



::आयुक्त (अपील्स) का कार्यालय, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क::  
O/O THE COMMISSIONER (APPEALS), CENTRAL GST & EXCISE,

द्वितीय तल, जी एस टी भवन / 2<sup>nd</sup> Floor, GST Bhavan,  
रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

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सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No. V2/327/RAJ/2017	मूल आदेश सं / O.I.O. No. 138/ADC/PV/2016-17	दिनांक / Date 22-03-2017
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ख अपील आदेश संख्या (Order-In-Appeal No.):

**RAJ-EXCUS-000-APP-013-2018-19**

आदेश का दिनांक / Date of Order:	<b>03.04.2018</b>	जारी करने की तारीख / Date of issue:	<b>11.04.2018</b>
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Passed by **Shri Gopi Nath, Additional Director General (Audit), Ahmedabad Zonal Unit, Ahmedabad.**

अधिसूचना संख्या २६/२०१७-के.उ.शु. (एन.टी.) दिनांक १७.१०.२०१७ के साथ पढ़े बोर्ड ऑफिस आदेश सं. ०५/२०१७-एस.टी. दिनांक १६.११.२०१७ के अनुसरण में, श्री गोपी नाथ, अपर महानिदेशक ऑडिट, अहमदाबाद जोनल यूनिट को वित्त अधिनियम १९९४ की धारा ८५, केंद्रीय उत्पाद शुल्क अधिनियम १९४४ की धारा ३५ के अंतर्गत दर्ज की गई अपीलों के सन्दर्भ में आदेश पारित करने के उद्देश्य से अपील प्राधिकारी के रूप में नियुक्त किया गया है।

In pursuance to Board's Notification No. 26/2017-C.Ex.(NT) dated 17.10.2017 read with Board's Order No. 05/2017-ST dated 16.11.2017, Shri Gopi Nath, Additional Director General of Audit, Ahmedabad Zonal Unit, Ahmedabad has been appointed as Appellate Authority for the purpose of passing orders in respect of appeals filed under Section 35 of Central Excise Act, 1944 and Section 85 of the Finance Act, 1994.

ग अपर आयुक्त/ संयुक्त 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 Neev Metologies P. Ltd., Plot No. 3,4, 5/A S.No. 84, Village Shapar (Veraval) Dist : Rajkot,**

इस आदेश(अपील) से व्याथेत 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, केंद्रीय 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, रूपए 5 लाख या उससे कम, 5 लाख रूपए या 50 लाख रूपए तक अथवा 50 लाख रूपए से अधिक है तो क्रमशः 1,000/- रूपये, 5,000/- रूपये अथवा 10,000/- रूपये 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/- रूपए 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 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, रूपए 5 लाख या उससे कम, 5 लाख रूपए या 50 लाख रूपए तक अथवा 50 लाख रूपए से अधिक है तो क्रमशः 1,000/- रूपये, 5,000/- रूपये अथवा 10,000/- रूपये 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/- रूपए का निर्धारित शुल्क जमा करना होगा।

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमावली, 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 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 रूपए 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

- बशर्त 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 पुनरीक्षण याचिका निम्नलिखित मामले में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, 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 an 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 समायाविधि 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, उपर्युक्त ढंग 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, 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 और भी ध्यान आकर्षित किया जाता है। /  
Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

- (G) उच्च अपीलीय प्राधिकारी को अपील 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. Neev Metologies Pvt. Ltd., Plot No. 3,4,5/A, S.No.84,Village Shapar(Veraval) Dist.Rajkot, Gujarat (hereinafter referred to as 'the appellant') has filed the present appeal against the Order-in-Original No. 138/ADC/PV/2016-17 dated 22.03.2017 (hereinafter referred to as "the impugned order") passed by the Additional Commissioner of Central Excise & Service Tax,Rajkot (hereinafter referred to as " the Adjudicating Authority").

