



**::आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::**  
**O/O THE COMMISSIONER (APPEALS), GST & CENTRAL 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 / अपील संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
✓	V2/17 & 18/RAJ/2017	47/D/AC/2016-17	02.12.2016

*6052 to 6057*

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

**RAJ-EXCUS-000-APP-105-TO-106-2017-18**

आदेश का दिनांक / 01.11.2017 जारी करने की तारीख / 02.11.2017  
Date of Order: Date of issue:

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

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

घ **अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name&Address of the Appellant & Respondent :-**  
1. M/s. F-Tech Engineering Co., Mansata Industrial Area,, Street No. 1, Gondal Road,,Nr. S T Workshop,Rajkot.  
2.Shri. Jigneshbhai Mansukhbhai Pambhar, Partner of M/s. F-Tech Engineering Co.

इस आदेश(अपील) से व्यभिक्त कोई व्यक्ति निम्नलिखित तरीके से 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 उपाय 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) सर्वोच्च न्यायालय से सम्बन्धित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जाती 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 अपील के अलावा शेष सभी अपील सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (विस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमारी भवन अखाड़ा अहमदाबाद- 380016 को की जाती 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) नियमवली, 2001, के नियम 6 के अंतर्गत निर्धारित फिल एवं फॉर्म EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहाँ उत्पाद शुल्क की सीमा, व्याज की सीमा 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 रजिस्ट्रार के नाम से किली भी सर्टिफिकेट डेब के बैंक द्वारा जारी रेकॉर्डेड बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहाँ संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे 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/-.

(iv) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवली, 1994, के नियम 9(1) के तहत निर्धारित फॉर्म S.T.-5 में चार प्रतियों में की जा सकती है 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, जहाँ सेवाकर की सीमा, व्याज की सीमा 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 रजिस्ट्रार के नाम से किली भी सर्टिफिकेट डेब के बैंक द्वारा जारी रेकॉर्डेड बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहाँ संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे 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/-.

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवली, 1994, के नियम 9(1) के तहत निर्धारित फॉर्म S.T.-5 में चार प्रतियों में की जा सकती है 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, जहाँ सेवाकर की सीमा, व्याज की सीमा 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 रजिस्ट्रार के नाम से किली भी सर्टिफिकेट डेब के बैंक द्वारा जारी रेकॉर्डेड बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहाँ संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवंटन-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 दंडों की गयी अपील, सेवानुसारी, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित फॉर्म S.T.-7 में की जा सकती है एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करे (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहयुक्त आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क सेवानुसारी, को अपीलार्थी न्यायाधिकरण को आवेदन दंड 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 सेवानुसारी अपीलार्थी प्राधिकरण (सेस्टैट) के प्रति अपीलार्थी के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवानुसारी को भी लागू की गई है, इस आदेश के प्रति अपीलार्थी प्राधिकरण में अपील करने समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं नुमांना विवादित है, या नुमांना, जब केवल नुमांना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षा देय राशि दस करोड़ रुपये से अधिक न हो।  
केन्द्रीय उत्पाद शुल्क एवं सेवानुसारी के अंतर्गत 'मांग किए गए शुल्क' में निम्न शामिल है  
(i) धारा 11 डी के अंतर्गत रकम  
(ii) सेस्टैट जमा की गयी राशि  
(iii) सेस्टैट जमा निवृत्तियों के नियम 6 के अंतर्गत देय रकम  
- बशर्त यह कि इस धारा के प्राधान्य वित्तीय (सं. 2) अधिनियम 2014 के अंतर्गत से पूर्व किसी अपीलार्थी प्राधिकरण के समक्ष विचारार्थीन स्थगन अर्जी एवं अपील को लागू नहीं होये।  
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 प्राधिकार विभाग/विशेष मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम प्रांतिक के अंतर्गत अपील सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवाणु टीप भवन, संसद भवन, 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 मात्र के किसी नुकसान के मामले में, जहां नुकसान किसी मात्र को किसी कारखाने से भंडार गृह के परिवहन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह परिवहन के दौरान, या किसी भंडार गृह में या भंडारण में मात्र के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में मात्र 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 मात्र के विभिन्नता में प्रयुक्त कच्चे मात्र 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.  
(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को मात्र निर्यात किया गया है। /  
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.  
(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इच्छा है 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 नियत की गई तरीके अथवा समायोजित 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 फॉर्म संख्या EA-8 में, जो की केन्द्रीय उत्पाद 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 साथ-साथ धारा 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 विभागाधिकृत 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 is 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 पढ़ी कार्य से बचने के लिए क्या/विशेष अपीलार्थी न्यायाधिकरण के 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) न्यायाधीन न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट जमा होना चाहिए। /  
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.  
(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवानुसारी अपीलार्थी न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में उल्लिखित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की और भी ध्यान आकर्षित किया जाता है। /  
Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.  
(G) उच्च अपीलार्थी प्राधिकरण को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और सर्वोत्तम प्रावधानों 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 hereinbelow have been filed by the appellant named in table below against Order-In-Original No. 47/D/AC/2016-17 dated 02.12.2016 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central Excise, Rajkot (hereinafter referred to as "the lower adjudicating authority").

