



::आयुक्त (अपील) 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



सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/113/BVR/2016	10/AC/RURAL/BVR/RR/2016- 17	31.05.2016

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

BHV-EXCUS-000-APP-026-2017-18

आदेश का दिनांक / Date of Order:	28.08.2017	जारी करने की तारीख / Date of issue:	29.08.2017
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कुमार संतोष, आयुक्त (अपील), राजकोट द्वारा पारित /
Passed by **Shri Kumar Santosh, Commissioner (Appeals), Rajkot**

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 :-**
Apollo Vikas Steel Pvt. Ltd., Plot No. 26., Soshiya Ship Recycling Yard, P.O. Manar, Alang.

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) वगीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पाद 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, , 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, 2nd 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) 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 सलग्न 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 सलग्न 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 सलग्न 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/-

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(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 सलग्न 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 सलग्न 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। /
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- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धारा (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 प्रतियाँ संलग्न करें (उनमें से एक प्रति पंजीकृत 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 Form 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 अपील 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 जुमाना विवादित है, या जुमाना जब केवल जुमाना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपये से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
- धारा 11 डी के अंतर्गत रकम
 - सेनवेट जमा की ली गई गलत राशि
 - सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरम्भ 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 :
- amount determined under Section 11 D,
 - amount of erroneous Cenvat Credit taken;
 - 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 परतक 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:
- 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 पसंस्करण 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
 - 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 छूट (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.
 - 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.
 - सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इयूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत माल्य 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.
 - 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 संश्लेषण 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.
 - पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।
जहां 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.
 - 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 पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण 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 filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each
 - 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.
 - 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 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.
 - 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

:: ORDER-IN-APPEAL ::

62

M/s. Apollo Vikas Steel Pvt. Ltd., Plot No. 26, SBY, Alang, Distt. Bhavnagar (hereinafter referred to as "the appellant") filed the present appeal against the Order-in-Original No. 10/AC/Rural/BVR/RR/2016-17 dated 31.05.2016 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central Excise, Rural Division, Bhavnagar (hereinafter referred to as "the lower adjudicating authority").

2. The facts of the case are that during the course of audit for the period March-2013 to February-2014, the audit observed that M/s. Apollo Concord Pvt. Ltd. is a related party of the appellant and price charged for clearance of scrap to related party was less as compared to that charged from other buyers. Therefore, SCN No. V.73/03-21/D/Rural/2015-16 dated 05.11.2015 was issued to the appellant demanding Central Excise duty of Rs. 1,56,001/- and proposing to appropriate Rs. 1,56,001/- paid by them on 25.03.2014 toward demand and for recovery of interest and imposition of penalty. The adjudicating authority, vide impugned order, confirmed Central Excise duty of Rs. 1,56,001/- under Section 11A of the Act and appropriated the same against Rs. 1,56,001/- paid by them, subject to verification and also ordered recovery of interest under Section 11AA and imposed penalty of Rs. 78,001/- under Section 11AC of the Act.

3. Being aggrieved by the impugned order, the appellant filed the present appeal, *inter alia*, on the following grounds:-

(i) The impugned order has been passed without producing any material evidences; that M/s. Apollo Concord Pvt. Ltd. has separate identity, who file their own Annual Balance Sheet separately; that the department failed to establish the financial interest of the appellant in M/s. Apollo Concord Private Limited.

(ii) It was alleged that M/s. Apollo Concord Pvt. Ltd. is a related party of the appellant and the price charged for clearance of scrap to the said related party was less as compared to that charged from the other buyer; that this allegation had been made without any material evidences; that in the SCN, it has not been considered that the price at which the excisable goods had been sold to so called related party for arriving the conclusion that price charged for clearance of scrap to related party was less as compared to that charged from other buyer; that the SCN appeared to have been issued on the basis of so called audit report only without disclosing the particulars of audit, which is not sufficient; that no such particulars of Final Audit Report had been disclosed while adjudicating the SCN dated 05.11.2015; that no such Central Excise invoices issued to the related person had been taken on record to work out differential central excise duty of Rs. 1,56,001/- and no Central Excise invoices issued to other parties had been taken on record to establish under valuation; that the adjudicating authority has violated principle of natural justice in as much

