



::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 / 2nd Floor, GST Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

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सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No. V2/58 & 59/RAJ/2017	मूल आदेश सं / O.I.O. No. 53/D/AC/2016-17	दिनांक / Date 30.12.2016
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ख अपील आदेश संख्या (Order-In-Appeal No.):

RAJ-EXCUS-000-APP-075-TO-076-2018-19

आदेश का दिनांक / Date of Order:	30.04.2018	जारी करने की तारीख / Date of issue:	08.05.2018
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Passed by **Dr. Balbir Singh, Additional Director General (Taxpayer Services), 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, डॉ. बलबीर सिंह, अपर महानिदेशक करदाता सेवाएँ, अहमदाबाद जोनल यूनिट को वित्त अधिनियम १९९४ की धारा ८५, केन्द्रीय 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, Dr. Balbir Singh, Additional Director General of Taxpayer Services, 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 :-**

- M/s Ajanta Steel Products, 10, Samrat Industrial Area, Gondal Road, Rajkot,**
- Shri Vijaybhai Pranlal Zalera, Partner, M/s Ajanta Steel Products**

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 असारवा अहमदाबाद- ३८००१६ को की जानी चाहिए।/
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd 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 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 को 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, बशर्ते 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 हैं

- (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 अर्जी 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.

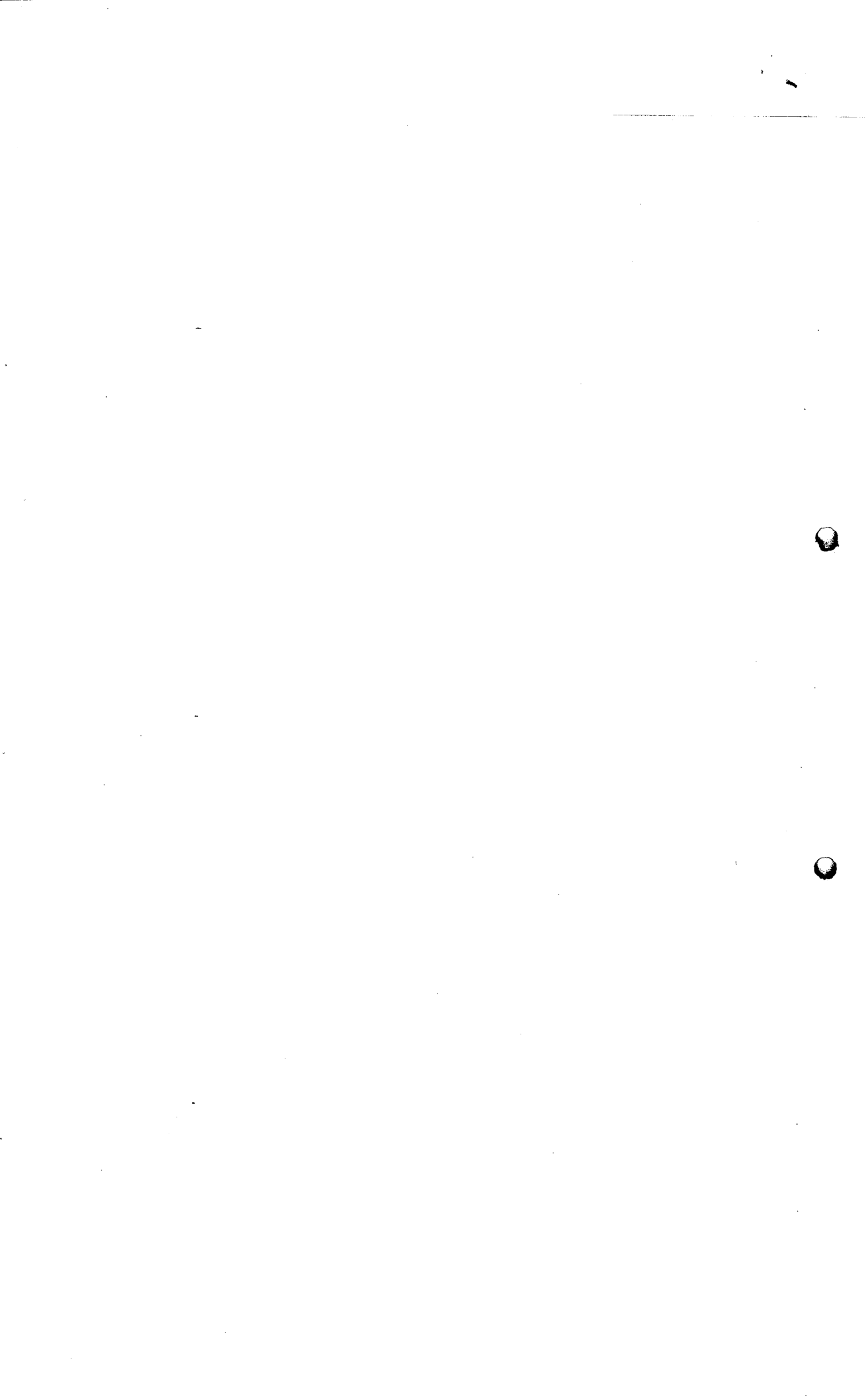
(C) **भारत सरकार को पुनरीक्षण आवेदन :**

Revision application to Government of India:

इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, 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 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 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 केंद्रीय 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 को देख सकते हैं। /
For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in



ORDER-IN-APPEAL

M/s. Ajanta Steel Products, 10, Samarth Industrial Area, Gondal Road, Rajkot hereinafter referred to as "the appellant") and Shri Vijaybhai Pranlal Zalera, partner of the appellant has filed appeal against OIO No. 53/D/AC/2016-17 dated 03.01.2017 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central Excise, Division-I, Rajkot (hereinafter referred to as "the adjudicating authorities"). Since, both the appeals filed are against the common OIO, the said appeals are being taken up commonly in this single order.

