



::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 / 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.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/335/RAJ/2017	DC/JAM/27/2016-17	31/03/2017

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

RAJ-EXCUS-000-APP-118-2018-19

आदेश का दिनांक / Date of Order:	05.06.2018	जारी करने की तारीख / Date of issue:	06.06.2018
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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 :-**
M/s. Rajhans Metals Pvt. Ltd., Plot No. 21/3, GIDC GIDC, Shankar Tekri, Jamnagar,

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, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

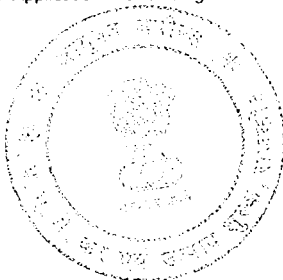
(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जर्माना, रूप 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 नियमवली, 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 प्रामाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जर्माना, रूप 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/-.

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(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवली, 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 प्रामाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जर्माना, रूप 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।/
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- (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 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, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:
- (i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। /
In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse
- (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /
In case of rebale 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 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 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 संेषण 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-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-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. Rajhans Metals Pvt. Ltd., 21/3, GIDC, Shankar Tekri Udhyognagar, Jamnagar (hereinafter referred to as "appellant") has filed present appeal against Order-in-Original No. DC/JAM/27/2016-17 dated 31.03.2017 (hereinafter referred to as "impugned order") passed by the Deputy Commissioner, Central Excise Division, Jamnagar (hereinafter referred to as "the lower adjudicating authority").

2. The brief facts of the case are that appellant - a manufacturer of excisable goods falling under Chapter No. 74 and 82 of the Schedule to the Central Excise Tariff Act, 1985. The appellant was clearing their finished products through Consignment Agents on payment of central excise duty and was also paying central excise duty on excess value realization on account of consignment sales. CERA had observed that the central excise duty paid by the appellant on excess value realization was less than the duty required to be paid. It was stated that during the period from 2011-12 to 2015-16, excess value of Rs. 2,44,38,386/- realized by the appellant, on which central excise duty of Rs. 29,34,957/- required to be paid whereas the appellant had paid central excise duty of Rs. 26,19,690/- only and hence, the appellant had short paid central excise duty Rs. 3,15,194/-. SCN No. V.74(4)-44/Demand/2016-17 dated 20.12.2016 for Rs. 3,15,194/- was issued to the appellant which was adjudicated by the lower adjudicating authority vide impugned order wherein he confirmed the demand of Rs. 3,15,194/- under Section 11A of the Central Excise Act, 1944 (hereinafter referred to as 'the Act') along with interest under Section 11AB/11AA of the Act and imposed penalty of Rs. 3,15,194/- under Section 11AC of the Act.

3. Being aggrieved with the impugned order, the appellant has filed appeal, *inter-alia*, on the ground that the impugned order is unsustainable in law inasmuch as based on illogical interpretation of relevant law; the lower adjudicating authority observed that the 'explanation' to Section 4 of the Act is applicable only when goods are sold at factory gate and not otherwise, this is nothing but misinterpretation of law since the said 'explanation' nowhere talks about whether goods are sold at factory gate or at place of consignment agent; that Section 4(3)(c)(iii) of the Act specifically provides that 'a depot, premises of a consignment agent etc. from where the excisable goods are to be sold after their clearance from the factory' is also a 'place of removal'; that the provisions of Section 4 of the Act, specifically 'explanation' thereto, inasmuch as the 'additional consideration' should be deemed as price-cum-duty and hence, demand of duty on gross additional consideration is not correct; that the

appellant had paid central excise duty on excess value realized on account of consignment sales, by treating excess value as cum-duty value; that according to cum-duty value and facts of the case, correct duty liability comes to Rs. 26,12,472/- whereas the appellant had already paid central excise duty Rs. 26,19,690/-; that the appellant relied upon following case laws:

