



::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



सत्यमेव जयते

Tele Fax No. 0281 - 2477952/2441142 Email: cexappealsrajkot@gmail.com

**रजिस्टर्ड डाक ए.डी.द्वारा :-**

क	अपील / फाइलसंख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/ 62/RAJ/2019	AC/JAM-I/C.Ex/18/2018-19	29-03-2019

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

**RAJ-EXCUS-000-APP-059-2020**

आदेश का दिनांक / Date of Order:	<b>29.04.2020</b>	जारी करने की तारीख / Date of issue:	<b>29.04.2020</b>
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श्री गोपी नाथ, आयुक्त (अपील्स), राजकोट द्वारा पारित/  
Passed by Shri Gopi Nath, Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं 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/ST / GST, Rajkot / Jamnagar / Gandhidham :

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

**M/s Rajhans Metal Pvt Ltd, Plot no. 21/3, GIDC, Shankar Tekri, Jamnagar-361140.**

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

(A) सीमा शुल्क केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है। /

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के. पुरम, नई दिल्ली, को की जानी चाहिए। /

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असारवा अहमदाबाद- ३८००१६ को की जानी चाहिए। /

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

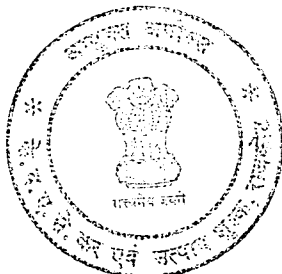
The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/- Rs.10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench 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 दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (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 जमाना विवादित है, या जमाना, जब केवल जमाना विवादित है, का भुगतान किया जाए, बशर्ते 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 गलत राशि  
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम  
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगा। / For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores, Under Central Excise and Service Tax, "Duty Demanded" shall include :  
(i) amount determined under Section 11 D;  
(ii) amount of erroneous Cenvat Credit taken;  
(iii) amount payable under Rule 6 of the Cenvat Credit Rules  
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.
- (C) भारत सरकार को पुनरीक्षण आवेदन :  
**Revision application to Government of India:**  
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक 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 छूट (रिवेट) 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 ड्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समयावधि पर या बाद में पारित किए गए हैं। / Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.  
(v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पाद 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।  
जहां संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 1000 -/ का भुगतान किया जाए।  
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.  
(D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding 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) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I 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 संबन्धित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.  
(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, 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 ::**

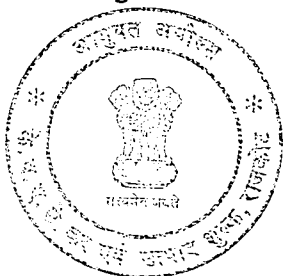
M/s. Rajhans Metals Pvt. Ltd., Jamnagar (*hereinafter referred to as "Appellant"*) filed appeal No. V2/62/Raj/2019 against Order-in-Original No. AC/JAM-I/C.Ex/18/2018-19 dated 29.03.2019 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Central GST, Division-I, Jamnagar (*hereinafter referred to as 'adjudicating authority'*).

2. The brief facts of the case are that during CERA audit of the records of the Appellant, it was noticed that the Appellant was selling their finished goods i.e. Brass roads/sections at huge loss on manufacturing activities for more than four years; that the percentage of loss to the net worth of the company in the year 2013-14 was to the extent of 30.09% and due to continuous loss of the company, the net worth of the company was getting reduced every year resulting in reduction of capital of the company. It appeared that the Appellant was selling their finished excisable <sup>goods</sup> below manufacturing cost deliberately. A Show Cause Notice covering the period from April,2012 to March,2016 was issued to the Appellant demanding differential Central Excise duty. In continuation of above referred audit observation and on the basis of CAS-4 statement provided by the Appellant and quantity of goods reflected in ER-1 returns for the year FY 2016-17, the appellant was served Show Cause Notice No. V.74/AR-III/JAM/17/2018-19 dated 2.5.2018 for the 2016-17 demanding Central Excise duty of Rs. 34,63,865/- alleging undervaluation of excisable the goods, along with recovery of interest and imposition of penalty.

2.2 The said Show Cause Notice was adjudicated by the adjudicating authority vide the impugned order, wherein he confirmed the demand of Central Excise duty of Rs. 34,63,865/- under Section 11A of the Central Excise Act, 1944 (*hereinafter referred to as 'Act'*) along with interest under Section 11AA and imposed penalty of Rs. Rs.34,63,865/- under Section 11AC of the Act.