Sr. No.	Name of the Appellant	Appeal No.	Appellant No.
01.	M/s. F-Tech Engineering Co., Mansata Industrial Area, Street No. 1, Gondal Road, S.T. Work Shop, Rajkot.	V2/17/RAJ /2017	Appellant No. 1
02	Shri Jigneshbhai Mansukhbhai Pambhar, M/s. F-Tech Engineering Co., Mansata Industrial Area, Street No. 1, Gondal Road, S.T. Work Shop, Rajkot.	V2/18/RAJ /2017	Appellant No. 2

2. The facts of the case are that the preventive officers of Rajkot Commissionerate found that the appellant was clearing set of Power Driven Pump (i.e. Pump + Motor), against declaration of Pump; that benefit of concessional rate of duty was not available to the appellant available for clearance of Power Driven Pump under Notification No. 12/2002-CE dated 17.03.2012. During search on 12.12.2014 unaccounted stock of the finished goods valued at Rs. 20,84,195/- was found and the same was placed under seizure. Show Cause Notice bearing F. No. II/11-03/PI/2015-16 dated 30.04.2015 was issued proposing confiscation of the goods and imposition of penalties, which was decided vide the impugned order, by ordering confiscation of the goods and imposing redemption fine of Rs. 2,57,607/- under provisions of Section 34 of the Central Excise Act, 1944 (hereinafter referred to as "the Act"). Penalty of Rs. 2,57,607/- under Rule 25 of the Central Excise Rules, 2002 (hereinafter referred to as "the Rules") on Appellant No. 1 and personal penalty of Rs. 1,00,000/- on Appellant No. 2 under Rule 26 of the Central Excise Rules, 2002 were also confirmed.

3 Aggrieved with the impugned order, the appellants preferred appeals, *inter alia*, contending that the lower adjudicating authority has erred in upholding seizure of the excisable goods, even though there was no apprehension of evasion of duty as goods were lying in the factory of production at semi-finished stage and were recorded in private records; that RG-1 stage comes when the goods reach the marketable condition; that in the instant case testing, labeling and packing were not done; that there was no intention on their part to clear the goods to evade duty of Central Excise.

3.1 The appellant submitted that the lower adjudicating authority has not considered their following decisions :-



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|---------------------------------------|----------------------------|
| (i) Maldar Barrels Pvt. Ltd. Vs. CCE, | 2014(312) ELT 742 (T-Mum); |
| (ii) Zincollied (India) Vs. CCE, Vapi | 2013(297) ELT 370 (T-Ahmd) |
| (iii) Marigold Paints Pvt. Ltd.       | 2014(308) ELT421(T-Ahmd);  |
| (iv) CCE Vs. Sadashiv Ispat Ltd.      | 2010 (255)ELT349(P&H); and |
| (v) Hindustan Steel Ltd.              | 1978(2)ELT(J159)(SC).      |

3.2 Appellant No. 1 also submitted that the lower adjudicating authority has erred in imposing penalty under Rule 25 of the Rules; that there was no intent to evade payment of duty and hence provisions of Rule 25 of the Rules cannot be invoked. Relying upon Rule 10, pertaining to Daily Stock Account, the appellants contended that the seized goods were in semi-finished condition and were recorded in private records; that they referred to and relied upon the decision of the Hon'ble CESTAT in the case of M/s. Alphine Panels reported as 2014(311)ELT754(T-Bang) in this regard.