- (i) Clariant (India) Ltd. – 2006 (196) ELT 353 (Tri. Mumbai);
- (ii) Maruti Udyog – 2005 (179) ELT A102 (SC);
- (iii) Srichakra Tyres Ltd. – 2002 (142) ELT A279 (SC);
- (iv) Srichakra Tyres Ltd. – 1999 (108) ELT 361 (Tribunal);
- (v) Soft Foam Industries Pvt. Ltd.–2013 (292) ELT 270 (Tri.Bang.);
- (vi) D.N.H. Spinners – 2009 (242) ELT 76 (Tri. Ahmd.);
- (vii) Deekeens Polysters P. Ltd. – 2009 (234) ELT 129 (Tri. Ahmd.)

3.1 The explanation provided under Section 4 of the Act was further clarified vide Para 15.1 of D. O. Letter No. 334/1/2003-TRU dated 28.02.2003 and hence, the impugned order confirming demand of excise on 'additional consideration' without treating the same as 'cum-duty-price' is unsustainable in law.

3.2 The impugned order confirmed the demand under extended period of limitation, however, necessary ingredients to invoke extended period of limitation i.e. suppression of facts or wilful misstatement completely absent in the instant case as the appellant had regularly filed monthly returns wherein payment of differential duties on additional consideration always reflected. Hence, extended period of limitation cannot be invoked in the instant case.

3.3 Since recovery of differential duty itself is not sustainable in law, order for recovery of interest and imposition of penalty is also unsustainable in law, both on merits and limitation. There is settled legal position that penalty should not be imposed when the matter involves interpretation of law, as in the present case.

4. Personal hearing in the matter was attended to by Shri Dinesh Jain, who reiterated the Grounds of Appeal and submitted that the demand is time barred; that the goods have been cleared from consignment agents depots also; that consignment agents are nothing but extended arm of the appellant; this has also been accepted by impugned order at Para 12.1 & 12.3; that the impugned order needs to be set aside in view of above facts.

Findings:

5. I have carefully gone through the facts of the case, the impugned order, the appeal memorandum filed by the appellant and written as well as oral submissions made by the appellant. The issue to be decided is whether in the facts and circumstances of the present case, the impugned order passed by the lower adjudicating authority confirming demand of differential of central excise duty of

Rs. 3,15,194/- on excess value realized on account of clearances affected at premises of consignment agent, is correct or not.

6. It is undisputed fact that the appellant had transferred finished products to the consignment agents on payment of central excise duty. The consignment agent sold the said goods on higher price than the price on which central excise duty had been paid originally by the appellant and hence, the appellant had paid differential duty of central excise on such added value realised by the consignment agents, by treating the said added value as cum-duty price as per explanation to Section 4 of the Act, which reads as under:

"SECTION 4. Valuation of excisable goods for purposes of charging of duty of excise. — (1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall -

(a) in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value;

(b) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed.

Explanation. — For the removal of doubts, it is hereby declared that the price-cum-duty of the excisable goods sold by the assessee shall be the price actually paid to him for the goods sold and the money value of the additional consideration, if any, flowing directly or indirectly from the buyer to the assessee in connection with the sale of such goods, and such price-cum-duty, excluding sales tax and other taxes, if any, actually paid, shall be deemed to include the duty payable on such goods."

6.1 I would like to reproduce the expression 'place of removal' defined under Section 4(3)(c)(iii) of the Act, which reads as under:

"place of removal" means -

(i) a factory or any other place or premises of production or manufacture of the excisable goods;

(ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;

(iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory; from where such goods are removed;

6.2 Thus, the premises of the consignment agent is also a place of removal from where the excisable goods are sold after their clearances from the factory. Hence, the explanation to Section 4 of the Act is also applicable to the goods sold from the premises of consignment agents, in other words, the price-cum-duty of the excisable goods sold by the consignment agent on behalf of the assessee from the premises of consignment agent should be considered for

calculation of differential of central excise duty. Therefore, the findings of the lower adjudicating authority that the benefit of cum-duty price may be available to an assessee, if the goods have been sold by the assessee directly to the customers is against the provisions of Central Excise Law and cannot be allowed to be sustained.

