



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

द्वितीय तल, जी एस टी भवन / 2<sup>nd</sup> Floor, GST Bhavan,

रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

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सत्यमेव जयते

**रजिस्टर्ड डाक ए. डी. द्वारा :-**

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/193 to 196/RAJ/2017	63-64/D/AC/2016-17	08-02-2017 -

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

**RAJ-EXCUS-000-APP-042-TO-45-2018-19**

आदेश का दिनांक / Date of Order:	<b>24.04.2018</b>	जारी करने की तारीख / Date of issue:	<b>27.04.2018</b>
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**कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /**  
**Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot**

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. Divine Overseas India (Now Difine Door Control P. Ltd.), Plot No. 4, Survey No. 229, Behind Parin Furniture Dholra Road Rajkot Gondal Road , Rajkot
2. Shri Rakesh Bhalala, Prop. M/s. Divine Overseas India (Now Difine Door Control P. 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 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 असावा अहमदाबाद- 380016 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) 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 माँग, ब्याज की माँग 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 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 माँग, ब्याज की माँग 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 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 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 जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना 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 पुनरीक्षण याचिका निम्नलिखित मामलों में, केन्द्रीय 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 इयूटी 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 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।  
जहां 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 Appellate 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-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-1 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)

**:: ORDERs-IN-APPEAL ::**

The appeals detailed below have been filed by the Appellants (*herein after referred to as "Appellant No.1 and Appellant No.2)* against Order-in-Original No. 63-64/D//AC/2016-17 dated 08.02.2017 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, Central Excise Division-I, Rajkot (*hereinafter referred to as 'the lower adjudicating authority')*).

Sr No.	Appeal No.	Appellant No.	Name of the Appellant
1	V2/193/RAJ/ 2017	Appellant No.1	M/s. Divine Overseas India, Rajkot, Plot No. 4, Survey No.229, Behind Parin Furniture, Dholra Road, Rajkot Gondal Road, Rajkot.
2	V2/194/RAJ/2017		
3	V2/195/RAJ/2017	Appellant No.2	Shri Rakesh Bhalala, Proprietor Appellant No.1
4	V2/196/RAJ/2017		

2. Brief facts of the case are that search was carried out at the factory premises of Appellant No.1 on 03.07.2014 and Sales ledger of Appellant No.1 revealed that they have crossed threshold limit of Rs.1.5. crore for the year 2012-13 and even then they were clearing excisable goods without obtaining Central Excise registration and without payment of Central Excise duty. Statements of Proprietor of Appellant No1., Shri Rakesh Bhalala (Appellant No.2) and Accountant of Appellant No.1 were recorded and finished goods valued at Rs.21,80,000/- were put under detention. The SCNs dated 02.12.2014 and dated 29.02.2016 issued to the Appellants alleged that Appellant No.1 was engaged in the manufacture of Architectural Hardware Items Viz. door Closer, Floor, Spring, Furniture Fitting, Glass Sliding Folding Systems etc. and had suppressed their manufacturing activity of these articles cleared by them and not paid the Central Excise duty on the sales effected during the period from 2009-10 to 2014-15 (upto May, 2014); that Appellant No.1 had not obtained Central Excise Registration for clearances of finished goods and hence Finished goods Valued at Rs.21,80,000/- initially detained on 03.07.2014 were subsequently placed under seizure under Panchnama dated 08.07.2014 on reasonable belief that the same were manufactured and were to be removed in contravention of the provisions of Central Excise Law and would have been removed clandestinely without payment of appropriate Central Excise duty.

