



::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 / 2nd 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 / OIO No.	दिनांक / Date
	V2/158 & 159/RAJ/2016 / 6213-706215	27/D/2015-16	31.03.2016

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

RAJ-EXCUS-000-APP-122-TO-123-2017-18

आदेश का दिनांक / Date of Order:	14.11.2017	जारी करने की तारीख / Date of issue:	15.11.2017
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कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ सयुक्त 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 :-**
1.M/s. Parot Power Pvt Ltd., 18-Sadguru Industrial Estate, Morbi-Rajkot Highway, Near Lajai Village,Morbi- 363650.
2. Shri Anandbhai Rameshbhai Vadhadia, Director of M/s Parot Power Pvt Ltd.

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है। /
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामलों सीमा शुल्क, केन्द्रीय 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, Asawa 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, व्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /
The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, व्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार 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 is upto 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 दायें की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र ST-7 में की जा सकती एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दाने करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत 'मांग किए गए शुल्क' में निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की ली गई राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होंगे।
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 परंतक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। / A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:
(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। / In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse
(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। / In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इयूटी केडीटी इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाचिधि पर या बाद में पारित किए गए हैं। / Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
(v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। / The above application shall be made in duplicate in Form No. EA-8 as specified under Rule. 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.
(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए।
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपरोक्त दंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी 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.
- (E) ययासशील न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। / One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.
- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982
- (G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, 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 ::

M/s. Parot Power Pvt. Ltd., 18-Sadguru Industrial Estate, Morbi-Rajkot Highway, Near Lajai Village, Morbi – 363 650 (hereinafter referred to as '**Appellant No. 1**') and Shri Anandbhai Rameshbhai Vadhadia, Director of M/s. Parot Power Pvt. Ltd., (hereinafter referred to as '**Appellant No. 2**'), filed the present appeals against Order-In-Original No. 27/D/2015-16 dated 31.03.2016 (hereinafter referred to as '**the impugned order**') passed by the Assistant Commissioner, Central Excise, Division – Morbi (hereinafter referred to as '**the lower adjudicating authority**').

2. Briefly stated the facts of the case are that search of the factory premises of the appellant on 11.10.2013 by the Preventive officers of Rajkot, revealed that the appellant was engaged in manufacture of Electrostatic Precipitator (Tar-Catcher) and clearing the same on the basis of Chit without invoices/bills. During search, incriminating documents were resumed under Panchanama dated 11.10.2013. Thus, it was found that they were manufacturing and clandestinely clearing excisable goods without obtaining Central Excise registration and without invoices/bills. During search, 02 Electrostatics Precipitator (Tar-Catcher), valued at Rs. 25,00,000/- were seized under Panchanama dated 11.10.2013 on reasonable belief that the same were intended to be cleared clandestinely and have bound liable to confiscation under the provision of Central Excise Law.

2.1 During investigation, search was also carried out, at the residential premises of Appellant No. 2 and incriminating documents were seized.

2.2 The statement of Appellant No. 2 was recorded date of search itself under Section 14 of the Central Excise Act, 1944 (hereinafter referred to as "the Act"), who in his statement, inter-alia, stated that (i) the figures shown in sales ledgers and other financial records were under reported so as to keep the firm's turnover below Rs. 1,50,00,000/- i.e. exemption limit (ii) Note Book No. 1 & 2 have been maintained and written by him, which contained the details of actual sales of Appellant No. 1 for F.Y. 2011-12, 2012-13 and 2013-14, showing details of products, dated of transaction and payments received. (iii) One file containing page no. 1 to 265, chit prepared in respect of goods viz. panel, rectifier, isolation transformer, heater etc. which were manufactured at the factory premises of Appellant No. 1 & cleared without payment of duty, consideration was received in cash & no book of accounts maintained. (iv) Statement of HDFC Bank and SBI, deposit of cash transactions of depositing cash received from unaccounted sales

were also recovered.

3. The above facts led into issuance of the Show Cause Notice No. IV/03-19/D/2014-15 dated 17.09.2014, which was adjudicated by the lower adjudicating authority vide impugned order wherein Redemption Fine of Rs. 5,00,000/- under Section 34 of the Act was imposed, Penalty of Rs. 75,000/- on Appellant No. 1 under Rule 25 of CER, 2002 and penalty of Rs. 65,000/- on Appellant No. 2 under Rule 26 of CER, 2002 imposed.

4. Being aggrieved with the impugned order, both the appellants preferred the present appeals, inter-alia, on the following grounds:

4.1 The adjudication authority has committed jurisdictional error in ordering confiscation of two Electrostatic Precipitators (Tar Catcher) seized in factory on 11.10.2013 only on ground that such goods were not accounted for by the appellant, no attempt or preparation was made by the appellants for removal of such goods therefore, confiscation was unwarranted and unjustified.