3.3. Appellant No. 2 submitted that the seizure of goods was unwarranted and there was no intent to evade payment of duty and the goods were recorded in the private records and hence confiscation of goods ordered is not proper and relied upon case of Pravin Shah reported as 2014(305)ELT480(Guj) and reiterated all grounds raised by Appellant No. 1.

4. Personal hearing in the matter was attended to by Shri Pragnesh B. Hirpara, Advocate who reiterated the grounds of appeals and submitted that the goods seized had not been cleared by the appellant as they had not attained the state of being marketable and hence allegation of non accountal in the RG-1 Register is not correct; that imposition of redemption fine and penalty in this case are not warranted. Personal hearing notice was sent to the Department, however, none appeared.

#### **Findings:**

5. I have carefully gone through the facts of the case, impugned order, grounds of appeals and oral and written submissions made by both the appellants. The issues to be decided in the present appeals are :-

- (i) whether the impugned order confiscating the seized goods under Rule 25 of the Rules and imposing redemption fine of Rs. 2,57,607/- in lieu of confiscation, is proper or not;
- (ii) whether penalty of Rs. Rs. 2,57,607/- imposed under Rule 25 of the Rules on the appellant No. 1 is proper or not; and
- (iii) whether personal penalty of Rs. 1,00,000/- imposed under Rule 26 of



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the Rules on the appellant No. 2 is proper or not.

6. I find that the appellant has contended that the seized goods had not been removed from the factory premises and that the goods were not in marketable conditions and therefore the same cannot be seized and confiscated. Consequently, no redemption fine, in lieu of confiscation of the goods could be imposed.

6.1 The facts of the case as well as Paras No. 3 & 18 of the impugned order that Shri Jignesh M. Pambhar, Appellant No. 2 and partner of Appellant No. 1 establish that he had categorically admitted that they had been clearing finished goods clandestinely and the excess stock of the finished goods was on account of such un-accounted removals. I, therefore, find that that the seized goods were not accounted for by Appellant No. 1 in their statutory records with intent to evade payment of duty and would have been cleared clandestinely had the Departmental officers not visited the factory premises.

6.2 I find that Rule 25(1) of the Rules expressly provides that if any manufacturer of excisable goods has not accounted for any excisable goods manufactured by him, then all such un-accounted goods shall be liable to confiscation. The contention of the appellants that there was no intent to evade payment of duty is not correct. It is a fact that incriminating documents and details of clandestine removals of the excisable goods were found in these premises and Appellant No. 2 and partner of Appellant No. 1 had clearly admitted in his statement recorded on 12.12.2014 that they were suppressing the actual production of the finished goods and clandestine clearances thereof. Appellant No. 2 has also categorically admitted that seized goods were meant to be cleared without payment of duty.

6.3 I also find that Appellant No. 1 has contended that the goods seized were semi-finished goods and were not in marketable state and therefore the same were not liable to seizure/confiscation. In this regard, I find that Appellant No. 2 has categorically admitted their *mens rea* of clandestine removal in his statement recorded under Section 14 of the Act. The bald ground taken in appeal memorandum on the part of the appellants, is an afterthought and the case-laws cited by the appellants are not applicable in the facts of the present case.

6.4 I also find from the records of the appeal that the confessional statement of Appellant No. 2 recorded under Section 14 of the Act has not been retracted at any stage and therefore sanctity of his statement cannot be undermined, especially when there is corroboration in form of un-accountal of the goods, coupled with the fact of detection of incriminating documents. It is settled law position that admitted

facts need not be proved as held by the Hon'ble Apex Court in the cases of Systems & Components Private Limited reported as 2004 (165) ELT 136 (SC); Alex Industries reported as 2008 (230) ELT 0073 (Tri-Mumbai) and 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."