2.1. Show Cause Notice No. V.83(4)-09/MP/2014-15 dated 02.12.2014 was

issued proposing confiscation of seized goods valued at Rs. 21,80,920/- and to impose penalty upon Appellant No. 1 under Rule 25 of Central Excise Rules, 2002 (*hereinafter referred to as "the Rules"*) and to impose penalty upon Appellant No. 2 under Rule 26 of the Rules. Another SCN No.V.83/ AR-V/ DIV.II/ ADC(BKS)/ 186/ 2015-16 dated 29.02.2016 was issued demanding Central Excise duty of Rs. 44,74,282/- under Section 11A (4) of the Central Excise Act, 1944 (*hereinafter referred to as "the Act"*), to appropriate Rs.22,00,000/- paid by Appellant No. 1 to recover demand of central excise duty under Section 11A (4) and interest under Section 11AA of the Act, for imposing penalty under Section 11AC of the Act and also for imposing penalty under Rule 26 of the Rules upon Appellant No.2. Both SCNs were adjudicated by the lower adjudicating authority vide impugned order wherein he confirmed demand of Central Excise duty of Rs.44,74,282/-, appropriated Rs. 22,00,000/- against demand so confirmed and ordered recovery of interest and also imposed penalty of Rs.44,74,282/- under Section 11AC of the Act with an option of reduced penalty on Appellant No.1 and also imposed penalty of Rs.2,00,000/- upon Appellant No. 2 under Rule 26 of the Rules. He also ordered confiscation of seized goods, however, granted option to pay redemption fine of Rs.2,75,000/- in lieu of confiscation under Section 34 of the Act.

3. Being aggrieved by the impugned order, the Appellants have preferred the present appeals, inter alia, on the grounds as under:

Appellant No.1

3.1 The Order-in-Original is non speaking because adjudicating authority has not discussed or deal with all the submissions and citations advanced by Appellant; that Appellant filed detailed reply to the show cause notices and also produced copies of Bill of Entry, invoices, etc. showing import as well as local purchase of goods which were later on sold on invoices issued under applicable VAT law and had categorically submitted that these goods were not manufacture by them; that this fact is acknowledged by the Adjudicating authority at Para 22 of impugned order; that adjudicating authority without establishing that the appellant had manufactured goods valued at Rs.6,80,51,255/- just confirmed demand of Central Excise Duty; that the Adjudicating authority has admitted that finished goods purchased locally and imported were sold were are not exigible to Central Excise duty.

3.2 Adjudicating Authority failed to discharge his duty as onus lies on the department, to prove clandestine manufacture and removal as evident from Para 18 and 19 of impugned order; that officers could have easily detected manufacturing activity in respect of all those items that were covered by various Bills of Entry and local purchase invoices and onus to establish manufacturing activity could have been discharged had the appellant been involved in manufacturing activity; that Bills of Entry and Purchase Invoices produced by the Appellant were neither proved false nor proved fake; that adjudicating authority ignored the documentary evidences and has shifted onus on the Appellant to prove that goods covered by such Bills were not manufacture by them; that having duly acknowledged at Para 17 of impugned order that Appellant had imported hardware items on payment of Customs Duty and sold goods under VAT invoices, could not have persisted with oral evidences; that Appellant filed written submission before adjudicating authority stating that the value of goods manufactured by Appellant for the years 2012-13, 2013-14 and 2014-15 (upto May, 2014) was Rs.1,12,26,742/-, Rs.1,47,23,987/- and Rs.53,43,754/- respectively; that mere confessional statement is not sufficient to prove clandestine removal; that department has not proved by cogent evidences that Appellant had manufactured excisable goods over and above the aforesaid goods; that show cause notice makes no reference to clandestine purchase of raw material, transportation of raw material, extraordinary usage of men and machinery including electricity to manufacture even those goods covered by Bills of Entry and Local purchases, evidences from sellers who sold finished goods to the Appellant and evidence from buyers who purchased those goods not manufactured by Appellant; that without first establishing factum of manufacture, there can be no demand of Central Excise duty.

3.3 Appellant also submitted that Adjudicating Authority had not reasoned for confiscation of goods and relied upon the Hon'ble Supreme Court's decision in the case of Asstt. Commr, Commercial Tax Department Vs. Shukla Brothers, reported as 2010 (254) ELT 6 (SC); that it is not held that goods valued at Rs.21,80,920/- were manufactured by Appellant and were not imported or purchased locally by Appellant; that without first holding that seized goods were actually manufactured in the factory of Appellant, orders for Confiscation of the goods under Rule 25 of Central Excise Rules, 2002 is not sustainable in the eyes of law.

