



**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 / 2<sup>nd</sup> Floor, GST Bhavan,  
 रेस कोर्स रिंग रोड, / Race Course Ring Road,  
 राजकोट / Rajkot - 360 001

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सत्यमेव जयते

**रजिस्टर्ड डाक ए. डी. द्वारा :-**

क अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.O. No.	दिनांक / Date
V2/169 to 174/RAJ/2016	20/D/AC/2015-16	21.03.2016

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

**RAJ-EXCUS-000-APP-019 to 24-2017-18**

आदेश का दिनांक / Date of Order:	जारी करने की तारीख / Date of issue:	
10.07.2017	11.07.2017	

**कुमार संतोष, आयुक्त (अपील), राजकोट द्वारा पारित /  
 Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot**

ग) अथवा आयुक्त/समयुक्त आयुक्त/उपायुक्त/सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, राजकोट / जामनगर / गंधीधाम। द्वारा उपरोक्तित जारी मूल आदेश से सृजित।  
 Arising out of above mentioned O/O issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham

**घ अपीलकर्ता & प्रतिवादी का नाम एवं पता/Name & Addresses of the Appellants & Respondents :-**

Sr. No.	Name of the Appellant	Appeal File No.
01	M/s. Ankur Polymers, G-1154, Kishan Gate, Lodhika GIDC, Metoda, Kalawad Road, Rajkot	V2/169/ RAJ /2016
02	Shri Khimjibhai B. Santoki, Partner, M/s. Ankur Polymers, Rajkot.	V2/174/ RAJ /2016
03	Shri Ashokbhai D. Bhalodiya, C/o, M/s. Ankur Polymers, Rajkot.	V2/173/ RAJ /2016
04	Shri Brijeshbhai N. Bhalodiya, C/o, M/s. Ankur Polymers, Rajkot.	V2/172/ RAJ /2016
05	Shri Kirithbhai H. Patel, C/o, M/s. Ankur Polymers, Rajkot.	V2/171/ RAJ /2016
06	Shri Mehlubhai K. Santoki, C/o, M/s. Ankur Polymers, Rajkot.	V2/170/ RAJ /2016

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) इलीकरण मूल्यांकन से सम्बंधित सभी मामलों में 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 पैराग्राफ 1(a) में बतौर गए अपील के अलावा शेष सभी अपीलें सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पहिचम क्षेत्रीय पीठिका, टुविलीय तल, बहुमाली भवन अलावा अहमदाबाद।  
 To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> Floor, Bhaumali Bhawan, Asarwa Ahmedabad, 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 फॉर्म EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की रॉंग, व्याज की रॉंग और लगाना राधा जमागत, 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। स्वयंसेवक आदेश (स्टै ऑर्डर) के लिए आवंटन-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 फॉर्म S.T.-5 में चार प्रतियों में की जा सकती एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उन्में से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की रॉंग, व्याज की रॉंग और लगाना राधा जमागत, 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। स्वयंसेवक आदेश (स्टै ऑर्डर) के लिए आवंटन-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 दंडों की गयी अपील, सेवाकर निष्पत्तिका, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित एचए S.T.-7 में की जा सकती एवं उसके साथ आवश्यक, 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 जहायक 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 (सेनटेट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एक 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 भाग के 10 प्रतिशत (10%), जब भाग 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 "जमा किए गए शुल्क" में निम्न शामिल है  
(i) धारा 11 डी के अंतर्गत रकम  
(ii) सेनटेट जमा की ती नई गलत राशि  
(iii) सेनटेट जमा निष्पत्तिका के नियम 6 के अंतर्गत देय रकम  
- बशर्त यह कि इस धारा के अंतर्गत वित्तीय (सं. 2) अधिनियम 2014 के अन्तर्ग से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचारार्थीय स्थगन अर्ज़ी एवं अपील को लागू नहीं होगी।  
For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores.  
Under Central Excise and Service Tax, "Duty Demanded" shall include :  
(i) amount determined under Section 11 D;  
(ii) amount of erroneous Cenvat Credit taken;  
(iii) amount payable under Rule 6 of the Cenvat Credit Rules  
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.
- (C) भारत सरकार को पुनरीक्षण आवेदन :  
Revision application to Government of India:  
इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केन्द्रीय 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 टॉप 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 इकाई 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 से 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 विभिन्नों में प्रयुक्त कच्चे माल पर अर्धी 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.  
(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) मुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इच्छी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (सं. 2), 1998 की धारा 109 के द्वारा निर्यात की गई तरीक अथवा समायाधि 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 प्रथम संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) निष्पत्तिका, 2001, के नियम 9 के अंतर्गत विनिश्चित है, इस आदेश के संघर्ष 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 साथ 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, उपरोक्त ढंग से किया जाना चाहिए। इस तथ्य के होते हुए भी की निम्न परी 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 Appellate 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 रिफिट अति 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 संबंधित मामलों को सम्बन्धित 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 दर्जित करने से संबंधित व्यापक, विस्तृत और नवीनतम जानकारी के लिए, अपीलार्थी 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)

