



आयकर (अपील) का आयोजक, केंद्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क
 GO THE COMMISSIONER (APPEALS), CENTRAL GST & EXCISE



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संज्ञित संख्या प. नं. सूचना :-

क	अपील / अपील संख्या / Appeal / File No. 82/57/1008/2017	भूल संख्या नं. / OI No. No. 29V-EXCISE-000-00002016-17	दिनांक / Date 11.01.2017
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घ अपील संख्या संख्या (Order No.) Appeal No.

BIV-EXCISE-000-APP-051-2018-19

क	केंद्र का दिनांक / Date of Issue	केंद्र का दिनांक / Date of Issue	केंद्र का दिनांक / Date of Issue
	20.04.2018	27.01.2018	

Issued by: Dr. Dalbir Singh, Additional Director General (Taxpayer Services), Ahmedabad Zonal Unit, Ahmedabad.

अधिसूचना संख्या 29V-EXCISE-000-00002016-17 के माध्यम से जारी की गई थी। अतिरिक्त सूचना संख्या 82/57/1008/2017 का प्रकाशन है। डॉ. कलबीर सिंह, आय नवनिदेशक कार्यालय के अध्यक्षता में एक समिति को विद्युत अधिसूचना संख्या 29V-EXCISE-000-00002016-17 के माध्यम से जारी की गई थी। इस अधिसूचना के माध्यम से आदेशों में परिवर्तन किया गया है।

This document is a Business Confidentiality document. It contains information that is confidential under the provisions of the Information Act, 2009. It is issued by Dr. Dalbir Singh, Additional Director General of Taxpayer Services, Ahmedabad Zonal Unit. For detailed information regarding this Appellate Authority, for the purpose of processing orders in respect of appeals, visit the Website: www.cbic.gov.in, 29V-EXCISE-000-00002016-17.

अतिरिक्त सूचना संख्या 29V-EXCISE-000-00002016-17 के माध्यम से जारी की गई थी। अतिरिक्त सूचना संख्या 82/57/1008/2017 का प्रकाशन है। डॉ. कलबीर सिंह, आय नवनिदेशक कार्यालय के अध्यक्षता में एक समिति को विद्युत अधिसूचना संख्या 29V-EXCISE-000-00002016-17 के माध्यम से जारी की गई थी। इस अधिसूचना के माध्यम से आदेशों में परिवर्तन किया गया है।

अपील संख्या संख्या (Order No.) Appeal No. 82/57/1008/2017

अपीलकर्ता के पता का पता पता (Name & Address of the Appellants & Associated):
 M/s Laxmi Steel 17, Lalbahadur Mansion, Dasauptha, Bhavnagar 361 001

अपीलकर्ता के पता का पता पता (Name & Address of the Appellants & Associated):
 M/s Laxmi Steel 17, Lalbahadur Mansion, Dasauptha, Bhavnagar 361 001

संज्ञित संख्या प. नं. सूचना :-
 Appeal No. 82/57/1008/2017

अपील संख्या संख्या (Order No.) Appeal No. 82/57/1008/2017

अपील संख्या संख्या (Order No.) Appeal No. 82/57/1008/2017

Dr. J. C. Goyal, Deputy Director of Customs, Excise & Service Tax Appellate Tribunal (CESTAT), 2nd Floor, 14th Main Road, Sector - 16, Gurgaon - 122001

ORDINARY APPEAL

1. M/s. Laxmi Steel, Bannagar has filed an appeal against CIL No. 10-EX-015-2017 dated 11.01.2017 (hereinafter referred to as 'the impugned order') passed by the Joint Commissioner, Central Excise & Service Tax, Bannagar (hereinafter referred to as 'the adjudicating authority').

2. Briefly stated, the facts are that M/s. Sri Ben Sree Industries, Bhadrachal had removed 150000 Nos of steel bars during July 2008 to March 2009 without a bill of material (BOM) Invoice, without accounting for a their removal, without assessing & payment of the Central Excise duty on the said goods as well as the clearance of the said excisable goods of 150000 Nos of steel bars. In the course of the investigation, statement of Sri Departmental Assistant, proprietor of the appellant was recorded and it was found that they had purchased 150000 Nos of steel bars valued at Rs. 3,15,00,000/- from M/s. Sri Haritree Industrial, Bhadrachal on a cash basis for which they neither received a Bill of Material Invoice nor they demanded the same and they sold the same to their customers. In this regard, a copy of BOM dated 10.01.2011 was submitted by M/s. Sri Haritree Industrial, Bhadrachal producing recovery of Central Excise duty amounting to Rs. 62,45,380/- as well as a copy of Bill of Material Invoice under Section 11A of the Central Excise Act, 1944 (hereinafter referred to as 'the Central Excise Rules') was proposed penalty on the appellant under Rule 20 of Central Excise Rules along with other documents. The Additional Commissioner vide O.O No. 10/2009/194/2012 dated 20.01.2012 confirmed the demand against M/s. Sri Ben Sree Industries, Bhadrachal along with interest and penalty and imposed penalty of Rs. 5,00,000/- each against two partners of M/s. Sri Ben Sree Industries and penalty of Rs. 1,00,000/- each against appellant and M/s. Sri Laxmi Steel, Bhadrachal. Appeal against this CIL, appeal was filed before the Commissioner (Appeal) and the Joint Commissioner and Commissioner (Appeal) vide CIL No. 10-EX-015/2017/01/565270 and 10-EX-015/2017/01/565270 dated 26.05.2017 remitted the case to a higher adjudicating authority.