2. Briefly stated, the facts are that during the period from 2011-12 to 2015-16 (upto 08.01.2016), the appellant had illicitly cleared the excisable goods having value of Rs. 1,16,82,023/- involving Central Excise duty of Rs. 4,01,917/- by deliberately bifurcating their clearances into three firms so as to avail undue benefit of exemption under Notification No. 08/2003-CE dated 01.03.2003. Therefore, a Show Cause Notice dated 05.07.2016 was issued to the appellant proposing confiscation of 13930 pieces of measurement scales of stainless steel valued at Rs. 3,56,233/-; proposing goods valued at Rs. 1,16,82,023/- involving central excise duty amounting to Rs. 4,01,917/- on crossing threshold limit of Rs. 1.50 crores liable for confiscation; proposing demand of Rs. 4,01,917/- alongwith interest under Section 11AA and penalty under Section 11AC of Central Excise Act read with rule 25 of the Central Excise Rules, 2002. Said SCN was also issued to Shri Vijaybhai Pranlal Zalera, partner of the appellant proposing for imposition of penalty under Rule 26 of Central Excise Rules, 2002.

3. The above notice was adjudicated vide OIO No. 53/D/AC/2016-17 dated 03.01.2017 by the Assistant Commissioner, Central Excise, Division-I, Rajkot wherein the Adjudicating Authority confirmed the demand of Rs. 4,01,917/- alongwith interest and imposed equal amount of penalty under rule 25 of the Central Excise Rules, 2002 read with Section 11AC of Central Excise Act, 1944 and ordered to appropriate the amount already paid against their respective liabilities. **The order also proposed redemption fine of Rs. 4,02,000/- against the appellant in lieu of confiscation as the goods were not available for confiscation; also imposed penalty amounting to Rs. 1,00,000/- upon Shri Vijaybhai Pranlal Zalera, partner of the appellant and Shri Nikhilbhai Zalera, proprietor of M/s. Anon Steel.**

4. Feeling aggrieved, the appellant has filed the present appeal on the following grounds:-

- that it is a settled legal position that when goods are neither seized nor available for confiscation, the redemption fine is not imposable and for this contention they rely upon the judgment of larger bench of the Hon'ble Cestat in case of Shiv Kripa Ispat Pvt. Ltd. v/s. Commissioner of C. Ex. & Cus., naski reported at 2009(235)ELT(Tri.-LB)
- that the judgments relied upon by the adjudicating authority are not applicable to the present case,
- that the redemption fine imposed is liable to be set aside