**:: ORDER IN APPEAL ::**

The appeals listed herein below have been filed by the following assessee/persons against Order-In-Original No. 20/D/AC/2015-16 dated 21.03.2016 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central Excise Division-I, Rajkot (hereinafter referred to as "the lower adjudicating authority").

Sr. No.	Name of the Appellant	Appeal File No.	Appellant No.
01.	M/s. Ankur Polymers, G-1154, Kishan Gate, Lodhika GIDC, Metoda, Kalawad Road, Rajkot	V2/169/ RAJ /2016	Appellant No. 1
02	Shri Khimjibhai B. Santoki, Partner, M/s. Ankur Polymers, Rajkot.	V2/174/ RAJ /2016	Appellant No. 2
03	Shri Ashokbhai D. Bhalodiya, C/o, M/s. Ankur Polymers, Rajkot.	V2/173/ RAJ /2016	Appellant No. 3
04	Shri Brijeshbhai N. Bhalodiya, C/o, M/s. Ankur Polymers, Rajkot.	V2/172/ RAJ /2016	Appellant No. 4
05	Shri Kiritbhai H. Patel, C/o, M/s. Ankur Polymers, Rajkot.	V2/171/ RAJ /2016	Appellant No. 5
06	Shri Mehubhai K. Santoki, C/o, M/s. Ankur Polymers, Rajkot.	V2/170/ RAJ /2016	Appellant No. 6

2. Since the issue involved is common in nature and connected with each other, the same are taken up together for disposal.

3. Briefly stated facts of the case are that the appellant no.1 is a partnership firm (CE Registration No. AAQFA6606GEM002), engaged in the manufacture of P.P. Strip falling under Chapter 39 of the First Schedule to the Central Excise Tariff Act, 1985. Acting upon intelligence, search was carried out by the Officers of the Preventive Branch of Central Excise, Rajkot on 05.01.2013 and recovered incriminating documents, which revealed that the finished excisable goods had been cleared by them without invoices and without payment of Central Excise duty. The investigation led into issuance of Show Cause Notice No.V.84(4)/MP/D/15-16 dated 28.10.2015, which was adjudicated by the lower adjudicating authority vide impugned order wherein he ordered; confiscation of the goods; that since the goods were not available for confiscation, he imposed redemption fine of Rs. 2,99,164/- equal to the amount of central excise duty involved, under Rule 25 of the Central Excise Rules, 2002; confirmed central excise duty of Rs. 2,99,164/- under Section 11A(4) of the Central Excise Act, 1944; recovery of interest under Section 11AA of the Act; ordered for appropriation of Rs. 3,00,000/- paid by them during the course of investigation, against the amount of duty confirmed and interest ordered; and also imposed penalty of Rs.2,99,164/- upon the appellant No.1 under Section 11AC of the Act and penalty of Rs. 10,000/- each upon the appellant No. 2 to 6 under Rule 26 of the Central Excise Rules, 2002.