Briefly stated facts of the case are as under:

2.1 The appellant holding Central Excise Registration No. AAECN1013BEM003; engaged in manufacturing of excisable goods namely Aluminium Coil/Foil, Sheets and Scrap thereof falling under the Chapter Heading No. 76069190, 76061190 and 76020090 respectively of the First Schedule to the Central Excise Tariff act, 1985 and within the same registration opted for a division functioning under the Compounded Levy Scheme for manufacture and clearance of the Aluminium Circles (Ch 76069210), governed under Notification No. 17/2007-CE dated. 1.3.2007(hereinafter referred to as the notification).The Range Superintendent observed that the appellant did not file the application the form specified in Appendix-II to the Notification; not paid the due amount of duty; breached the condition of notification by diverting the scrap generated during their manufacturing of Aluminium Coil/Foil/Sheets from the CENVATable Inputs. The above act on the part of the appellant culminated into issuance of a Show Cause Notice No.V.76/AR-Shapar/Div-I-RJT/ADC/BKS/25/2016-17 Dated 2.5.2016.

2.2 The aforesaid Show Cause Notice were adjudicated vide impugned order, wherein the Adjudicating Authority ordered withdrawal of permission to operate under optional Compounded Levy Scheme in terms of Notification No. 17/2007-CE of dated. 1.3.2007 w.e.f. 30.4.2016; confirmed the demand of Specified duty to Rs. 36000/-for the month of February-March and April-2016 and ordered for its recovery along with the interest under Section 11AB of Central Excise Act,1944; hold 376.500 Kgs. Of Aluminium Circle cleared without payment of Central Excise Duty during the month of March-2016,however due to non-availability of goods for confiscation, no redemption fine were imposed; ordered to recover wrongly availed CENVAT credit of Rs. 5,42,500/- in terms of Rule 14 of CENVAT Credit Rules, 2004 read with Section 11A(4)(e) of Central Excise Act,1944 along with interest under Section 11AB of Central Excise Act,1944;imposed



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penalty of Rs. 5,68,500/- (Rs. 5,42,500 + Rs. 36000/-) under Section 11AC of the CEA,1944 read with Rule 25(1) of Central Excise Rules, 2002.

3. Being aggrieved by the impugned order, the Appellant filed the present appeal.

- The Adjudicating Authority erred in confirming the demand of Rs. 5,42,500/- on the ground mentioned in the impugned order in Para 23.1,23.2 & 24.
- The Adjudicating Authority erred in confirming the demand ignoring the fact that the appellant was eligible for exemption under Notification No. 67/95 and consequently the scrap cleared to the circle division could not be treated as scrap cleared by availing benefit of Cenvat Credit ; the input used in or in relation to manufacture of circle were without payment of duty and there for the applicant could not have availed Cenvat Credit and consequently demand confirmed as the Cenvat Credit availed and by applying the provision of Rule 14 of Cenvat Credit Rule was bad in law.
- The duty demanded, in the guise of Cenvat Credit is nothing but the duty demand on the scrap cleared/transferred to circle Division which is bad in law and liable to be set aside.
- The Adjudicating authority had himself considered the permission granted under Notification No. 17/2007 valid till 30.4.2016 and no part of demand is liable to be confirmed.
- The Adjudicating Authority erred in confirming the demand of Rs. 36,000/- for the month of Feb-2016 to April-2016 though the applicant had stopped the production activity from the month of January-2016 as informed vide their letter dated 13.6.2016.
- The Adjudicating Authority erred in withdrawing the permission w.e.f 30.4.2016, in as much as, the department had not produced any evidence to prove so called breach of condition of the relevant notification.
- Their ground raised for setting aside the demand may be treated as the ground raised for setting aside the penalty and interest.

4. Hearing in the matter was held on 12.03.2018, wherein Shri Paresh Sheth, Advocate appeared on behalf of the appellant and reiterated the submission of their appeal memorandum for consideration.