Appellant No. 2

The Appellant submitted similar grounds of Appeal as raised by the Appellant No.1 in Para 3.1 to 3.3 and also submitted that simultaneous penalty on proprietary concern and proprietor is not permissible under law; that relied upon decision of Hon'ble CESTAT in the case of Mohd. Amin A.S. Lakha, 2012 (275) ELT 465 by the Adjudicating Authority is not applicable as it deals with imposition of penalty on Partner; that penalty imposed on Appellant No.2 under Rule 26 of Central Excise Rules, 2002 is also not sustainable.

4. Personal hearing in the matter was attended by Shri R. C. Prasad, consultant on behalf of the Appellants and reiterated grounds of appeal. He also submitted written submissions emphasizing that the case is not of clandestine clearances but based on their records only; that they have been trading imported goods as well as locally procured goods, which were different from their manufactured products; that they have not exceeded threshold limit of Rs.1.5 crore of Manufacture but traded goods of Rs.4 crore and above in 2013-14, which will be proved by import and locally procured goods detailed by them in Para 3.12 of reply dated 5.12.2016; that their submissions were not considered by adjudicating authority though he considered Para 3.13 of their reply dated 5.12.2016; that department failed to find any evidence of raw material purchase, transporters used, purchasers who purchased from them etc. as no goods were sold without payment of VAT/ S Tax or without invoices/ Bills. Shri Prasad requested two weeks time to submit all details as Relied Upon Documents have not been given to them, which were seized by the department during the search. Accordingly, further hearing held in the matter wherein Shri Prasad submitted written submissions again including Exhibit "A" to "H" evidencing that each and every sale is duly recorded by them of all imported goods, traded goods as well as manufactured goods; that the purchased goods and imported goods can't be added to goods manufactured by them; that they have never crossed exemption limit of Rs.1.5 Cr in any year covered in the SCN; that no demand is payable by them; that this is a proprietorship concern and no penalty can be imposed on proprietor as well on proprietorship concern; that in view of above, impugned order needs to be set aside and their appeals allowed.

4.1 Appellant in written submissions, referred Para 17 and 18 of the impugned order and submitted that there is no specific findings as to what was the mismatch and in which invoice; that only a general and casual reference has been given;

that words and phrase "which may amount to manufacture" is not a definite findings as to which process was carried out on the goods; that adjudicating authority has not properly verified the document; that demand is confirmed on the basis of statements only because it was not retracted nor complained by the giver of the statement; that no copy of the statement was provided to them and in absence of any copy of statement, it cannot be said as to what was the admission about illicit act; that demand is confirmed on the basis of sales recorded in books of accounts and cannot be said to be clandestine clearance; that despite this fact, Proprietor was compelled to mention in his statement dated 06.02.2016 that they have sold finished goods valued at Rs.8,56,23,943/- without cover of any statutory invoices and also received payment in cash from their customers; that proprietor has accepted his illegal act of clearances of finished goods; that what is stated in the statement is not in congruity with the facts and evidences produced by the department itself and as such it is indicative of the fact that the statement was dictated; that there is no corroborative evidence in the case to confirm the demand and hence adjudicating authority did it by mentioning that the proprietor had not retracted the statement;

4.2 Appellant also submitted that no evidence or facts discussed in the impugned order as to what was manufactured and with which machines; that there is no single evidence on record to suggest as to what was manufactured, how it was manufactured, from where the raw materials were purchased and which machineries were used and even not discussed whether Appellant was having such manufacturing facilities. Appellant relied upon following decision in support of their contention that no separate penalty was imposable on proprietor.