3. Aggrieved, the Appellant preferred the present appeal, *inter-alia*, on various grounds as under:

3.1 The impugned order is untenable in law and against the principal of natural justice in as much as overlooking the appellant's reply against the allegation made in SCN dated 02.05.2018 making clear that they had not cleared finished goods below manufacturing cost rather they made profit of



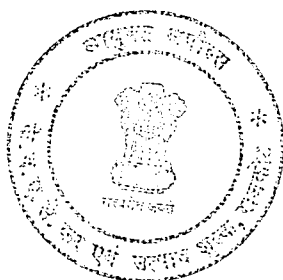
Rs.3,09,16,268/-, which is reflected in the audited P&L account for FY 2016-17.

3.2 That cost of manufacture of brass rod for F.Y. 2016-17 was Rs. 275.87 per kg, whereas, the appellant had sold the said goods for Rs. 291.34 per kg and cost of manufacture of brass sections for F.Y. 2016-17 was Rs. 275.87 per kg, whereas, the appellant had sold the said goods for Rs. 285.48 per kg; that the said goods had not at all been sold below manufacturing cost and hence, the impugned order, upholding that the appellant had sold goods below cost of manufacture is untenable in law being issued without application of mind.

3.3 That the department has calculated duty payable taking into consideration assessable value as 110% of cost of manufacture; that the impugned order resorting to valuation of goods at 110% of cost of production under Rule 8 of the Central Valuation Rules, 2000 (hereinafter known as 'Rules') is without authority of law; that the said provision is applicable in a case where excise duty is payable on captive consumption, which is not the case here; that it is well settled law that when excisable goods are sold to an unrelated third party, the cost of production or any other method is impermissible for the purpose of valuation of such goods, specifically, when there is no additional monetary consideration flowing from the buyer to the seller.

3.4 That that provisions of section 4(1)(b) of the Act can be invoked (i.e. transaction value can be rejected), as confirmed in the impugned order, only in a case where a particular transaction is not covered within the four corners of the said provision; that in the present case, the adjudicating authority rejected transaction value on the findings that price is not the sole consideration for the sale of goods because some so called 'extra commercial consideration' have flown from the buyers to the appellant, however, the impugned order have miserably failed not only to establish but to elaborate also what these so called 'extra commercial consideration' are and what is its monetary value; that the said allegation is also untenable in law since the appellant neither sold goods below manufacturing cost nor it incurred losses during the relevant period.

3.5 That the impugned order invoking provisions of rule 6 of the Valuation Rules, 2000 for differential duty demand are not at all applicable in the present case, since, it is an admitted fact that the appellant had not received any additional consideration, whether directly or indirectly, from its buyers. As a matter of fact, there is no such averment/finding in the impugned order as well



*a*

as SCN dated 02.05.2018 that the appellant had received any additional consideration from its buyers whether directly or indirectly.

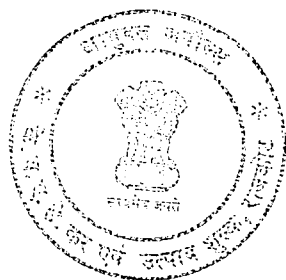
3.6 That the impugned order is contrary to the amended provision of Rule 6 of the Rules which provides that even when goods are sold below manufacturing cost and profit and if no additional consideration is flowing directly or indirectly from the buyer to the assessee, the transaction value' alone would form the assessable value. In other words, only money value of the consideration flowing directly or indirectly from the buyer to the assessee alone would determine the assessable value.

3.7 That the departmental contention, "that the losses incurred by the appellant are nothing but extra commercial consideration flowing indirectly to the appellant over and above the 'transaction value' indicated on the sales invoices and therefore the same is includable in the assessable value", is factually incorrect since the appellant had not incurred losses in the relevant financial year and secondly, is untenable in law since the term 'consideration' appearing in section 4(1)(a) of the Act is nothing but only monetary consideration flowing from the buyer to the seller.

3.8 The appellant submitted that the impugned order, based on the judgment of the honorable Supreme Court in case of FIAT, which was rendered in extraordinary circumstances, is untenable in law since the said decision cannot be applied to every loss making entity; that the Board vide circular no. 979/03/2014-CX dated 15.01.2014 has clarified that the FIAT decision doesn't automatically apply to every case where the manufacturing cost is higher than the transaction value at the time of sale of goods.