4.2 The appellants stated many decisions given by the Hon'ble CESTAT, it is held that goods were lying inside the factory and there was no evidence of preparation of clandestine removal, that goods were not liable for confiscation.

4.3 The decision of the adjudicating authority rejecting to club proceeding of this seizer case with main case with Principle Commissioner of Central Excise case Rajkot was not proper and without application of mind. There is error in the findings of adjudicating authority that the present case is limited to the issue of confiscation of seized goods whereas Para 11.1, 11.2 and 11.3 address the issue of alleged clandestine removal made by the appellant. The impugned order suffers from contradiction. The case of the department is that the appellants have cleared excisable goods without issuing proper invoices and without payment of duty, two electrostatics precipitators laying at the appellant's premise were seized and separate SCN was issued, in order to adjudicate upon the issue whether finished goods found at premises were in any manner clandestine goods, it was necessary for the department to establish that such goods were dutiable and intended to be cleared without payment of duty. The allegation that appellant had clandestinely removed goods and undervalued this, to stay under SSI exemption is still to be decided and is pending before the Principle Commissioner for adjudication. The unnecessary haste shown by the adjudicating authority in deciding the present SCN rejecting to club the present proceeding with the

Principle Commissioner clearly demonstrates non-application of mind.

4.4 The quantity of seized goods is very small and no reason as to why the appellant would remove it in clandestine manner, the department has not disputed accounts maintained by appellant with respect of inputs, even if the value of these two Electrostatic Precipitators is added, SSI exemption is not crossing.

4.5 Imposing penalty under Rule 25 of the CER, 2002 is even otherwise without jurisdiction because there is no intent to evade payment of duty on the appellant part, no liability for any penalty in view of principle laid down by Hon'ble Gujarat High Court in the case of Saurashtra Cement Ltd. reported as 2010 (260) ELT 71 (Guj) and Prince Multi Plast Pvt. Ltd. reported as 2012 (276) ELT 48 (Guj), wherein it is held that penalty under Rule 25 of the Rules (like Section 11AC of the Act) could be imposed only when sustainable case of malafide and deception against the appellant, in the present appeal goods in question were lying in the factory, there was no suppression at all. No cogent and reliable evidence in support of the charge levelled in the SCN/ findings, no penalty would be justified on the basis of assumptions and presumptions, penalty being quasi-criminal in nature.

4.6 Imposing penalty under Rule 26 of the CER, 2002 on Appellant No. 2 is also illegal and unjustified as one person could not be engaged in all the activities like manufacture, sale, transportation etc. of the excisable goods, In the SCN/ Impugned order it is not pointed out that which particular activity he was concerned with, this principle settled by virtue of the decisions in cases of Vinodkumar - reported as 2006 (199) ELT 705 and R.K. Ispat Udhyog reported as 2007 (211) ELT 460.

5. Personal hearing in the matter was attended by Shri Chetan Detharia, Advocate on behalf of the appellants, reiterated the grounds of appeal. He submitted that unit was a SSI unit and RG -1 was not required to be maintained; that private records were being maintained by them; that goods confiscated had not been removed from the factory; that there was no preparation for removal of good without payment of duty as they had not crossed SSI limit of 1.5 crores during the year; the main case of duty evasion is now decided by the Principle Commissioner which is pending before CESTAT, Ahmedabad. No one appeared from the department despite P.H. notices sent to them.

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FINDINGS

6. I have carefully gone through the facts of the case, the impugned order, appeal memorandum in respect of both appellants and records of the Personal hearing. The issues to be decided in both appeals are, (i) Whether the seized goods i.e. two Electrostatic Precipitator (Tar-Catcher), valued at Rs.25,00,000/- are liable to confiscation under Rule 25 of the CER, 2002, (ii) whether redemption fine of Rs. 5 lakhs imposed is proper (iii) whether Appellant No. 2 is liable to penalty under Rule 25 of the CER, 2002 (iv) whether Appellant No. 2 is liable to penalty under Rule 26 of the CER, 2002 or not.

6.1 I find that Appellant No. 1 is engaged in manufacturing of excisable finished goods i.e. Electrostatic Precipitator (Tar-Catcher), without obtaining Central Excise Registration. It is on revealed that during search of the factory premises of Appellant No. 1 and residential premises of Appellant no. 2, various incriminating documents including two note-books and sales ledgers were seized in the presence of Appellant No. 2 and in statement dated 11-10-2013 i.e. on day of search, Appellant No. 2 categorically admitted that the figures shown in sales ledgers and other financial records were under reported so as to keep the Appellant No. 1 turnover below Rs. 1,50,00,000/- of SSI limit and Note Book No. 1 & 2 have been maintained and written by them, the details of actual sales of appellant no. 1 for F.Y. 2011-12, 2012-13 and 2013-14, showing details of products, date of transactions and payments received. He also admitted that one file containing page no. 1 to 265, chit prepared in respect of goods viz. panel, rectifier, isolation transformer, heater etc. which were manufactured & cleared without payment of duty, consideration was received in cash and same were deposited in HDFC and SBI & no books of accounts have been maintained by Appellant No. 1 in their office records.