(a) Sansuk Ind – 2017 (350) ELT 265 (Tri-Mumbai)

(b) Santosh Kumar Kishan Lal Jain- 2017(348) 351 (Tri- Del)

4.3 Appellant submitted copies of Bank Statements as "Exhibit A", Audit Reports as "Exhibit B", Work Sheet showing the Qty and Value of goods manufactured, procured locally and imported as "Annexure-C", Copies of commercial invoice as "Exhibit"-D", Copies of VAT returns as Exhibit-E and copies of Purchase invoices of local supplier, corresponding sales invoices as 'Exhibit-F". Appellant also submitted that when the goods are purchased locally or imported, the supplier writes certain description along with some abbreviated product codes and when the goods are sold, certain codes are written by the Appellant , but the description of the product is verifiable. It is also submitted that just because certain description mismatch, it cannot be said that the goods which were sold were

were manufactured by them; that in that case it is obligatory on part of the revenue to come out as to what happened to the purchased goods either locally or imported where there are positive evidences available to prove that the goods were further manufactured; that in India no manufacturing unit was having facility to manufacture – Floor Hinges/ Floor Springs and appellant was also not having any such facility. Appellant submitted Catalogue having product description and also that of two major foreign suppliers and a list showing product description code showing the goods purchased and sold as “Exhibit-G” and also submitted ledgers showing the amounts under various heads of expenses as “Exhibit-H” in support of their contention that post manufacturing expenses have also been included in value of the goods.

4.4 Appellant referred Para 18 of the impugned order to contest adjudicating authority's findings that it can not be established that the same goods which were purchased or imported were sold by the Appellant; that adjudicating authority has not explicitly mentioned as to how there was description mismatch and in which items there was description mismatch; that nomenclature or product codes used by the suppliers may not be necessarily copied word to word by the appellant but the fact is that the products were sold as such only; that out of 25 types of items imported for trading, in 11 to 12 items the codes/descriptions were changed to suit the buyers' demands or to maintain trade secrecy. In rest of the items, the codes/description were used as such. In case of local purchases also, out of 25 items purchased locally and in 6 items appellant mentioned the description almost same as mentioned in the purchase invoices. Appellant produced a list of imported items in which the product codes/description of the imported items were shown and corresponding item codes/description mentioned in the sales invoices by the appellant alongwith the page number of the product catalogue of the appellant for correlation; that in middle column the picture of the traded item was also shown to match with the product catalogue of the appellant (Annexure-G); that a chart is being submitted showing the product code/description of the supplier and that of corresponding product code of the appellant alongwith the picture of the product as mentioned in the product catalogue of the appellant.

4.5 Appellant illustrated that in case of imported product of code YG-60 (DF-FS-604), the item Floor hinges/spring had been imported, which was sold by the appellant mentioning the product code as 'DF-FS-604' and the description was mentioned as 'Floor spring 90 Kgs' which appears in their product catalogue page



no. 4 having image matching with the image of the imported product. In case of local purchase from supplier M/s Shree Mahavir Metals Pvt. Ltd (SMI), the product code/ description mentioned in the purchase invoice is "70 MM one side key/knob cylinder with regular key". The same item was sold with product code "DF-OSK ("OSK" representing 'One Side Key)" and product description as '70MM cylinder OSK' mentioned at page 23 of the product catalogue of the appellant along with image. Thus, what has been procured from local market has been sold as such as is the case of imported goods sold as such; that there is neither capacity to manufacture such products nor any evidences of illicit production shown by the department for such serious allegation.

### Findings:-

5. I have carefully gone through the facts of the case, impugned order and written as well as oral submissions made by the Appellants. I find that there is delay of 14 days in filing of appeals over and above 60 days due to change in counsel by the Appellants, which is within limit of 30 days allowed under law. I condone delay of 14 days in filing of Appeals and proceed to decide the Appeals on merits.