6.5 It is well settled position of law that the case of un-authorized clearance and non – accountal of goods owing to clandestine clearances, is not to proved with mathematical precision, especially when the appellants have categorically admitted their offence. I, therefore, uphold the confiscation of the finished goods ordered in the impugned order. I therefore, find that as made out by the appellants, it is not a plain vanilla case of un-accountal of the goods entailing liberal approach. Therefore, imposition of redemption fine of Rs. 2,57,607/- in lieu of the goods valued at Rs. 20,84,195/- is correct, legal and proper.

7. I find that imposition of penalty under Rule 25 of the Rules has to be followed in case like this where Appellant No. 2 and partner of Appellant No. 1 had admitted offence and hence imposition of penalty of Rs 2,57,607/- under Rule 25 of the Rules, read with Section 11 AC of the Act is legal and proper and is required to be upheld.

8. As regards, imposition of penalty of Rs. 1 lakh under Rule 26 of the Rules on Appellant No. 2, I find that Appellant No. 2 was involved in the clandestine manufacture and clearance of the finished goods, who is also an active partner in the partnership firm; that the excess goods were meant for unauthorized clearance has been accepted. Hon'ble CESTAT, Ahmedabad in the case of Yunusbhai Samsuddin Devdiwala reported as 2016 (334) ELT 120 (Tri.-Ahmd.) has already held that personal penalty upon partner is imposable, in addition to penalty imposed on the partnership firm. The Hon'ble Madras High Court in the case of C. Eswaran reported as 2014 (306) E.L.T. 264 (Mad.) has also held as under:-

*"8. It is true that the statutory authority imposed penalty on the firm as well as on the partner. The finding recorded by the original authority was confirmed in appeal. The legality and correctness of the order was once again tested by the CESTAT. The CESTAT being the final fact finding authority arrived at a conclusion that there was clinching evidence to show that the appellant imported the weaving looms by fabricating the records and engraving the year of manufacture.*

*9. The only question raised in the present appeals is as to whether the statutory authority was justified in imposing fine on the firm as well as on the partner.*

10. Section 112(a) of the Customs Act, 1962 provides that not only the person who is instrumental in doing a particular act by violating the provisions of the Act but also the person who abets it or commits such act, is also liable for payment of penalty. The goods in question were imported in the name of the firm by name M/s. Sri Ram Tex. The appellant in C.M.A. No. 811 of 2012 in his capacity as the partner abetted the firm to commit the offence. Therefore, the statutory authority was fully justified in imposing fine on the firm as well as on the partner.

(Emphasis supplied)

8.1 In light of the above facts and legal position as above, the imposition of penalty on Appellant No. 2 under Rule 26 of the Rules, is justified, legal and proper, I therefore uphold the penalty imposed upon Appellant No. 2.

9. In view of above, I uphold the impugned order and reject both the appeals.

९.१. अपीलकर्ताओ द्वारा दर्ज की गई अपीलों का निपटारा उपरोक्त तरीके से किया जाता है।

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

सत्यापित,  
निखिल ए. रूपरेतिया  
अधीक्षक (बर्गीय)

(कुमार संतोष)  
आयुक्त (अपील्स)

**By R.P.A.D.**

To,

1	M/s. F-Tech Engineering Co., Mansata Industrial Area, Street No. 1, Gondal Road, S.T. Work Shop, Rajkot.	2. Shri Jigneshbhai Mansukhbhai Pambhar, Partner of M/s. F-Tech Engineering Co., Mansata Industrial Area, Street No. 1, Gondal Road, S.T. Work Shop, Rajkot.
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**Copy to:**

1. The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
2. The Commissioner, GST & Central Excise, Rajkot Commissionerate, Rajkot.
3. The Assistant Commissioner, GST & Central Excise, Division-I, Rajkot.
4. The Range Superintendent, GST & Central Excise, Division-I, Rajkot
5. Guard File.