as had central excise records been disclosed, the appellant would have defended the case properly and legally; that without disclosing statistical details pertaining to how much quantity of excisable goods manufactured by the appellant and how much quantity of goods had been removed/sold to the so called "related person" and the value charged on the said removed quantity of excisable goods, the SCN itself is not sustainable; that it has not been specified in the SCN as to which documents of the appellant such inference has been drawn; that no reference of Final Audit Report has been given by the department to the appellant.

(iii) The adjudicating authority has failed to establish as to which facts and circumstances had been suppressed by the appellant; that the appellant had filed periodical returns in time and that the activity of the appellant were well known to the department as well as DGCEI and Preventive unit of the department, who had so many times visited the appellant unit, but no such issue with regard to under valuation had been pointed out by them; that the Annual Balance Sheet being filed is public document and, therefore, the SCN is time barred; that the penalty under Section 11AC(1)(b) of the Act has been imposed, though the details of transaction had not been disclosed in the SCN. The appellant relied on following case laws:-

- Electronic Calculators & Computers Co. – 2008 (224) ELT 559 (Tri.-Chennai)
- Tungabhadra Industries Ltd. – 1995 (75) ELT 95 (Tribunal)
- Automotive Axles Ltd. – 2002 (142) ELT 706 (Tri.-Bang.)
- TTK Healthcare Ltd. – 2007 (207) ELT 453 (Tri.-Bang.)
- Art Rubber Industries – 1999 (114) ELT 83 (Tribunal)

4. Personal hearing in the matter was attended by Shri N.K. Maru, Consultant, who reiterated grounds of Appeal and made a detailed written submission stating that there is no evidence of related party in the SCN and Order-In-Original; that allegation of related party is not correct in absence of money flow back; that in absence of any such evidence, they are not liable to pay any duty on this account; that the demand is time barred in absence of any suppression of facts by them as detailed in the Grounds of Appeal and written submission; that imposition of penalty is not justified in the facts of this case.

4.1 The appellant in his additional submissions submitted that Final Audit Report No. 241/2013-14 dated 28.05.2014 determined the duty of excise on the basis of difference between the value of goods sold to M/s. Apollo Concord Pvt. Ltd. and value of goods sold to un-related parties, purely on "average value" as disclosed in said Audit Report; that the period of determining the so called duty of Rs. 1,56,001/- has also not been disclosed; that the SCN itself was not justifiable; that every Central Excise invoice is the document for the purpose of valuation of the goods, therefore, each and every transaction is required to be verified to prove the charge of under valuation; that the SCN

60

appears to have been issued without any verification of Central Excise invoices issued by them to the so called sister concern unit and hence related party and to the independent customers; that the subject SCN has been issued on the basis of assumptions and presumptions only.

4.2 It has also been submitted that as per Section 4 of the Act, each transaction is a separate transaction and has to be valued separately; that separate price charged for same products from two different buyers is permissible; that the "under valuation" of each and every transaction is required to be disclosed by the department; therefore, the impugned order is not proper and legal as the same has been passed without considering the statutory provisions of Central Excise Law. The appellant relied the decision of CESTAT, Delhi in case of Prakash Industries reported as 2010 (250) ELT 65 wherein it is held that "each transaction has to be valued separately".

4.3 The allegation that the appellant had charged less for the goods cleared to related party than charged to other parties has been made without any verification of status of appellant as well as status of the said party; that without verifying the "Money Flow Back" with the said party, the allegation of "related person" is not justifiable; that the adjudicating authority has accepted the contention of the audit without verifying the Books & Account of the appellant as well as of the said party; that the appellant has provided copies of Central Excise invoices issued to the said related party and to other customers on the same date along with Memorandum of Appeal, which establish that prices charged to the said related party were higher than the prices charged to other customers. The appellant relied on the following case laws in this regard:-

- Mahalakshmi Glass Works Pvt. Ltd. – 2016 (343) ELT 637 (Tri. Mumbai)
- Sheth Brothers (Perfumers) Pvt. Ltd. – 2016 (344) ELT 647 (Tri. Del.)
- H.L. Papers Ltd. – 2017 (345) ELT 644 (Tri. Del.)