6.3 I find that assessable value of the goods where additional consideration has been realized on account of sale of goods at higher value than the value at which goods were cleared from the factory has been well clarified with the illustration vide Para 15.1 of D. O. Letter No. 334/1/2003-TRU dated 28.02.2003, which reads as under:

"15.1 The introduction of 'transaction value' has brought out significant improvements in reduction of disputes and bringing about certainty in the matter of valuation. There are, however, certain areas where disputes are still continuing. Having regard to this, section 4 of the Central Excise Act has been amended by providing an explanation so as to clarify that the total amount received by a manufacturer will be deemed to be the price-cum-duty and the assessable value should be determined accordingly subject to exclusion of sales tax or other taxes, if paid. Similar will be the position when additional considerations are received.

Illustration 1:.....

Illustration 2: Certain excisable goods was sold for Rs. 120/- and 20% is the rate of excise duty. In this case the transaction value for charging excise duty shall be calculated as follows:

$$\begin{aligned} \text{Value} &= \frac{\text{Price-cum-duty}}{(1 + \text{Rate of excise duty})} = \frac{\text{Rs. 120/-}}{1 + \frac{20}{100}} \\ &= \text{Rs. 100/-} \end{aligned}$$

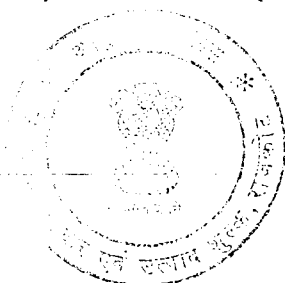
Subsequently, it was found that the price-cum-duty of the goods was in fact Rs. 140/- as the assessee had collected Rs. 20/- separately. Such additional consideration shall be deemed to include the excise duty payable on such goods. Accordingly, the revised value of such goods shall be calculated as follows:

$$\begin{aligned} \text{Value} &= \frac{\text{Price-cum-duty}}{(1 + \text{Rate of excise duty})} = \frac{(\text{Rs. 120/-} + 20/-)}{1 + \frac{20}{100}} \\ &= \text{Rs. 116.67} \end{aligned}$$

Illustration 3:....."

6.4 In view of above, I am of the considered view that the appellant has correctly calculated and paid differential central excise duty on such added value realised by the consignment agents, by treating the said added value as cum-duty price as per explanation to Section 4 of the Act.

6.5 My view is supported by decision of the Hon'ble CESTAT, Mumbai in case of Clariant (India) Ltd. reported as 2006 (196) ELT 353 (Tri.-Mumbai), wherein it



has been held that:

"5. Accordingly, we order that the extra amount recovered towards cost of packing is to be added to the assessable value but we agree with the lower appellate authority that the value needs to be recalculated by the adjudicating authority treating the amount as 'cum-duty-price'. Hence, we uphold the remand order and reject the appeal."

(Emphasis supplied)

7. As discussed above, I find that the appellant is not required to pay differential central excise duty as alleged in the SCN and hence, impugned order confirming demand of differential central excise duty, is not correct, legal & proper. Since, demand of duty is not sustainable, the question of payment of interest and imposition of penalty do not arise.

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

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

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

(Handwritten signature)
06/06/2018
(कुमार संतोष) 5/6/2018
आयुक्त (अपील्स)

By Regd. Post AD

To,

M/s. Rajhans Metals Pvt. Ltd.,
21/3, GIDC,
Shankar Tekri Udhyognagar,
Jamnagar.

मे. राजहंस मेटल्स प्रा. ली.,
२१/३, जीआईडीसी, शंकर टेकरी उधयोगनगर,
जामनगर.

Copy for information and necessary action to:

- 1) The Chief Commissioner, CGST & Central Excise, Ahmedabad Zone, Ahmedabad for favour of kind information.
- 2) The Commissioner, CGST & Central Excise Commissionerate, Rajkot
- 3) The Assistant Commissioner, CGST & Central Excise Division, Jamnagar.
- 4) Guard file.