5. I have gone through the appeal memorandum, written and oral submission made during personal hearing by the appellant.

*Abh*



5.1 I find that the appellant has made payment of mandatory deposit of Rs.42650/- (7.5% of the Rs.5,68,500/- vide Union Bank of India Challan No. 20159 Dated. 4.6.2017 and thereby complied with the requirement of mandatory pre deposit in pursuance to the amended provisions of Section 35F of the Central Excise Act, 1944.

5.2 I find that the appellant has filed appeal on 28<sup>th</sup> day from the due date prescribed. For the aforesaid delay the appellant submitted that due to financial crunch, they could not make the payment of pre-deposit as required under provisions of Section 35F of the Central Excise Act, 1944 and therefore requested to condon that same. I find the reason appears to be genuine and delay is well within the prescribed time limit of 30 days for the Commissioner (Appeals) is empowered to extend as per Section 35 of the Central Excise Act, 1944. I condone the delay and allow to appeal to be heard.

5.3 Now issue before me to decide in the present appeal are

- i) Whether the Adjudicating Authority rightly confirmed the demand of Rs. 36,000/- for the month of Feb-2016 to April-2016.
- ii) Whether the appellant was eligible to claim benefit of exemption under Notification No. 67/95 of the scrap generated during their manufacturing of Aluminium Coil/Foil/Sheets from the CENVATable Inputs and the order of Adjudicating Authority confirming demand of Rs.5,42,500/-, attributed to the denial of benefit of Notification 67/95 is just and proper.
- iii) Whether the Adjudicating Authority correctly withdrawn the permission w.e.f 30.4.2016.
- iv) Whether the Adjudicating Authority appropriately imposed penalty and interest.

5.4 Now I take up the 1<sup>st</sup> issue *Whether the Adjudicating Authority rightly confirmed the demand of Rs. 36,000/- for the month of Feb-2016 to April-2016.*

Relevant portion of the Notification 17/2007 CE dated. 1.3.2007 are extracted below.

"4. Manufacturer's declaration and accounts. - (1) The manufacturer who has been granted permission under paragraph (2) above shall make an application in the form specified in Appendix-II to this notification to the Superintendent-in-charge of the factory for permission to remove the stainless steel pattis/pattas, or aluminium circles from his premises during the ensuing month, declaring the maximum number of cold rolling machines installed by him or on his behalf, in one or more premises at any time during three calendar months immediately preceding the said calendar month in which such application is made.

(2) If such application is not made to the Superintendent of Central Excise within the time limit laid down in sub-paragraph (1), the manufacturer shall, unless, otherwise directed by the Assistant Commissioner of



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Central Excise or the Deputy Commissioner of Central Excise, and in exceptional circumstances, be liable to pay duty on his entire production of stainless steel pattis/pattas, or aluminium circles during the month or part thereof in respect of which the application was to be made, at the rate prescribed in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) read with any relevant notification issued under sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944).

(3) The manufacturer shall also intimate the Superintendent of Central Excise in writing of any proposed change in the number of cold rolling machines installed by him or on his behalf, and obtain the written approval of such officer before making any such change."

I find that as per the clause 4(1) of the Notification it is prescribed that The manufacturer who has been granted permission under paragraph (2) above shall make an application in the form specified in Appendix-II to this notification to the Superintendent-in-charge of the factory for permission to remove the stainless steel pattis/pattas, or aluminium circles from his premises during the ensuing month. In the present case the appellant did not give any application in the form specified in Appendix-II for the month February-March & April-2016; not given any intimation of closure/proposed change in of their production during the month February-March & April-2016;not produced any evidence of payment of monthly specified duty for the respective months; not produced any permission of the Additional/Joint Commissioner condoning failure to comply with any conditions laid down in Notification No. 17/2007 as provided under Clause 7 of the Notification. **Accordingly, the adjudicating authority has rightly confirmed the demand of Rs. 36,000/- for the month of Feb-2016 to April-2016.**

5.5 Now I come to the 2<sup>nd</sup> issue whether the appellant was eligible to claim benefit of exemption under Notification No. 67/95 of the scrap generated during their manufacturing of Aluminium Coil/Foil/Sheets from the CENVATable Inputs.