4. Being aggrieved with the impugned order, the appellant no. 1 filed the appeal alongwith application for condonation of delay in filing the appeal, *interalia*, on the following grounds:-

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(i) that the goods which is not available for seizure cannot be confiscated; that for confiscation, goods must be available; that in the present case goods is not available or released provisionally on execution of Bond or Bank Guarantee, therefore imposition of redemption fine in lieu of confiscation is not legal, proper and correct as per the law and liable to be set aside as per decisions in the cases of Shiv Kripa Ispat Private Limited – 2009 (235) ELT 623 (Tri.-LB), ATM International – 2014 (313) ELT 808 (Tri. Del.), Shiwalya Spinning & Weaving Mills (P) Ltd. – 2011 (274) ELT 306 (Tri.-Del.), Sudarshan Cargo Pvt. Ltd. – 2010 (258) ELT 197 (Bom.), Finesse Creation Inc. – 2010 (255) ELT A120 (SC), Finesse Creation Inc. – 2009 (248) ELT 122 (Bom.).

(ii) that as regard clandestine removal, department has only relied upon the statements of the noticee and co-noticees and no corroborative evidences adduced by the department; that the investigating authority has recorded a statement of one buyer who had refused the purchase of goods from the appellant; that the investigating authority has not brought on record any evidence of clearance of goods i.e. transport documents, goods received by the buyer or any payment made by the buyer; that the department must adduce positive proof and duty demand is not correct and legal. The appellant relied on the decisions in the cases of Premium Packaging Pvt. Ltd. – 2005 (184) ELT 165 (Tri.-De.), Nabha Steel Ltd. & Others – 2016-TIOL-941-CESTAT-CHD in support of their contentions.

(iii) that the appellant had deposited entire amount as ascertained by the investigating officers; that no show cause notice was required to have been served in view of sub-section (2) of Section 11A of the Act and hence the SCN is illegal and not tenable in law.

(iv) that more than one persons have cleared the goods in small quantity and there may be some mistake occurred in accounting of goods; no stock difference found by the investigation; there was no intention to clear goods without payment of duty and there was no intention to evade the duty to be paid; that there is no mens rea or wilfull suppression of facts on the part of the appellant.

5. Being aggrieved with the impugned order, the appellants no. 2 to 6 filed appeals alongwith applications for condonation of delay in filing the appeals, *interalia*, on the grounds that as per law of partnership, firm having no legal existence apart from its partners and merely a compendious name to describe partners as distinguished from a company which stands as separate entity distinct from its shareholders; that where no specific rule is attributed to the partner in the firm, then once firm has already been penalized, separate penalty cannot be imposed upon the partners because a partner is not a separate legal entity and cannot be equated with employee of a firm. In support of their contention, the appellants relied on decisions in the cases of S.R. Lites – 2013 (296) ELT 498 (Tri.-Del.), Arihant Synthetics – 2013 (298) ELT 278 (Tri.-Ahmd.), Pravin N. Shah – 2014 (305) ELT 480 (Guj.).

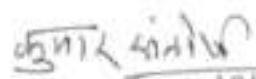
In light of the aforesaid submission, they requested to allow their appeals and to set aside the impugned order.

6. Personal hearing in the matter was held 27.06.2017 which was attended by Shri Rushi Upadhyay, Chartered Accountant on behalf of the appellants no. 1 to 6, who reiterated the grounds of appeal and submitted that corroborative evidences are not available in the case except statements. He also stated that the goods, not available for confiscation, can't be confiscated and redemption fine can't be imposed; that duty in full already paid before issue of SCN, hence no penalty is imposable on noticee No. 1. He also submitted that appellant No. 2 is partner in this partnership firm and no penalty can be imposed on partner also as held in SR Lite vs. CCE, Kanpur as detailed in their submissions. Appellants No. 3 & 4 are not partners but employees and had to act as per direction on the appellant No. 1, hence no penalty is required to be imposed on them. Appellant No. 5 & 6 are not employees but relatives of partner/appellant No. 2 and hence no penalty is to be imposed on them under Rule 26 of Central Excise Rules, 2002. The case laws stated in their grounds of appeal were re-iterated.