Findings:-

5. I have carefully gone through the facts of the case, the impugned order, appeal memorandum and the submissions of the appellant. The issue to be decided in the present appeal is whether in the facts and circumstance of the case, the impugned order confirming demand of central excise duty along with interest, on account of under valuation on the ground that the value at which the goods have been sold to the so called "related person" is less as compared to the value at which similar goods have been sold to un-related buyers, is proper or not.

6. I find that the adjudicating authority has rejected the declared transaction value and confirmed the demand of Central Excise duty of Rs. 1,56,001/- on the ground that the appellant has cleared excisable goods at a lesser value to M/s. Apollo Concord Private Limited as compared to the value at which the excisable goods have been sold to other customers, I would like to reproduce Section 4(1) of Central Excise Act, 194, which is as under:-

59

SECTION 4: (1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall

- (a) in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value;
- (b) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed.

6.1 As per Section 4(1) of the Act, where the assessee and the buyer are not related and the price is the sole consideration for the sale, the excise duty is chargeable with reference to the transaction value of goods and in any other case, the value needs to be determined in terms of Central Excise Valuation Rules, 2000. Section 4(3)(b) of the Act provides that persons shall be deemed to be "related" if –

- (i) they are inter-connected undertakings as defined in Section 2(g) of MRTP Act, 1969;
- (ii) they are relatives as defined in Section 2(41) of Companies Act, 1956 read with Section 6 of the said Act;
- (iii) amongst them the buyer is a relative and a distributor of the assessee, or a sub-distributor of such distributor; or
- (iv) they are so associated that they have interest, directly or indirectly, in the business of each other.

6.2 The audit has stated that the appellant and M/s. Apollo Concord Private Limited are related to each other, which has been alleged in the SCN also, but the basis of relation as in Section 4(3)(b) has not been elaborated in SCN or in impugned order. The value of the excisable goods sold to related person needs to be determined in terms of Rule 9 of Central Excise Valuation Rules, which reads as under:-

Rule 9: Where whole or part of the excisable goods are sold by the assessee to or through a person who is related in the manner specified in any of the sub-clauses (ii), (iii) or (iv) of clause (b) of sub-section (3) of section 4 of the Act, the value of such goods shall be the normal transaction value at which these are sold by the related person at the time of removal, to buyers (not being related person); or where such goods are not sold to such buyers, to buyers (being related person), who sells such goods in retail :

(Emphasis supplied)

7. The appellant has argued that the allegation of related person leveled in the SCN has not been substantiated as neither of 4 clauses could be involved in their case. I find that the impugned SCN dated 05.11.2015 has been issued on the basis of audit report wherein it has been mentioned that M/s. Apollo Concord Pvt. Ltd. is a related party of the

appellant but no flow back evidence has been provided either in SCN or in impugned order. It is true that the appellant paid Rs. 1,56,001/- on 25.03.2014 voluntarily, when audit officers had pointed out, however, merely payment by the appellant does not establish relation between the appellant and M/s. Apollo Concord Pvt. Ltd. There has to be relevant material facts to come to such conclusion. I find that this plea had been raised by the appellant during submission of defense reply to the adjudicating authority also. The adjudicating authority has stated that SCN has been prepared on the basis of Final Audit Report in which all these details are available, however, he failed to give copy of Final Audit Report and has also not discussed these details as to how the two have become related persons in terms of Section 4(3)(b) of the Act. 50