5.5.1 Notification No. 67/95-C.E., dated 16-3-1995

**Capital goods and inputs captively consumed within the factory of production**

In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excises and Salt Act, 1944 (1 of 1944), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts -

(i) capital goods as defined in rule 57Q of the Central Excise Rules, 1944 manufactured in a factory and used within the factory of production;

(ii) **goods specified in column (2) of the Table hereto annexed (hereinafter referred to as 'inputs') manufactured in a factory and used within the factory of production in or in relation to manufacture of final products specified in column (3) of the said Table;**

from the whole of the duty of excise leviable thereon which is specified in the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) :

Provided that nothing contained in this notification shall apply to inputs used in or in relation to the manufacture of final products (other than those cleared either to a unit in a Free Trade Zone or to a 100% Export Oriented Undertaking or to a unit in an Electronic Hardware Technology Park or to a

*Alsh*



unit in a Software Technology Parks), which are exempt from the whole of duty of excise leviable thereon or are chargeable to 'Nil' rate of duty.

*Explanation.* - For the purposes of this notification 'inputs' does not include -

(i) packaging materials in respect of which any exemption to the extent of the duty of excise payable on the value of the packaging materials is being availed of for packaging any final products;

(ii) packaging materials or containers, the cost of which is not included in the assessable value of the final products under section 4 of the Central Excises and Salt Act, 1944 (1 of 1944).

TABLE

S.No. (1)	Description of inputs (2)	Description of final products (3)
1.	All goods falling within the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), other than the following, namely, -  (i) goods classifiable under any heading of Chapter 24 of the Schedule to the said Act;  (ii) goods classifiable under heading Nos. 36.05 or 37.06 of the Schedule to the said Act;  (iii) goods classifiable under sub-heading Nos. 2710.11, 2710.12, 2710.13 or 2710.19 (except Natural gasoline liquid) of the Schedule to the said Act;  (iv) high speed diesel oil classifiable under heading No. 27.10 of the Schedule to the said Act.	All goods falling within the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), other than the following, namely, -  (i) goods classifiable under any heading of Chapter 24 of the Schedule to the said Act;  (ii) goods classifiable under heading Nos. 36.05 or 37.06 of the Schedule to the said Act;  (iii) woven fabrics classifiable under Chapter 52 or Chapter 54 or Chapter 55 of the Schedule to the said Act.

5.5.2 I find that the only condition to be satisfy to be eligible for exemption under the notification is that goods specified in column (2) of the Table (hereinafter referred to as 'inputs') manufactured in a factory and used within the factory of production in or in relation to manufacture of final products specified in column (3) of the said Table.

In the present case, it is undisputed that the scrap is generated in a factory and used within the factory of production in or in relation to manufacture of final products i.e. Aluminium Circles.

5.5.3 Further as per the notification, Inputs falling under the following Chapters are not eligible.

*" goods classifiable under any heading of Chapter 24 ,36.05 or 37.06, 2710.11, 2710.12, 2710.13 or 2710.19 (except Natural gasoline liquid) ,high speed diesel oil classifiable under heading No. 27.10 of the Schedule to the said Act "*

**In the present case it is scrap of aluminum falling under the Chapter Heading No. 76.**

5.5.4 I further find that there is following pre-condition which also need s to be satisfy to be eligible for exemption under the notification is that

*"Provided that nothing contained in this notification shall apply to inputs used in or in relation to the manufacture of final products (other than those cleared either to a unit in a Free Trade Zone or to a 100% Export Oriented Undertaking or to a unit in an Electronic Hardware Technology Park or to a unit in a Software Technology Parks), which are exempt from the whole of duty of excise leviable thereon or are chargeable to 'Nil' rate of duty."*

*Alam*





**In the present case , the final products i.e. Aluminium Circles(7606) are not exempt from the whole of duty of excise leviable thereon or are chargeable to "Nil" rate of duty.**

