



आयुक्त (अपील) 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

Tele Fax No. 0281 - 2477952/2441142 Email: cexappealsrajkot@gmail.com



सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क्र	अपील / फाइल संख्या / Appeal / File No	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/167/GDM/2017	05/JC/2017-18	29-05-2017
	V2/178/GDM/2017	06/JC/2017-18	29-05-2017

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

**KCH-EXCUS-000-APP-072-TO-73-2018-19**

आदेश का दिनांक / 12.07.2018 जारी करने की तारीख / 16.07.2018  
Date of Order: Date of issue:

कुमार संतोष, आयुक्त (अपील), 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 / गंधीधाम / 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 Appellant & Respondent :-**  
M/s. GPT Steel Industries Ltd., Plot No. 301, GIDC Phase- II, Mitnrohhar, Gandhidham Kutch - 370 240.

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 CE, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-
- (i) वर्गीकरण मूल्यांकन से सम्बंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पाद 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 at 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, दिल्ली 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) 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 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 रजिस्ट्रार 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 सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उत्तर में 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, 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 रजिस्ट्रार 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/-

(f) विस्तृत अधिनियम, 1994 की धारा 84 की उप-धाराओं (2) या (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 उसमें साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (जुममे से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आदेश 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 84 of the Finance Act 1994, shall be filed in Form 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) शीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेक्टोर) के प्रति अपील के मामलों 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 में 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 अन्वये तबत्र कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपये से अधिक न हो।  
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है  
(i) धारा 11 टी के अंतर्गत रकम  
(ii) सैनवेट जमा की की गयी गलत राशि  
(iii) सैनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम  
- बशर्ते यह कि इस धारा के प्राधान्य विस्तार (स. 2) अक्टोबर 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थान अर्थात् अपील को लागू नहीं रहे। /

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 अधिकार निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर शक्ति, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त सचिवालय, राजस्व विभाग, बोधी 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 cases, governed by first proviso to sub-section (1) of Section-35B ibid:

(i) यदि माल के किसी नुकसान के मामले में, जहां गुणवत्ता किसी अन्य 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 भारत 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 छूट (रिबेट) के अंतर्गत में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र का 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 से 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) अर्थात् उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो छूटों के तहत इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (स. 2) 1994 की धारा 109 के द्वारा नियत की गई तरीक 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 allowed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1994.

(v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-3 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट हैं, इस आदेश के संश्लेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आदेशों 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-3 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 O.I.O 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.

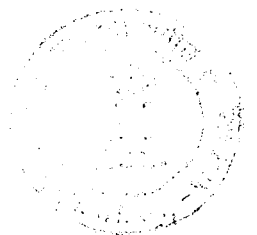
(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क नि भरना ही जानी चाहिए। / The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac

(D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपरोक्त ढंग से किया जाना चाहिए। इस तथ्य के तहत हुए भी की रिक्त पदों को भरने के लिए सहायक 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, not withstanding 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 exceeding Rs. 1 lakh fee of Rs. 100/- for each.

(E) पञ्चसंश्लेषित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसूची मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट 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) शीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (हार्ड कॉपी) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की और भी ध्यान अवगत किया जाना 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 दायित्व करने से संबंधित प्रत्येक विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट [www.cbac.gov.in](http://www.cbac.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.cbac.gov.in](http://www.cbac.gov.in)



**::ORDER IN APPEAL ::**

M/s. GPT Steel Industries Ltd Plot No. 301, GIDC, Phase-II, Mithirohar, Gandhidham (Kutch) (hereinafter referred to as "the appellant") filed the appeals against Order-In-Original No. 05/JC/2017-18 dated 28.05.2017 (*hereinafter referred to as "the impugned order - 1"*) and Order-in-Original No. 06/JC/2017-18 dated 28.05.2017 (*hereinafter referred to as "the impugned order - 2"*) and both collectively referred to as "the impugned orders"), passed by the Joint Commissioner, Central Excise and Service Tax, Gandhidham (Kutch) (*hereinafter referred to as "the lower adjudicating authority"*). The details of appeals are as under : -

