and hence, the same is liable to be set aside on this ground itself.

(iii) In identical case, the Hon'ble Tribunal vide its Final Order No. A/1460 to 1504/WZB/AHD/2007 dated 18.06.2007 has allowed the benefits of the said Notification No.202/88-CE and as per their knowledge, the said order is also accepted by the department. Hence, the department can not take a different view in respect of another assessee on the similar issue. Reliance is placed on the various decision of the higher judicial forum in support of their above contention.

(iv) The Adjudicating Authority has erred in relying on the decision of the Hon'ble Tribunal in the case of Ahmedabad Rolling Mills Pvt. Ltd-2008 (225) ELT 273(T) in as much as the earlier decision of the Hon'ble Tribunal vide its Final Order No. A/1460 to 1504/WZB/AHD/2007 dated 18.06.2007 has not been challenged by the department. Further, aforesaid decision in the case of a Ahmedabad Rolling Mills Pvt. Ltd is *per incuriam* in as much as the said final order Final Order No. A/1460 to 1504/WZB/AHD/2007 dated 18.06.2007 was not brought to the notice to the Hon'ble CESTAT. Hence, the decision of the Hon'ble Tribunal in the case of Ahmedabad Rolling Mills Pvt. Ltd, has not precedent value and hence,

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not binding. Further, the reasoning of the Adjudicating Authority that the Tribunal in their earlier order dated 18.06.2017 had not discussed the Hon'ble Apex Court order in the case of Kalyani Packaging, is not sustainable.

(v) As they had already submitted the statement showing the details of materials purchased and cleared by them during the period from 01.03.1993 to 28.02.1994 vide their letter dated 17.03.1994 and therefore, after 23 years, it is not possible by the appellant to provide the production figures.

(vi) Extended period of limitation is wrongly invoked. There is no evidence or discussion in the impugned SCN/impugned order regarding suppression of facts with intent to evade the duty. The SCN issued on 26.11.1993 for the period from 01.03.1993 to 31.10.1993. In absence of any charges of suppression of facts or misstatement, the time limit for issuance of SCN was only six months and hence, the same is time barred.

4. Hearing was held on 16.03.2018, wherein Shri Sarju Mehta, Chartered Accountant appeared on behalf of the appellant and reiterated the submissions of the appeal memorandum for consideration.

5. I have gone through the appeal memorandum and oral submission made during personal hearing. I proceed to decide the case on merits since the appellant had earlier made payment of deposit of Rs.5,81,668/- vide Challan dated 28.06.2010 in compliance to earlier Stay Order dated 11.06.2010 issued by the Commissioner(Appeals), in the first round of litigation and thus, complied with the requirement of fulfillment of mandatory pre deposit in pursuance to the amended provisions of Section 35F of the Central Excise Act,1944 effective from 06.08.2014.

6. The issue to be decided is whether or not the Adjudicating Authority in a remand proceedings, under the impugned order has correctly confirmed the demand of Central Excise Duty of Rs. 23,26,672/-. I find that it is not the contention of the appellant that they had not manufactured and cleared the rolled products during the period from 01.03.1993 to 31.10.1993. I also find that it is not their contention that they had not used the raw materials of ship breaking materials falling under Chapter Heading No.72.30 & 73.27 of the Central Excise Tariff Act, 1985, purchased from Ship Breaking Yards as raw materials(inputs) for manufacture of their final products. It is also not in dispute that the raw materials (inputs) purchased from Ship Breaking Yards were exempted under Notification No. 44/93 CE dated 28.02.1993 during the relevant period. Though the appellant contended that they had also purchased the input raw materials from open market but no evidences in support of this contention have been placed by the appellant before me in the appeal memorandum. In the back ground of these facts and discussion, I proceed to decide the appeal filed against the impugned order issued in the remand proceeding.

7. I find that impugned order is issued in the second round of adjudication in a remand proceedings as ordered by the Hon'ble CESTAT, Ahmedabad vide its order No. A/2279/WZB/AHD/2011- & S/1734/WZB/AHD/2011 dated 20.12.2011, the relevant

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portion thereto is reproduced as under for ease of reference.

“ 4. On perusal of the records, we find that the adjudicating authority has considered the production as monthly average production and the same quantity has been considered as monthly clearances to arrive at the demand of the duty on the appellant by not giving benefit of Notification No.202/88-CE dated 20.05.88. It is also seen from the records that the show cause notice did not have any calculation as to the quantity manufactured and cleared by the appellant. The main plank of the argument the learned counsel appearing on behalf of the assessee is that these figures have been collected beyond their back and they were not informed, it is also his submission that both the authorities have not considered the points urged as regards the demand being hit by limitation.