7. I have carefully gone through the facts of the case, impugned order, grounds of appeals and submissions made by all the appellants. The appellants have filed application for condonation of delay in filing the appeals. The grounds narrated by the appellants for delay in filing the appeals, have been found to be genuine. Therefore, I condone the delay and proceed to decide the appeals on merits. I find that the issues to be decided in the present appeals are that whether the impugned orders confiscating the goods in question and imposing redemption fine in lieu of confiscation is proper or not. It is also required to be decided whether penalty on partner/employees/relatives can be imposed/needs to be imposed under Rule 26 of the Rules when penalty has already been imposed on the partnership firm.

8. The appellant has vehemently argued that the goods were not seized and were not available for confiscation and therefore can't be confiscated and thereby no redemption fine in lieu of confiscation can be imposed. I observe that the adjudicating authority held that the goods are not available for confiscation, however he imposed redemption fine under Rule 25 of the Central Excise Rules, 2002, I find ample force in the argument put forth by the appellant. I find that in catena of judgments, it has been held that when goods are not available for confiscation, no redemption fine in lieu of confiscation is imposable. I find that CESTAT, Principal Bench, New Delhi in the case of Dev Anand Agarwal – 2016 (337) ELT 397 (Tri.-Del.) observed as under:-

*"11. There is however force in the contention of the appellant that the goods which had been cleared without any bond and were not available for confiscation, no redemption fine can be imposed. Thus only goods which were seized can be confiscated and redemption fine imposed thereon. ...."*

  
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The CESTAT, Ahmedabad in the case of Quippo Energy Private Limited reported as 2016 (331) ELT 617 (Tri.-Ahmd.), observed as under:-

*19. We find that the appellant acted under a bona fide belief that the activities undertaken by them would not amount to manufacture. It is the case of interpretation of the provisions of law and therefore, the imposition of penalties on the appellants are not warranted. It is noted that the goods were [not] available for confiscation. It is well settled that if the goods are available, the same cannot be confiscated. Accordingly, the confiscation of goods and imposition of penalty cannot be sustained.*

The CESTAT, Mumbai in the case of Shiv Kripa Ispat Private Limited reported as 2009 (235) ELT 623 (Tri.-LB) relying the decision of Hon'ble High Court of Punjab & Haryana in the case of Raja Impex Private Limited reported as 2008 (229) ELT 185 (P&H) and decision of Hon'ble CESTAT, New Delhi in the case of Chinku Exports reported as 1999 (112) ELT 400 (Tribunal) [affirmed by Hon'ble Supreme Court reported as 2005 (184) ELT A36(S.C.)] held that "goods cannot be confiscated when not available and redemption fine not imposable." In view of above discussions, I am of the view that since goods were not available for confiscation, the same can't be confiscated and redemption fine in lieu of confiscation can't be imposed. Accordingly, redemption fine imposed under the impugned order is not tenable, and the same is set aside.

9. It has also been argued that department has only relied upon the statements of the noticee and co-noticees and no corroborative evidences adduced by the department. I find that during search of the factory premises of appellant No.1 on 05.01.2013, many incriminating documents/records namely Note Book (Diary), Production Register, Stock-sheet file, etc. were resumed under Panchnama proceedings and during investigation statements of the responsible persons of appellant No.1 (i.e. appellant No.2 to 6) were recorded wherein they categorically admitted evasion of central excise duty by clearing final products of appellant No. 1 without recording their manufacture and clearance in their Daily stock account; without issuance of invoices and without payment of central excise duty. It is also a fact that the appellant No.2 to 6 had not at any point of time, rebutted the oral and documentary evidences resumed during the investigation and have never stated to have given their statements under duress and/or their statements were not voluntary. Under these circumstances, the oral evidences are required to be held valid, legal and admissible.