3. Accordingly, the adjudicating authority under the demand assessment order vide impugned order dated 11.01.2017 at para 43 has imposed penalty of Rs. 2,00,000/- against the appellant under Rule 20 of Central Excise Rules, 2002.

4. Feeling aggrieved, the appellant filed appeal on the following grounds.
- That the impugned order is passed without discussing the grounds made by them with regard to the provisions of sub 26(1) and 26(2) of the Central Excise Rules, 2002;
 - That the appellant has stated that the appellant does not know who the said supplier is and who is liable for the said goods. The appellant is a trader, they have to buy Sales Tax/Bill on purchase of the excisable goods, it is the duty of the supplier to issue that invoice and the goods are removed under the cover of invoice;

M/s. Laxmi Steel
Bannagar

(Signature)

- that such penalty can be imposed under Rule 26(a) if to the extent of such benefits received, but an individual taxpayer has a right to qualify such benefits;
- that the allegation of purchase of steel wire from s/s/ Sri Lanka Steel Corporation (Shoragar) has not been proved by any material evidence;
- that the charges have been framed on the assumption presumption in a ground was framed on the basis of the third party's evidence;
- that it is not correct that they were in knowledge of the said goods were in their possession being only "interfer"
- that they had purchased the Bar and Iron & Steel products from the address of "Bona Fine" and not purchased by address "Bona Fine" as stated;
- that the respondents are liable for penalty under Rule 26 of General Excise Rules, 2002;
- that the impugned order may be set aside.

5. The appeal was filed before the Commissioner (Appeals), Rajkot. The undersigned has been nominated as Commissioner (Appeals) / Appellate authority as regards to the case of appellant vide Board's Order No. 35/2017-Service Tax dated 18.11.2017 issued by the Chief Secretary (Service Tax), G-33, V.C.C., Deptt of Revenue, GST, Service Tax Wing, on the basis of Board's Circular No. 208/6/2017-Service Tax dated 17.10.2017.

6. Personal hearing was held on 28.04.2018 wherein the consultants appeared on behalf of appellant reiterated the grounds of appeal and requested to set aside the impugned order.

7. I have carefully gone through the facts of case, the grounds mentioned in the appeals and the submissions made by the appellant. The issue to be decided in the appeal is whether penalty of Rs. 2,00,000/- imposed upon the appellant under Rule 26 of General Excise Rules, 2002 is just and equitable.

8. However, while moving into the merits of the matter, I find that the impugned order was received by the appellant on 09.02.2018 (75th notice filed on 09.02.2018 under Section 7A.1 filed by the appellant) and the appeal against the said order was filed on 17.04.2017. Thus, appeal has been filed after 12 days from the date of communication of the impugned order. I find that the appeal was filed and has been filed beyond the stipulated 60 days

time limit specified under section 3(1) of the Central Excise Act, 1944. Relevant extracts of Section 3B of Central Excise Act, 1944, is reproduced below for ease of reference:


Section 3B. Appeals to Commissioner (Appeals). (1) Any appeal preferred by any person or corporation under this Act by a Central Excise Officer (other than a person in possession of a licence or a permit or a certificate or a licence or a permit or a certificate of approval) referred to as the Commissioner (Appeals) shall be disposed of within the time specified in sub-section (2) of section 3 of the Central Excise Act, 1944.

(2) Provided that the Commissioner (Appeals) may, if he is satisfied that the applicant has presented a sufficient case for allowing his appeal, extend the normal period of sixty days, where it is, to be disposed of within the presence of the goods.

1. As per proviso to section 3(1) Commissioner is empowered to condone the delay of 30 days after the prescribed time limit of sixty days. Time that no such application for condonation of delay has been filed by the applicant together with the appeal.

12. In view of the foregoing, I reject the appeal on merits as provided under Section 3B of the Central Excise Act, 1944 with effecting time limits. The appeal is appeal filed by the applicant stands disposed of on above terms.


Anil Kumar
Commissioner (Appeals)
Bikaner


Anil Kumar
Commissioner (Appeals)
Bikaner


Date: 04.02.2018

F.No. 03/2019/2017/2017

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3701/2017/2017
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Copies to

1. The CH of Commissioner, CBIC, Central Excise, Ahmedabad Zone
2. The Commissioner, CBIC & Central Excise (Appeals) Commissioner (Appeals), Bikaner
3. The Judicial Officer Deputy/Assistant Commissioner, Bikaner
4. The Addl. Commissioner, Systems, Udaipur, Bikaner
5. Guard file.


Anil Kumar
Commissioner (Appeals)
Bikaner