6. I find that the issues to be decided in the present appeals are

- (i) whether sales effected by Appellant No.1 during period from 2009-10 to 2014-15 (upto May, 2014) as recorded in their books of account are clearances of finished goods manufactured by Appellant No.1 or trading of imported goods and locally procured goods duly recorded in their Books of accounts;
- (ii) whether confirmation of demand of Central Excise duty for the sales effected (after crossing threshold limit) in F. Y. 2012-13 is correct or not ;
- (iii) whether Redemption Fine imposed in lieu of confiscation of seized goods is correct or not;
- (iv) whether penalty imposed on proprietorship concern as well as on proprietor is legal and proper or otherwise.

6.1 After careful examination of show cause notice, impugned order and arguments advanced by the Appellants, I find that demand of Central Excise Duty is confirmed on the basis of sales of finished goods duly recorded in the books of accounts of Appellant No.1 and therefore, this is not a case of clandestine clearances of goods as held by the Adjudicating authority. I also find that all

transactions are recorded in books of accounts by Appellant No.1 and all sales are effected under invoices on payment of VAT and hence it does not amount to be a case of clandestine clearances.

6.2 The department has alleged that Central Excise duty has not been paid but failed to provide evidences that these goods had been manufacture by Appellant No.1. I find that the issue requires to be decided that whether all goods cleared by Appellant No.1 under invoices were actually manufactured by Appellant No.1 or they have also sold imported and locally procured goods as such without further manufacturing. I find that show cause notice did not charge any allegation with regard to manufacturing facility of Appellant No.1 and refers only that manufacturing activity was carried out by Appellant No.1. It is not forthcoming from the show cause notice or from the impugned order that what were the processes carried out by Appellant No.1 on imported goods and/or on locally procured goods, what type of machinery were actually installed in the factory premises of Appellant No.1 to further manufacture the imported goods and/or locally procured goods. In absence of any evidences to this effect, I am unable to accept contention in respect of manufacturing process of hardware items like Door Closer, SS Shower Hinges, Glass Door Handle etc. falling under Chapter 83 of the Central Excise Tariff Act, 1985 (hereinafter referred to as "CETA") as manufacturing of these finished goods requires a line of machineries and many operations in the factory premises including melting, Drawing and Casting, Cutting, polishing etc. and machineries like Furnace, Drawing Machine, Cutting Machines, Casting moulds/ Dies, Lath, Polishing machine etc. I find that there is no allegation and narration with regard to number of machines installed in the factory, stages of manufacturing, Technicality of Machines installed or noticed during search, Power Consumption, production records either in the show cause notice or in impugned order. I find that none of these aspects was considered necessary during investigation and also not discussed in the impugned order.

6.3 I find that Appellant No.1 has vehemently argued that they have not manufactured and cleared the goods but had mainly sold the bought out finished goods i.e. imported goods and locally procured goods, which did not attract central excise duty, having been not manufactured by them. Appellant No.1 submitted details of their imports, purchase and manufactured goods for the years from 2012-13 to 2014-15 (upto May,2014) as under:-

**EXHIBIT- C**

*Book sheet showing details of Purchase and Sales*

2012-13								
	Opp.(As On 01-04-2012)		Purchase/Mfg.		Sales		Closing	
	Qty	Value Rs.	Qty	Value Rs.	Qty	Value Rs.	Qty	
Local Purchase	1540	2525548	7472	7615415	6032	2011972	2980	17763096
Import	1008		22010	5323512	3239	2624513	19779	
Mfg	2140		12850	8996551	8490	11326742	6500	
Total	4688		42332	21935478	17761	15963227	29259	
$4688 + 42232 = 47020 - 17761 = 29259$								
2013-14								
	Opp.(As On 01-04-2013)		Purchase / Mfg.		Sales		Closing	
	Qty	Value Rs.	Qty	Value Rs.	Qty	Value Rs.	Qty	
Local Purchase	2980	17763096	35970	8745320	20178	11037298	18772	7687540
Import	19779		23270	2245104	19302	15248328	23747	
Mfg	6500		5785	10311050	10120	14723987	2165	
Total	29259		65025	21301474	49600	41009613	44684	
$29259 + 65025 = 94284 - 49600 = 44684$								
2014-25 (Up To May-2014)								
	Opp.(As On 01-04-2014)		Purchase/Mfg.		Sales		Closing	
	Qty	Value Rs.	Qty	Value Rs.	Qty	Value Rs.	Qty	
Local Purchase	18772	7687540	3670	1439382	2650	1641234	19792	55822
Import	23747		13850	3477834	1790	1897593	35807	
Mfg	2165		1008	1325292	2950	5243754	223	
Total	44684		18528	6242508	7390	8782581	55822	
$44684 + 18528 = 63212 - 7390 = 55822$								