Sr. No.	Appeal No.	Period involved	Date of issue of SCN	Disputed Amount of Credit Rs.
01.	V2/167/GDM /2017	June, 2007 & July, 2007	26.06.2012	92,47,736/- (Reversed)
02	V2/178/GDM/2017	17.06.2007 to 28.02.2008	06.07.2012	61,27,354/- (Not reversed)

2. The brief facts of the case in respect of the impugned order – 1 are that the during audit of records of the appellant by CERA it was noticed that they had cleared 6796.49 MTs of imported goods as such during June, 2007 to July, 2007 by issuing invoice and payment of Basic Excise Duty (CVD), Education Cess and Secondary and Higher Secondary Education Cess, however, did not pay Cenvat Credit taken in respect of Additional Excise Duty (SAD) which was allegedly required as per Rule 3(5) of Cenvat Credit Rules, 2004 (hereinafter referred to as "the Rules"). Show Cause Notice No. V.72/AR-GDM/Commr./142/2012 dated 26.06.2012 was issued to the appellant which was adjudicating by the lower adjudicating authority by confirming demand of Cenvat credit of Rs. 92,47,736/- under Rule 14 of the Rules read with Section 11A(4)/proviso to Section 11A(1) of the Central Excise Act, 1944 (hereinafter referred to as "the Act"), ordering recovery of interest under Rule 14 of the Rules read with Section 11AA/11BB of the Act and imposing penalty of Rs. 92,47,736/- under Rule 15 of Rules read with Section 11AC of the Act.

2.1 The facts of the case in respect of the impugned order – 2 are that the during the Audit of records of the appellant it was noticed that they had cleared 109.612 MTs of imported goods, that is, HRPO Coils, as such from 17.06.2007 to 28.02.2008 without reversing Cenvat Credit which was allegedly required as per Rule 3(5) of Cenvat Credit Rules, 2004 (hereinafter referred to as "the Rules"). Show Cause Notice No. V.72/AR-GDM/Commr./153/2012 dated 06.07.2012 was

issued to the appellant which was adjudicated by the lower adjudicating authority by confirming demand of Cenvat credit of Rs. 61,27,354/- under Rule 14 of the Rules read with Section 11A(4) / proviso to Section 11A(1) of the Central Excise Act, 1944 (hereinafter referred to as "the Act"), ordering recovery of interest under Rule 14 of the Rules read with Section 11AA / 11BB of the Act and imposing penalty of Rs. 61,27,354/- under Rule 15 of Rules read with Section 11AC of the Act.

3 Impugned Order – 1 : Aggrieved with the impugned order, the appellant preferred appeal, *inter alia*, contending in respect of the impugned order – 1 that demand of Cenvat credit (in respect of special additional duty) for the period June, 2007 and July, 2007 is time barred as they have been filing periodical returns regularly; that the appellant was under bonafide belief that they were required reverse credit taken in respect of additional duty of customs, education cess and secondary and higher secondary education cess at the time removal of goods as such and not required to reverse credit of special additional duty of customs and therefore extended period of limitation cannot be invoked; that show cause notice is time barred and therefore, demanding interest and imposition of penalty is liable to be set aside; that the appellant were having sufficient balance of credit in the Cenvat credit account and credit was reversed even before show cause notice and therefore, demand of interest and imposition of penalty are not sustainable.

3.1 Impugned Order – 2 : Aggrieved with the impugned order, the appellant preferred appeal, *inter alia*, contending in respect of the impugned order – 1 that demand of Cenvat credit for the period June, 2007 to February, 2008 is time barred as they have been regularly filing periodical returns; that the Show Cause Notice alleges non-reversal of credit on 109.612 MT is Rs. 6,68,670/-; that show cause notice is time barred and therefore, demanding interest and imposition of penalty is liable to be set aside; that the appellant were having sufficient balance of credit in Cenvat credit account and credit was reversed even before show cause notice and therefore, demand of interest and imposition of penalty are not sustainable.