5. At this juncture, we find that the figures relied upon by the adjudicating authority for arriving at a duty liability on the appellant is not indicated in the show cause notice. This needs to be reconsidered by the lower authorities after giving the appellant an opportunity of producing defence in respect of production of goods. In our considered view, the entire issues need to be reconsidered by the original adjudicating authority. In view of this, without expressing any opinion on the merits of the case, keeping all the issues open, we set aside the impugned orders and remit the matter back to the original adjudicating authority to reconsider the issue afresh after following the principles of natural justice. Stay petition and appeal are allowed by way of remand.”

From above order, it transpires that since the figures relied upon by the adjudicating authority in the first OIO for arriving at a duty liability on the appellant was not indicated in the show cause notice and the main plank of the argument by the learned counsel before the Hon'ble Tribunal was that these figures have been collected beyond their back and they were not informed and hence, the Hon'ble Tribunal felt it necessary to reconsider by the lower authorities after giving the appellant **an opportunity of producing defence in respect of production of goods**. Thus, it was for appellant to come forward and put forth the evidences as their defence in respect of production of goods.

7.1 However, I find that the Adjudicating Authority at Para-3.3 of the impugned order has observed that “ .... but the Noticee failed to produce defence in respect of production of goods as directed by CESTAT in its above mentioned order. Despite sufficient time and opportunities to the Noticee, the Noticee failed to produce any production records and submitted vide letter dated 19.08.2016 that the issue pertains to year 1993-94, almost 23 years back and they are not having any records to this period except for the adjudication proceedings involved in this matter.” Thus, during the remand proceedings also, the appellant failed to produce defence in respect of the production of goods. Even before me in the appeal memorandum, the appellant has not produced any such documents in support of their contention.

7.2 Further, I find that the Adjudicating Authority during the course of remand proceedings, vide letter dated 21.06.2016 directed the Range Officer to obtain the exact monthly figures of final products from the appellant and in turn the Range Superintendent vide letter dated 27.06.2016 asked the appellant to submit the relevant records showing production figure of the final products for the period from March 1993 to October,1993. In reply thereto, the appellant

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vide letter dated 18.07.2016 received on 19.08.2016 by the Range office, interalia informed that "The issue is pertaining to year 1993-94, almost 23 years back. We are not having any records pertaining to this period except for the adjudication proceedings involved in this matter. ....The SCN dated 26.11.1993 is pertaining to the period from March 1993 to October,1993.....The Second SCN dated 29.04.1994 and the third SCN dated 30.08.1994 are issued with full quantification, which means that the figure of production and clearances were made available to the department at the material time..... The figures arrived at the subsequent SCNs were made available by the parties only.....As per our records, the figures pertaining to purchase and clearance were submitted as per Performa issue as early as on 17.03.1994. Based on which the SCN dated 29.04.1994 and 30.08.1994 were issued. The acknowledged copy of such letter dated 17.03.1994 enclosed here with for your records." Further, from the enclosed copy of letter dated 17.03.1994 with said letter dated 18.07.2016 received on 19.08.2016, I Find that the same is addressed to Range Superintendent and is with reference to Range Superintendent's letters dated 28.10.1993 followed by 19.01.1994 and 08.02.1994 wherein the appellant had enclosed the statement of purchase and clearance of shipbreaking which were purchased and cleared from 1/3/93 to 28/2/94. Further, these facts are also once again reiterated by the appellant in the appeal memorandum as interalia mentioned at Para-3(v) above. Thus, from these facts, it clearly transpires that the details for the period from March'1993 to October'1993 were submitted by the appellant at the relevant time. And on the basis of the said details, it appears that the Assistant Commissioner of Central Excise, City Division, Bhavnagar vide their letter dated 26.03.2009 had quantified the duty involved in the subject SCN, the facts thereto is mentioned at Para-4 of the first OIO, the relevant portion thereto is reproduced as under for ease of reference.

" The subject SCN was unquantified at the time of issue by the range superintendent. The jurisdictional Assistant commissioner/Range Superintendent has been asked to quantify the amount of demand involved in the SCN. The Assistant Commissioner of Central Excise, City Division, Bhavnagar vide his letter F.No. IV/16-6/Misc/Adj/2003-CX-3 dated 26.03.2009 has quantified the duty involved in the SCN as given below:-

1. Monthly Average production:- 290.834 MT
2. Monthly Clearances :- 290.834 MT
3. Rate of Duty :- Rs.1000/- PMT
4. Period :- March'93 to Oct'93 for eight months
5. Quantity cleared :- 2326.672 MT
6. Amount of Duty :- Rs. 23,26,672/-

The amount of duty involved in AR-II/Rolling Mills/D/29/93-94 dated 26.11.93 is thus calculated at Rs. 23,26,672/-"

**7.3** Thus, in view of the facts and discussion herein foregoing paras, I find that the quantification of the demand confirmed under impugned order, though the same was not done in the impugned SCN, has been found to be strong footed and based on the details made available by the appellant at the relevant time. Further, even before me, the appellant could not produced any contradictory submission on it or any defence in respect of production of goods as directed by Hon'ble CESTAT in its above mentioned order. Hence, I hold that the quantification of demand done under the impugned order is sound footed and hence, sustainable in the eyes of law.