3.9 That the impugned order, confirming recovery of interest and imposing penalty, are unsustainable in law since recovery of differential duty itself is unsustainable in law on merits, as discussed herein above.

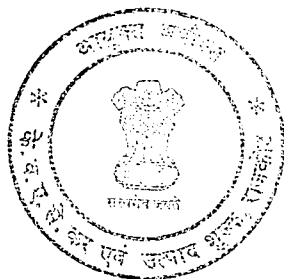
4. Hearing in the matter was scheduled on 27.09.2019, 05.11.2019, 17.12.2019 & 03.01.2020. However, no one appeared for hearing on any of the dates nor any request for adjournment was received. Since the appeal cannot be kept pending indefinitely, I take up the appeal for decision on the basis of records available before me.



5. I have carefully gone through the facts of the case, the impugned order, and grounds of appeal memorandum. The issue to be decided in the present appeal is whether the impugned order confirming Central Excise Duty of Rs. 34,63,865/- and imposing equal penalty is correct, legal and proper or otherwise.

6. On going through the impugned order, I find that the adjudicating authority confirmed the demand on the grounds that the Appellant had deliberately kept the assessable value of their finished goods below their manufacturing cost and sold the goods at a loss in order to penetrate market and re-determined assessable value of the goods under Section 4(1)(b) of the Act. On the other hand, the Appellant has argued that they had not cleared finished goods below manufacturing cost but they made profit of Rs. 3,09,16,268/-, which is reflected in the audited P&L account for FY 2016-17; that cost of manufacture of brass rods and brass section was Rs. 275.87 per kg, whereas, they had sold the said goods for Rs. 291.34 per kg and for Rs. 285.48 per kg, respectively.

7. I have gone through the Annual accounts for the year 2016-17 submitted by the Appellant. I find that the Appellant had made profit of Rs. 3,09,16,268/- in the year 2016-17 as reflected in their profit and loss account. So, the very foundation of entire proceedings that the Appellant had sold their finished goods below their manufacturing cost is factually incorrect. I find that the Appellant had pleaded before the adjudicating authority in reply to Show Cause Notice that cost of manufacture of brass rods/section was Rs. 275.87/- per Kg as per CAS-4 and their declared assessable value was Rs. 291.34/- per Kg and Rs. 285.48/- per Kg, respectively, and had also furnished copy of their audited final accounts for the year 2016-17. The adjudicating authority has not disputed the claim of the Appellant since he has not given any findings on this ground in the impugned order. It appears that the adjudicating authority was influenced by the previous Show Cause Notice dated 8.5.2017 issued for the period from 2012-13 to 2015-16, wherein the Appellant had cleared goods below manufacturing cost. However, the adjudicating authority ought to have appreciated that the facts involved before him were entirely different inasmuch as the Appellant had not cleared goods below their manufacturing cost during the year 2016-17 and consequently, the case law of FIAT India Ltd-2012(283) ELT 161 (S.C.) is not applicable to the facts of the present case. The impugned order was passed



*[Handwritten Signature]*


ignoring factual position of the case and hence, not sustainable.

7.1 In view of above factual position, I am of the opinion that there is no case for re-determination of assessable value by resorting to Section 4(1)(b) of the Act and duty discharged by the Appellant on transaction value under Section 4(1)(a) of the Act during 2016-17 is proper. I, therefore, set aside confirmation of Central Excise duty of Rs. 34,63,865/- and imposition of equal penalty under Section 11AC of the Act.

8. In view of above, I set aside the impugned order and allow the appeal filed by the Appellant.

9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

9. The appeal filed by the Appellant is disposed off as above.

  
(GOPI NATH) 28/4/2020  
Commissioner(Appeals)

Attested



(V.T.SHAH)

Superintendent(Appeals)

By R.P.A.D.

To, M/s Rajhans Metals Pvt. Ltd. Plot no. 21/3, GIDC, SHANKAR Tekri, Jamnagar-361004.	सेवा में, मैसर्स राजहंस मेटल्स प्राइवेट लिमिटेड प्लॉट नंबर 21/3, जीआईडीसी, शंकर टेकरी, जामनगर -361004
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प्रतिलिपि :-

- 1) प्रधान मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट को आवश्यक कार्यवाही हेतु।
- 3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क मण्डल, जामनगर-1 को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फाइल।