5.5.5 Moreover, as per the explanation given under the Notification the Input does not include the (i) *packaging materials in respect of which any exemption to the extent of the duty of excise payable on the value of the packaging materials is being availed of for packaging any final products;*(ii) *packaging materials or containers, the cost of which is not included in the assessable value of the final products under section 4 of the Central Excises and Salt Act, 1944 (1 of 1944).*

**In the present case it is scrap of aluminum falling under the Chapter Heading No. 76.**

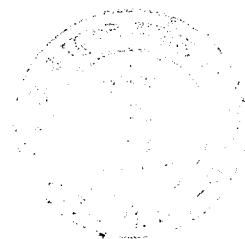
5.5.6 In nutshell, the core condition as per the notification is goods manufactured in a factory and used within the factory of production in or in relation to manufacture of final products.

In the present case, it is undisputed in either side that Scrap was generate in a factory of appellatant while manufacturing of Aluminium Coil/Foil/Sheets etc. and used within the same factory of production in or in relation to manufacture of final products i.e. Alumium Circles. It is worthy to note that both the division are running under common central excise registration i.e.AAECN1013BEM003 and within the same factory premises. Moreover, I find that the notification does not bar exemption to the scrap transferred from one division to another. Accordingly, I hold that confirmed demand of Rs. 5,42,500/-, in the guise of Cenvat Credit which is nothing but the duty demand on the scrap cleared /transferred to Circle Division is not recoverable from the appellatant. **Accordingly, I hold that order of recovery of Demand of Rs. 5,42,500/- as well as Interest and penalty attributed to the above confirmed amount are set aside.**

5.6 Now I come to the 3rd issue Whether the Adjudicating Authority have correctly withdrawn the permission w.e.f 30.4.2016.

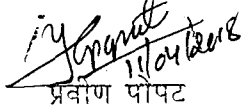
I find that as per the clause 4(1) of the Notification it is prescribed that *the manufacturer who has been granted permission under paragraph (2) above shall make an application in the form specified in Appendix-II to this notification to the Superintendent-in-charge of the factory for permission to remove the stainless steel pattis/pattas, or aluminium circles from his premises during the ensuing month and the appellatant had not done it regularly; not produced any evidence of payment of monthly specified duty for the respective months for the month of February-March-April-2016; not produced any permission of the Additional/Joint Commissioner condoning failure to comply with any conditions laid down in Notification No. 17/2007 as provided under Clause 7 of the Notification. **Accordingly I hold that the***

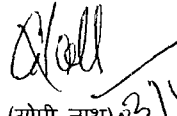
*Well*



**Adjudicating Authority has rightly/correctly withdrawn the permission  
w.e.f 30.4.2016.**

6. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
6. The appeal filed by the appellant stands disposed off in above terms.

सत्यापित,  
  
प्रवीण पोपट  
अधीक्षक (अपील्स)

  
(गोपी नाथ) 03/4/18  
अपर महानिदेशक ऑडिट / आयुक्त (अपील्स)

By Regd. Post A.D. /Speed Post  
F.NO.V2/327/RAJ/2017

Dated 3.4.2018

**To,**  
M/s. Neev Metologies Pvt. Ltd.,  
Plot No. 3,4,5/A, S.No.84,  
Village Shapar(Veraval)  
Dist.Rajkot, Gujarat.

**Copy To:-**

1. The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
2. The Commissioner (Appeals), Central Taxes, Rajkot.
3. The Commissioner, GST & Central Excise, Rajkot Commissionerate, Rajkot.
4. The Additional Commissioner, GST & Central Excise, Rajkot Commissionerate, Rajkot.
5. The Assistant Commissioner, GST & Central Excise, Division....., Rajkot.
6. The Superintendent, Range-....., GST & Central Excise, Division....., Rajkot.
7. Guard File.
8. Guard File for O/o the Additional Director General (Audit), Ahmedabad Zonal Unit, Ahmedabad.