6.2 I find that Rule 25 of the Central Excise Rules, 2002 (hereinafter referred to as '**the Rules**') reads as under;

Rule 25. Confiscation and penalty. -

(1) Subject to the provisions of section 11AC of the Act, if any producer, manufacturer, registered person of a warehouse or a registered dealer, -

(a) removes any excisable goods in contravention of any of the provisions of these rules or the notification issued under these rules; or

(b) does not account for any excisable goods produced or manufactured or stored by him; or

(c) engages in the manufacture, production or storage of any excisable goods without having applied for the registration certificate required under section 6 of the Act; or

(d) contravenes any of the provisions of these rules or the notifications issued under these rules with intent to evade payment of duty.

then, all such goods shall be liable to confiscation and the producer or manufacturer or registered person of the warehouse or a registered dealer, as the case may be, shall be liable to a penalty not exceeding the duty on the excisable goods in respect of which any contravention of the nature referred to in clause (a) or clause (b) or clause (c) or clause (d) has been committed, or [rupees two thousand], whichever is greater.

(2) An order under sub-rule (1) shall be issued by the Central Excise Officer, following the principles of natural justice.

[Emphasis Supplied]

6.3 The Appellant No. 2 and Director of Appellant No. 1 has admitted unaccounted stock of 2 Electrostatic Precipitators, valued at Rs.25,00,000/-, were stored by them for clandestine clearance with intent to evade payment of Central Excise duty. I find that the said seized goods are liable to confiscation under Rule 25(1)(b) and 25(1)(d) of the Rules. Section 34 of the Act provides that whenever confiscation is adjudged under the Act or the Rules made thereunder, an option is to pay a fine in lieu of Confiscation. The Central Excise duty involved on these goods amount Rs. 3.09 Lakhs. Hence, imposition of redemption fine of Rs. 5 Lakhs on Appellant No. 1 is justified.

6.4 I find that Appellant No. 1 was involved in clandestine clearance of finished goods without invoice and payment of duty, involved in manufacturing of excisable goods from the raw materials obtained without invoice and cleared goods without preparing/issuing invoice in contravention of the Rules. The finished goods, manufactured by them and stored, was with an intent to evade payment of duty on the said goods i.e. 2 Electrostatic Precipitators (Tar-Catcher) valued at Rs.25,00,000/-, and the said goods have been held liable for confiscation under Rule 25 of the Rules. I find that this act of omission and commission by Appellant No. 1 is covered under sub-rule (1) (a), (b) and (d) of Rule 25 ibid. Therefore, imposition of penalty of Rs. 75,000/- on Appellant No. 1 under Rule 25 is justified.

6.5 I find that penalty of Rs. 65,000/- has been imposed on Appellant No. 2 Rule 26 which reads as under:

Rule 26. Penalty for certain offences. -


(1) Any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or these rules, shall be liable to a penalty not exceeding the duty on such goods or two thousand rupees, whichever is greater.

6.5.1 All activities of Appellant No. 1 related to clandestine manufacture and clearance of finished goods without payment of duty, purchase of raw materials, payments were being looked after by Appellant No. 2, which has also been admitted by him in his statement dated 11-10-2013. Therefore, imposition of penalty on Appellant No. 2 under Rule 26(1) of the Rules is also justified.

7. In view of the above facts, I uphold the impugned order and reject the appeals filed by both the Appellants.

7.1 अपीलकर्ता द्वारा दर्ज की गई दोनों अपील का निपटारा उपरोक्त तरीके से किया जाता है।

7.1 The appeals filed by the two appellants are disposed off in above terms.


(कुमार संतोष)
आयुक्त (अपील्स)

By R.P.A.D.

To,

1. M/s. Parot Power Pvt. Ltd.,
18-Sadguru Industrial Estate,
Morbi-Rajkot Highway,
Near Lajai Village, Morbi – 363 650

2. Shri Anandbhai Rameshbhai Vadhadia,
Director of M/s. Parot Power Pvt. Ltd.,
18-Sadguru Industrial Estate,
Morbi-Rajkot Highway,
Near Lajai Village, Morbi – 363 650

Copy to:-

1. The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
2. The Commissioner, GST & Central Excise Commissionerate, Rajkot.
3. The Assistant Commissioner, GST & Central Excise Division – I/II, Morbi
4. Guard File.