8. With regards to their bald and general contention as interalia detailed at Para-3 (i) above, that "at the outset, they adopt and reiterate to avoid repetition, the various pleas/grounds made by them in their reply to impugned SCN filed earlier before the Adjudicating Authority in the first round of adjudication proceedings", I find that the Adjudicating Authority at Para- 2.1 of the impugned order has very categorically given the reference of appellant's Reply dated 18.03.2013 and then mentioned each of their submission at Para-2.1.1 to 2.1.9 as well as at Paras-2.2.1 to 2.2.7 of the impugned order. Further, submission through appellant's Reply dated 01.08.2014 wherein the appellant relied upon judgements as mentioned at Para-2.4.1 to 2.4.10 of the impugned order. I find that each of the said contentions/submissions have been well discussed and after proper findings thereto as mentioned at para-3.2 to 3.10 of the impugned order, the Adjudicating Authority has passed the impugned order after rejecting the said submissions put forth by the appellant in remand proceedings. I have gone through the said each submission and findings thereon of the Adjudicating Authority and I hold that there is no scope for any diverse views on it. Therefore, I find no infirmity in the impugned order passed by the Adjudicating Authority. Further, on the said issues, except on the issues as mentioned at para-3 above Viz. issue regarding Tribunal Final Order No. A/1460 to 1504/WZB/AHD/2007 dated 18.06.2007, issue of Limitation and issue with regards to decision of the Hon'ble Tribunal in the case of Ahmedabad Rolling Mills Pvt. Ltd. I find that the appellant has not put forth any new contention on the findings of the Adjudicating Authority. Even on the issue of the said two decisions of the Hon'ble Tribunal, the Adjudicating Authority has at length discussed the same and then held the same against the appellant. Hence, I uphold the impugned order on the said submissions.

9. On the issue of limitation, I find that the appellant contended as interalia mentioned at Para-3(vi) above that extended period of limitation is wrongly invoked as there is no evidence or discussion in the impugned SCN/impugned order regarding suppression of facts with intent to evade the duty; that the SCN issued on 26.11.1993 for the period from 01.03.1993 to 31.10.1993 and in absence of any charges of suppression of facts or misstatement, the time limit for issuance of SCN was only six months and hence, the same is time barred.

9.1 I do not find force in it. There is no dispute that the SCN in the present case is issued on 26.11.1993 covering the period from March'1993 to October'1993. It is also not disputed that in spite of being repeatedly asked by the Range Officer, the appellant had not made available the requisite information to the department. Further, the appellant has though manufactured the final products, had not obtained the Central Excise Registration and also not complied other provisions of the said Act and Rules. Further, since the final products manufactured by the appellant was out of the raw materials obtained from the ship breaking units which clearly visible of non duty paid as the same was exempted under notification No. 44/93 ibid and thus, the appellant was not eligible for the benefit of the said notification 202/88 ibid. From these facts and discussion herein above, I find that the appellant has intentionally suppressed the facts with intent to evade the central excise duty during the relevant period. Hence, the extended period is very much invocable in the present case.

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10. In view of the facts and discussion herein above, I uphold the impugned order confirming the demand of Central Excise Duty of Rs. 23,26,672/- under the provisions of Section 11A of the Central Excise Act, 1944 read with Rule 9(2) of Central Excise Rules, 1944 and also imposing penalty of Rs. 5000/- on the appellant under the provisions of Rule-210 of erstwhile of Central Excise Rules, 1944.

11. In view of above, the appeal filed by the appellant is thus, rejected.

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28/3/18  
(Gopi Nath)  
Commissioner (Appeals)/  
Additional Director General (Audit)

**To,**

M/s Vinubhai Steel Co. Pvt. Ltd.  
Plot No. F/A, Ruvapari Road,  
Bhavnagar-364 001.

**Copy To:-**

1. The Chief Commissioner, CGST, Ahmedabad Zone, Ahmedabad.
2. The Commissioner, CGST, Bhavnagar.
3. The Commissioner, CGST, Appeals, Rajkot
4. The Joint Commissioner, CGST, HQ, Bhavnagar (Previously Joint Commissioner, Central Excise & Service Tax-Adjudicating Authority).
5. The Assistant Commissioner, Systems, CGST, Bhavnagar.
6. Guard File.
7. P.A. File.