9.1. It is also observed that admitted facts need not be proved as held by the Hon'ble Apex Court in the case of Systems & Components Private Limited reported as 2004 (165) ELT 136 (SC); by the Hon'ble CESTAT in the cases of Alex Industries reported as 2008 (230) ELT 0073 (Tri-Mumbai), M/s. Divine Solutions reported as 2006 (206) E.L.T. 1005 (Tri. (Chennai), wherein it has been consistently held that Confessional statements would hold the field. Hon'ble CESTAT in the case of M/s. Karori Engg. Works reported as 2004 (166) E.L.T. 373 (Tri. Del.), has also held that "confessional statement is a substantial piece of evidence, which can be used against the maker."



paid Rs. 3,00,000/- on 12.01.2013. However, against interest liability for delayed payment of duty under Section 11AA of the Central Excise Act, 1994 in respect of clearances made during the period from 03.04.2012 to 04.01.2013, the appellant then appeared to have paid only Rs. 836/-, which is not sufficient to fulfill their interest liability. Further, the instant case also involves the ingredient of suppression of facts by way of clandestine manufacture and clearance of finished goods and therefore provisions contained in Section 11A(2) of the Act are not applicable. The Show cause notice has rightly been issued demanding central excise duty under Section 11A (4) of the Act alongwith interest under Section 11AA of the Act and proposing penalty under Section 11AC of the Act besides personal penalty under Rule 26 of the Rules.

11. It has also been argued that simultaneous penalty on the firm and partner can not be imposed. During the personal hearing, the Chartered Accountant submitted that appellant No. 2 is a partner in the appellant No. 1 - a partnership firm and no penalty can be imposed on partners as much as partnership firm. I find that the appellant No. 2 has categorically admitted in his statement dated 05.01.2013, 25.09.2013 and 25.04.2014 that he looked after purchase, sale, manufacturing, dispatch, account and collection and had also admitted clearance of goods without payment of central excise duty. Thus, I am of the view that he was the person concerned with transporting, removing and selling of excisable goods and liable for penal action under Rule 26 of the Central Excise Rules, 2002 for the commission of offences committed by him. Therefore, penalty of Rs. 10,000/- imposed upon the appellant No. 2 is fully justified in view of facts and circumstances of the case. The Hon'ble CESTAT, Ahmedabad in the case of Mohd. Amin A.S. Lakha reported as 2012 (275) ELT 465 (Tri.-Ahmd.) held as under:-

*"8. The facts and legal position being so, I conclude that a personal penalty on the individual or partner is different from a penalty on the partnership firm provided the commissions or omissions of the partner are proved beyond doubt warranting a penalty if Act/Rule prescribes so as in the instant case. Therefore the original adjudicating authority is fully justified in imposing a personal penalty on the partner other than the penalty on the partnership firm."*

11.1 It has also been contended that Appellant No. 3 & 4 are not partners but employees and had to act as per direction of appellant No. 2, hence no penalty is required to be imposed on them. I find that both of these appellants have under their respective statements, admitted that the clearances of goods without payment of central excise duty were made with their concurrence. It is also on record that they were concerned in selling the goods illicitly which they knew that those were liable to confiscation and thereby played role in evasion of duty. Therefore, penalty of Rs. 10,000/- imposed on each of these two appellants is maintainable.

11.2 It has been further argued that the Appellant No. 5 & 6 were not employees but relatives of partner/appellant No. 2 and hence no penalty is to be imposed on them under Rule 26 of Central Excise Rules, 2002. I find that both of these



appellants have under their respective statements, admitted that they were involved in clearances of goods without payment of central excise duty and the clearances were made with their concurrence. Thus it is very evident that these two appellants had also abetted Appellant No. 1 in evasion of duty as they were concerned in selling the goods illicitly. Therefore, penalty of Rs. 10,000/- imposed on each of these two appellants also is maintainable.