5. Shri Vijaybhai Pranlal Zalera, partner of the appellant, has filed appeal on the following grounds:-

- that the adjudicating authority erred in interpreting the provisions of Proviso to Rule 26 of CER, 2002 properly, that the SCN was issued on 05.07.2016 i.e., after 01.03.2016 when the provision of the proviso to Rule 26 was effective,
- that the proceeding against the main notice have been concluded as the main notice has paid all the disputed amount of duty, interest thereon and penalty @15 as provided under Section 11A(1)(d) of the Central Excise Act, 1944 within 30 days from the receipt of the SCN and the said conclusion happened after 01.03.2016 and so the provision of the said proviso is applicable to the proceedings pending against them.
- that the penalty of Rs. 1,00,000/- imposed upon them under Rule 26 of the Central Excise Rules, 2002 be set aside.

6. Personal hearing was held on 11.04.2018, wherein Shri K. D. Chandarana, C.A. appeared on behalf of both the appellants and reiterated the submissions made by them earlier in this regard & requested to drop the proceedings.

7. The appeals were 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 Circular No. 208/6/2017-Service Tax dated 17.10.2017 and Board's Order No. 05/2017-Service Tax dated 16.11.2017 issued by the Under Secretary (Service Tax), G.O.I, M.O.F, Department of Revenue, CBEC, Service Tax Wing.

8. I have carefully gone through the facts of case, the grounds mentioned in both the appeals and the submissions made by both the appellants. The question, to be decided in these appeals, are (i) the redemption fine of Rs. 4,02,000/- imposed upon the appellant (M/s. Ajanta Steel Products) in lieu of confiscation of goods of Rs. 1,16,82,023/- is justified or otherwise (ii) penalty of Rs. 1,00,000/- imposed upon Shri Vijaybhai Pranlal Zalera, partner of the appellant, under Rule 26 of the Central Excise Rules, 2002 is correct or otherwise.

9. I find that the adjudicating authority while imposing redemption fine of Rs. 4,02,000/- under Rule 25 of the Central Excise Rules, 2002 with reference to clandestine removal of goods of Rs. 1,16,82,023/-, has ordered as under :-

(ii) I hold finished goods valued at Rs. 1,16,82,023/- cleared clandestinely, liable for confiscation under Rule 25 of Central Excise Rules, 2002. As the same was not available for confiscation, I hereby impose a redemption fine of Rs. 4,02,000/- (Rupees Four lakhs two thousand only) in lieu of confiscation upon M/s. Ajanta Steel Products, Rajkot.



10. From the above, it can be seen that in the impugned order itself, it has been mentioned that redemption fine has been imposed in lieu of confiscation as the goods were not available for confiscation. Since goods were not available for confiscation, the redemption fine is not imposable in view of Cestat, Larger bench, Mumbai's judgment, in case of Shiv Kripa Ispat Pvt. Ltd. V/s. Commissioner of Central Excise & Customs, Nasik reported at 2009 (235) ELT 623 (Tri.- LB). The above judgment of Cestat, Larger Bench is upheld by the Hon'ble Bombay High Court reported at 2015 (318) ELT A259 (Bom.), wherein at para 3, High Court has observed as under:-

"2. The only point of law which needs consideration is "whether in the facts and circumstances of the case and in law the CESTAT is right in dismissing the appeal of Revenue and holding that no redemption fine can be imposed and penalty levied when the goods are physically not available for confiscation?"

3. In so far as redemption fine is concerned, we have, in the facts and the circumstances of the case, taken a view in the case of the Commissioner of Customs (Import) v. M/s. Flurose Creation INC. in Customs Appeal No. 66 of 2009, by judgment dated August 25, 2009 that as the goods are not available for confiscation no redemption fine can be imposed. This question therefore, does not arise."

11. I also find that the appellant has paid all the disputed amount of duty, interest thereon and penalty @15 as provided under Section 11A(1)(d) of the Central Excise Act, 1944 within 30 days from the receipt of the SCN.