7.1. The appellant has contended that the impugned order has been passed without discussing as to how M/s. Apollo Concord Pvt. Ltd. is related person to the appellant; that the impugned order has failed to establish the financial interest of the appellant in M/s. Apollo Concord Pvt. Ltd. and has not given copy of audit report to counter the claim of audit. Therefore, the adjudicating authority has violated the principles of natural justice while passing the impugned order, as documents have to be given to the appellant so that they can defend their case. It is emphasized that each and every transaction needs to be verified to establish "Money Flow Back" to the appellant from the related person and interest, directly or indirectly in the business of each other. In absence of such evidences, the allegation of related person has not been substantiated in the impugned order. I find force in the arguments of the appellant that the concept of related person has not been substantiated and even then value. I find that the adjudicating authority has rejected the transaction value without discussing as to how the said party is related to the appellant in terms of ingredient defined/specified under Section 4(3)(b) of the Act. I find that without having discussed the said important and crucial aspect, the confirmation of demand cannot be allowed to be sustained. The adjudicating authority is also required to verify each disputed transaction and can't determine duty on average value over months/years. No evidence of mutual interest in the business of each other has been established in the impugned order. Therefore, I have no hesitation to hold that the impugned order is vague and not legal and proper.

7.2 In view of above facts, I feel it appropriate to remand the case back to the lower adjudicating authority to decide the case afresh in light of the decision of the CESTAT delivered by the learned Justice Ajit Bharihoke, President of Hon'ble CESTAT in the case of CCE, Meerut Vs. Singh Alloys (P) Ltd. reported 2012(284) ELT 97 (Tri-Del). I also rely upon the recent decision of the Hon'ble Tribunal in the case of CCE, Meerut-II Vs. Honda Seil Power Products Ltd. reported in 2013 (287) ELT 353 (Tri-Del) wherein the similar views have been paraphrased in respect of inherent power of Commissioner (Appeals) to remand a case under the provisions of Section 35A of the Act. Further, the Hon'ble Gujarat High Court in Tax Appeal No. 276 of 2014 in respect of Associated Hotels

59

Ltd. has held that even after the amendment in Section 35A(3) of the Central Excise Act, 1944 after 11.05.2011, the Commissioner (Appeals) would retain the powers of remand.

8 The adjudicating authority is directed to adjudicate the case afresh, after providing copy of final audit report including Annexures/Relied Upon Documents and after verification of each disputed transaction, keeping in mind the provisions of Section 4(3)(b) of the Act and the submissions made by the appellant by passing speaking order and offering fair and reasonable opportunities to the appellant to explain their case. Accordingly, I set aside the impugned order and allow appeal, filed by the appellant, by way of remand.

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 the above terms.

(कुमार संतोष)

आयुक्त (अपील्स)

By Speed Post

To,

M/s. Apollo Vikas Steel Pvt. Ltd.,
Plot No. 26, SBY, Alang, Distt.
Bhavnagar

मे. अपोलो विकास स्टील प्रा. लिमिटेड,
प्लॉट न. २६, एस.बी.वाय. अलंग,
डिस्ट्रिक्ट - भावनगर

Copy to:

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
- 2) The Commissioner, GST & Central Excise, Bhavnagar Commissionerate,
Bhavnagar.
- 3) The Assistant Commissioner, GST & Central Excise, Rural Division, Bhavnagar.
- 4) Guard File.

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सत्यापित,

(कुमार सतोष)

आयुक्त (अपील्स)

आर. एन. मीणा,
अधीक्षक (अपील)

By Speed Post

To,

M/s. Apollo Vikas Steel Pvt. Ltd., Plot No. 26, SBY, Alang, Distt. Bhavnagar	मे. अपोलो विकास स्टील प्रा. लिमिटेड, प्लॉट न. २६, एस.बी.वाय. अलंग, डिस्ट्रिक्ट - भावनगर
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(Handwritten Signature)
 (कुमार संतोष)
 आयुक्त (अपील्स)

By Speed Post

To,

M/s. Apollo Vikas Steel Pvt. Ltd.,
 Plot No. 26, SBY, Alang, Distt.
 Bhavnagar

मे. अपोलो विकास स्टील प्रा. लिमिटेड,
 प्लॉट न. २६, एस.बी.वाय. अलंग,
 डिस्ट्रिक्ट - भावनगर

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