11.3 I find that in the case of Shreeji Aluminum Pvt. Ltd. [2011 (11) LCX 0166], it has been held as under:

*14.1 Further, penalty of Rs. 10 lakhs on Shri Ajay Kumar Mondal, Excise incharge of M/s. Shreeji, the adjudicating authority has observed that he was responsible for proper maintenance of Central Excise record. Inasmuch as we have already held that the notebooks, other private books seized from the premises of M/s. Shreeji reflected clandestine activity of M/s. Shreeji, which were being maintained by the said appellant, resulting in confirmation of demand of duty of Rs. 26 lakhs (approx.), he is liable to penalty. However, keeping in view that he was only an employee working under the directions of management, penalty on him is reduced to Rs. 10,000/- (Rupees Ten Thousands only)."*

11.4. In light of the above facts and legal position, the personal penalty imposed on the appellant No. 2 to 6 under Rule 26 of the Central Excise Rules, 2002. is upheld.

12. In view of above findings, I partially allow the appeal filed by appellant No. 1 to the extent of setting aside the redemption fine imposed under the impugned order. However, rest of the impugned order stands upheld.

१२.१. अपीलकर्ता द्वारा दर्ज की गई अपीलों का निपटारा उपरोक्त तरीके से किया जाता है।

12.1. The appeals filed by the appellants stand disposed off in above terms.

*कुमार संतोष*  
10/7/2017

(कुमार संतोष)  
आयुक्त (अपील्स)

**By Speed Post**

To,

1	M/s. Ankur Polymers, G-1154, Kishan Gate, Lodhika GIDC, Metoda, Kalawad Road, Rajkot	मै. अंकुर पॉलीमर्स, जी - ११५४, किशान गेट, लोधीका, जी.आइ.डी.सी. मेटोडा, कालावड रोड, राजकोट
2	Shri Mehulbhai K. Santoki, Partner, M/s. Ankur Polymers, G-1154, Kishan Gate, Lodhika GIDC, Metoda, Kalawad Road, Rajkot	श्री मेहुलभाई के. संतोकी, पार्टनर, मै. अंकुर पॉलीमर्स, जी - ११५४, किशान गेट, लोधीका, जी.आइ.डी.सी. मेटोडा, कालावड रोड, राजकोट
3	Shri Kiritbhai H. Patel, Partner, M/s. Ankur Polymers, G-1154, Kishan Gate, Lodhika GIDC, Metoda, Kalawad Road, Rajkot	श्री किरीटभाई एच. पटेल, पार्टनर, मै. अंकुर पॉलीमर्स, जी - ११५४, किशान गेट,

		लोधीका, जी.आइ.डी.सी. मेटोडा, कालावड रोड, राजकोट
4	Shri Brijeshbhai N. Bhalodiya, Partner, M/s. Ankur Polymers, G-1154, Kishan Gate, Lodhika GIDC, Metoda, Kalawad Road, Rajkot	श्री ब्रिजेशभाई एन. भालोडिया, पार्टनर, मै. अंकुर पोलिमेर्स, जी - ११५४, किशान गेट, लोधीका, जी.आइ.डी.सी. मेटोडा, कालावड रोड, राजकोट
5	Shri Ashokbhai D. Bhalodiya, Partner, M/s. Ankur Polymers, G-1154, Kishan Gate, Lodhika GIDC, Metoda, Kalawad Road, Rajkot	श्री अशोकभाई डी. भालोडिया, पार्टनर, मै. अंकुर पोलिमेर्स, जी - ११५४, किशान गेट, लोधीका, जी.आइ.डी.सी. मेटोडा, कालावड रोड, राजकोट
6	Shri Khimjibhai B. Santoki, Partner, M/s. Ankur Polymers, G-1154, Kishan Gate, Lodhika GIDC, Metoda, Kalawad Road, Rajkot	श्री खिमजीभाई बी. संतोकी, पार्टनर, मै. अंकुर पोलिमेर्स, जी - ११५४, किशान गेट, लोधीका, जी.आइ.डी.सी. मेटोडा, कालावड रोड, राजकोट

**Copy to:**

1. The Chief Commissioner, CGST & Central Excise, Ahmedabad.
2. The Principal Commissioner, CGST & Central Excise, Rajkot.
3. The Assistant Commissioner, CGST & Central Excise Division-I, Rajkot.
4. The Superintendent, CGST & Central Excise, AR-IV, Rajkot.
5. Guard File.