FOR, DIVINE OVERSEAS INDIA  
*Ravi*  
 PROPRIETOR

6.4 I find that the fact not in dispute is 'Sales' effected by Appellant No.1 under VAT invoices and accounted for in their statutory books of accounts, which are also relied upon by the investigation to arrive at Central Excise Duty liability by Appellant No.1. I find that audited report submitted by Appellant No.1 shows purchase of finished goods of Rs.2,13,01,474/- during 2013-14, Rs.2,19,35,478/- during 2012-13, and Rs.58,17,118/- during 2011-12. I find that investigation failed to look into other side of the Books of accounts that sales cannot be accounted for in the books without accounting of purchases. The question of purchased items (i.e. Raw materials) for manufacture of finished goods i.e. if finished goods had been manufactured as alleged in the SCN has been left in dark and not discussed at all either in the show cause notice or in the impugned order. I find that department did not consider the Purchase side of books of account and a lopsided wrong view was taken on the basis of only sales figures of Appellant No.1. No evidences in form of buyers of finished goods and/or supplier of raw materials have been brought on record. Similarly, while relying "Sales" in books of accounts of Appellant No.1, investigation completely failed to bring on record the assets of

Appellant No.1 in the form of Plant and Machinery justifying availability of adequate machinery to manufacture the finished goods in such large quantity.

6.5 I find that the appellant has clarified that some product description is changed at the time of sale whereas in some cases, description of products are not changed. Appellant produced a chart comparing imported/locally procured products (with image) with the products shown in their own catalogue. Sample copy of comparative chart are reproduced below for ease of reference:-

Comparison in respect of Local Procured Goods







Local Purchase							
no.	SMI CODE	Image	Define Code	Define Image	DESCRIPTION OF GOODS	Define Catalog Page No.	Supplier Description
1	70MM CYLINDER ONE SIDE KNOB ONE SIDE REGKEY		DF-OSK (70MM)		Euro Profile Cylinder - ONE SIDE KNOB ONE SIDE REGULAR KEY (70mm)	23	70MM CYLINDER ONE SIDE KNOB ONE SIDE REGULAR KEY
2	60MM CYLINDER ONE SIDE KNOB & ONE SIDE REGKEY		DF-OSK (60MM)		Euro Profile Cylinder - ONE SIDE KNOB ONE SIDE REGULAR KEY (60mm)	23	Euro Profile Cylinder - ONE SIDE KNOB ONE SIDE REGULAR KEY (60mm)
3	LKYPOMKLC		DF - CS		Bathroom (Coin ) Cylinder 60mm	23	60mm cylinder keyless SS
4	60mm Both Side Key Cylinder with Regular Key SS		DF-BSK (60mm)		Euro Profile Cylinder - Both Side Regular Key 60mm	23	60mm Both Side Key Cylinder with Regular Key SS
5	70mm Both Side Key Cylinder with Regular Key SS		DF-BSK (70mm)		Euro Profile Cylinder - Both Side Regular Key 70mm	23	70mm Both Side Key Cylinder with Regular Key SS
6	100mm One Side Key / Knob Cylinder Knob with regular key SS		DF-OSK (100MM)		Euro Profile Cylinder - ONE SIDE KNOB ONE SIDE REGULAR KEY (100mm)	1	100mm One Side Key / Knob Cylinder Knob with regular key SS
7	2201 BN		DF - BSH - 11		Wall To Glass 90° Shower hings Brass Glossy	1	Wall To Glass 90° BN Brass
8	2205 BN		DF - BSH - 16		Wall To Glass 90° One Side Shower Hings Brass Glossy	1	Wall To Glass 90° One Side Plate BN