12. In view of the above, I do not find redemption fine of Rs. 4,02,000/- imposable upon the appellant.

13. Now, I take up the second issue of imposition of penalty of Rs. 1,00,000/- upon Shri Vijaybhai Pranalal Zalera, partner of the appellant, under Rule 26 of the Central Excise Rules, 2002. In this context, the proviso to Rule 26(1) of the Central Excise Rules, 2002, inserted vide Notification No. 8/2016-CE (NT) dated 01.03.2016, reads as under:-

"Provided that where any proceeding for the person liable to pay duty have been concluded under clause (a) or clause (d) of sub-section (1) of section 11AC of the Act in respect of duty, interest and penalty, all proceedings in respect of penalty against other persons, if any, in the said proceedings shall also be deemed to be concluded."

14. I find that the adjudicating authority in the impugned order at para 40 has observed that payment of duty along with interest and 15% of penalty results in conclusion of proceedings as far as provisions of Section 11A read with Section 11AC are concerned.



15. Since M/s. Ajanta Steel Products, main appellant, has paid all the disputed amount of duty, interest thereon and penalty @15 as provided under Section 11A(1)(d) of the Central Excise Act, 1944 within 30 days from the receipt of the SCN, penalty imposed upon Shri Vijaybhai Pranlal Zalera, partner of the appellant, under Rule 26 of the Central Excise Rules, 2002 is not justified.

16. In this regard, I reply upon the following case laws:-

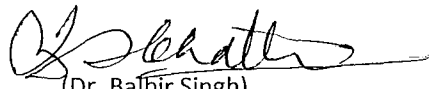
- In case of Kedarnath Dubey & others v/s. Commissioner of Central Excise, Nashik reported at 2016-TIOL-855-CESTAT-Mum, while allowing appellant's appeal, Cestat, Mumbai has observed that *once the main noticee in the SCN against whom duty, interest and penalty was proposed have paid duty, interest and 25% of penalty within one month from the date of SCN, proceedings also stand concluded against co-noticees against whom penal proceedings u/r 26 of CER, 2002 are proposed.*
- In case of Raman Gandhi v/s. Commr., C. Ex. Delhi reported at 2015 (323) ELT 579 (Tri.—Del.), while allowing appellant's appeal, Cestat, Principal Bench, New Delhi has observed that *duty along with interest and 25% of duty paid as penalty by main noticee within 30 days of show cause notice in terms of Section 11A(1A) of Central Excise Act, 1944 and C.B.E. & C. Circular No. 831/8/2006-CX., dated 26-7-2006 - Proceedings against co-noticee comes to an end - Impugned order set aside - Rule 26 of Central Excise Rules, 2002.*

17. Thus, I do not find merit in imposing penalty of Rs. 1,00,000/- upon Shri Vijaybhai Pranlal Zalera, partner of the appellant, under Rule 26 of the Central Excise Rules, 2002.

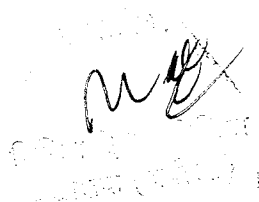
18. In view of above, I set aside the impugned order to the extent as discussed at para 12 and 17, and allow both the appeals.

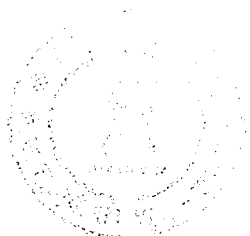
19. The appeals filed by both the aforesaid appellant stand disposed of in above terms.

Date : .04.2018


(Dr. Balbir Singh)
Additional Director General (D&TS),
AZU, AHMEDABAD.

F.No. V2/58-59/RAJ/2017





BY RPAD

To

- (1) M/s. Ajanta Steel Products,
10, Samarth Industrial Area, Gondal Road,
Rajkot.

- (2) Shri Vijaybhai Pranalal Zalera, Partner of
M/s. Ajanta Steel Products,
10, Samarth Industrial Area, Gondal Road,
Rajkot.

Copy to :

1. The Chief Commissioner, CGST & Central Excise, Ahmedabad Zone.
2. The Commissioner, CGST & Central Excise, Rajkot/ Commissioner (Appeals), Rajkot.
3. The jurisdictional Deputy/Assistant Commissioner, Rajkot.
4. The Jt/Addl Commissioner , Systems, CGST, Rajkot
5. Guard File.
6. P.A

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