SK = Both side key / knob

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














Rajni  
1 PROPRIETOR PROPRIETOR

### Comparison in respect of Imported Products

LIST OF IMPORT MATERIALS						
Code (DRL)	Import Party Image	Define Code	Description of Goods (Define)	Image	SPECIAL REMARKS	Define Catalog Page No.
YG - 60 (DF - FS - 604)		DF - FS - 604	Floor Spring (Double Spindle) Capacity upto 90 Kg. (Without Accessories)		FLOOR HINGS, IRON BODY 304 # 1.0MM PLATE 90 KGS WITHOUT ACCESSORIES DORMA HEAD / 304, Import Party Floor Hings, Define : Floor Spring	4
YG84 (DF - FS - 904)		DF - FS - 904	Floor Spring (Double Spindle) Capacity upto 120 Kg. (Without Accessories)		FLOOR HINGS, IRON BODY 304 # 1.0MM PLATE 120 KGS WITHOUT ACCESSORIES DORMA HEAD / 304, Import Party Floor Hings, Define : Floor Spring	4
YG84 (DF - FS - 1040)		DF - FS - 1040	Floor Spring (Double Spindle) Capacity upto 150 Kg. (Without Accessories)		FLOOR HINGS, IRON BODY 304 # 1.0MM PLATE 150 KGS WITHOUT ACCESSORIES DORMA HEAD / 304, Import Party Floor Hings, Define : Floor Spring	4

\* fs - floor spring

FOR, DIVINE OVERSEAS INDIA  
*Ramesh*  
PROPRIETOR

LIST OF IMPORT MATERIALS						
Import Party Code	Image	Define Code	Description of Goods	Define Image	Define Catalog Page No.	
4 BF - 201 (DF - ZSH - 15)		DF - ZSH - 15	Fix Clip - Matt, ZINC (SHOWER HINGS)		2	SHOWER HING FOR
5 BF - 201 (DF - ZSH - 15)		DF - ZSH - 15	Fix Clip - Glossy, ZINC (SHOWER HINGS)		2	SHOWER HING FOR
6 BF - 203 (DF - ZSH - 16)		DF - ZSH - 16	Wall To Glass 90° One Side Open - Matt, ZINC (SHOWER HINGS)		2	SHOWER HI SHOWER HING
7 BF - 203 (DF - ZSH - 16)		DF - ZSH - 16	Wall To Glass 90° One Side Open - Glossy, ZINC (SHOWER HINGS)		2	SHOWER HI SHOWER HING
8 BF - 204 (DF - ZSH - 11)		DF - ZSH - 11	Wall To Glass 90° - Matt, ZINC (SHOWER HINGS)		1	SHOWER H SHOWER HING
9 BF - 204 (DF - ZSH - 11)		DF - ZSH - 11	Wall To Glass 90° - Glossy, ZINC (SHOWER HINGS)		1	SHOWER H SHOWER HING
10 BF - 206 (DF - ZSH - 12)		DF - ZSH - 12	Glass To Glass 180° - Matt, ZINC (SHOWER HINGS)		1	SHOWER HI SHOWER HING
11 BF - 206 (DF - ZSH - 12)		DF - ZSH - 12	Glass To Glass 180° - Glossy, ZINC (SHOWER HINGS)		1	SHOWER HI SHOWER HING

\* ZSH = Zinc Shower hinges

FOR, DIVINE OVERSEAS INDIA  
*Ramesh*  
PROPRIETOR

6.6 I find that the above comparison reveals that nomenclature of the product is in relation to its use and content, which varies in a narrow compass. Appellant has explained that imported products "*Shower Hings-Zinc, Fix*" with code of "*BF-201*" is sold with description of '*Fix Clip-Matt, Zinc (Shower Hinges)*' and ZSH stands for 'Zinc Shower Hinges'; that similarly, "OSK" is "One Side Knob". I find that the lower adjudicating authority has not considered the evidences in form of purchase documents including Bills of Entry and invoices/ Bills of locally procured goods submitted by Appellant No.1 and brushed aside their submissions with generic remark of mismatch in description. I find that no specific findings have been given in the impugned order for rejecting Appellant No.1's submission of sales of bought out goods also. The lower Adjudicating authority has solely relied upon the statements recorded during investigation stating that Appellant No.1 had received sales proceeds through Cash; that sales were made without Bills; that buyers were hesitant to purchase materials under legal invoices and hence, sales were effected without legal invoices under compulsion. However, such statements are contrary to the facts available in the case inasmuch as Sales Invoices with VAT were issued to the buyers of the goods sold by Appellant No.1 and hence statement that 'buyers purchased the goods without bills' is contrary to the facts available in the case. Hence, I am unable to accept this statement as an evidence in absence of other corroborating evidences.

7. In view of the foregoing discussions, I am of the considered view that allegation of manufacturing of finished goods traded by them is not proved. Therefore, I have no other option but to hold that it is not established by the department that Appellant No.1 had indulged in clandestine manufacture of finished goods and clearances thereof as held by the lower adjudicating authority and hence, I have to set aside the impugned order and drop the proceedings initiated against Appellant No.1, which do not sustain on merit.

8. Since, manufacture of finished goods beyond the prescribed threshold limit is not established, confiscation of finished goods seized is not justified in the eyes of law. Accordingly, I set aside the order of confiscation of seized goods and imposition of redemption fine in lieu of such confiscation. Since, demand does not sustain, recovery of interest and imposition of penalty on Appellant No.1 also do not sustain.

8.1 It is already settled principle that penalty can't be imposed on proprietorship concern as well as on the proprietor for the same offence for the same period. Hence, penalty imposed on Appellant No.2 under Rule 26 of the Rules is liable to be set aside. However, in this case since no charges of clandestine manufacture of finished goods and clearances therefor could be proved as held above, there is no question of imposition of penalty on any of the two appellants and hence penalty on both Appellants is set aside.

9. Accordingly, I set aside the impugned order and allow the appeals filed by both the Appellants.

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

9.1 The appeals filed by the Appellants stand disposed off as above.

सहसंचालक,  
स्विट्जरलैंड एक्सपोर्टिंग  
अधीक्षक (अपील्स)

(कुमार संतोष)  
आयुक्त (अपील्स)

By Regd. Post AD

To,

M/s. Divine Overseas India, Plot No. 4, Survey No.229, Behind Parin Furniture, Dholra Road, Rajkot	मेसर्स डिव्हाइन ओवर्सीस इंडिया प्लॉट नं ४, सर्वे नं २२९, परिन फर्नीचर केई पीछे ढोलरा रोड, राजकोट
Shri Rakesh Bhalala, Proprietor, M/s. Divine Overseas India, Plot No. 4, Survey No.229, Behind Parin Furniture, Dholra Road, Rajkot	श्री राकेश भालाला प्रोप्राइटर मेसर्स डिव्हाइन ओवर्सीस इंडिया प्लॉट नं ४, सर्वे नं २२९, परिन फर्नीचर केई पीछे ढोलरा रोड, राजकोट

**Copy to:**

- 1) The Chief Commissioner, CGST & Central Excise, Ahmedabad Zone, Ahmedabad.
- 2) The Commissioner, CGST & Central Excise Commissionerate, Rajkot
- 3) The Assistant Commissioner, CGST & Central Excise Division-I, Rajkot.
- 4) Guard file.
- 5) F No. V2/194/RAJ/2017
- 6) F No. V2/195/RAJ/2017
- 7) F No.V2/196/RAJ/2017