4. Personal hearing in the matter was attended to by Shri Vikas Mehta, Consultant who reiterated the grounds of appeals and submitted that they do not want to add anything further. Personal hearing notice was sent to the Department, however, no one appeared.



**Findings:**

5. I have carefully gone through the facts of the case, the impugned orders, grounds of appeals and oral and written submissions made by both the appellant. The issues to be decided in the present appeals are :-

- (i) whether the impugned orders confirming demand of Cenvat credit on the imported goods cleared as such under Rule 14 of the Rules read with Section 11A(4) / proviso to Section 11A(1) of the Central Excise Act, 1944 along with interest, is proper or not; and
- (ii) whether penalty equal to non - reversed Cenvat credit is imposable under Rule 15 of Rules read with Section 11AC of the Act or not.

6. I find that the appellant is not contesting confirmation of demands on merits but contended that the demands are time barred as they were regularly filing statutory periodical returns and therefore, proceedings are required to be set aside. I find that simpliciter by filing periodical returns the appellant cannot shift buck to the Department contending that they have disclosed their acts. Filing periodical returns should not be considered panacea to every evils/ills or atonement for all sorts of acts. It was incumbent upon the appellant to have explained along with facts, figures, documents and justification as to how mere filing of the periodical returns, the department was made aware of exact details of clearances of goods 'as such' and its quantification of reversal of credit. The appellant had not submitted any details or documents in respect of goods cleared 'as such' to the Department and unless the officers verified the documents and co-related and cross-tallied credit amounts by going through the records in detail the violation could not have been detected by the CERA/Audit. Also, quite importantly, I find in case of the impugned order-1 the lower adjudicating authority has held at Para 19 that the appellant agreeing to audit objection has voluntarily reversed Rs. 92,47,736/- against their liability of Additional Excise duty (SAD) without any protest. The lower adjudicating authority has also appropriated Cenvat credit of Rs. 92,47,736/- voluntarily paid by the appellant and therefore, the appellant cannot somersault and now again start contesting the amount reversed during audit of their own volition.

6.1 In case of the impugned order – 2, they have not reversed Cenvat credit on 109.612 MT of the imported goods cleared as such. The appellant was required to reverse Cenvat credit of Rs. 61,27,354/- in respect of the confirmed demand which they have not paid or reversed. The appellant, in respect of the impugned order -2 has also raised contention of time – bar of demand as they had filed periodical returns. Here, I would like to replicate findings in respect of the impugned order -1 and further add that the contention of time bar of demand is also not sustainable.

as even after pointing out of lacunae the appellant had not bothered to reverse the Cenvat credit as held by the lower adjudicating authority at Para 28.2 as "28.2 ..... I find that the act of noticee was not bonafide because the noticee had not reversed the Cenvat credit of Rs. 61,27,354/- even after the objection raised by the audit. Had it not been pointed out by the Audit, the fact of non-reversal of the Cenvat credit would have gone unnoticed. Thus, it proves that the intention of the noticee is malafide and hence, penalty becomes integral part. ...."


6.2 During the course of personal hearing too, the appellant has not submitted any documents or any further submissions to support their claim or contentions on time bar or quantification of demand or any other pleas.

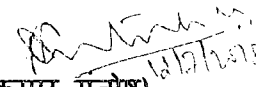
6.3 I find that the appellant has failed to reverse appropriate Cenvat credit on the imported goods cleared 'as such' for the extended period from June, 2007 to February, 2008 on multiple clearance transactions. Two demand notices have also been issued consequently leading to passing of the impugned orders confirming demands along with interest and imposition of penalty under Rule 15 of Rules read with Section 11AC of the Act. I therefore, find that imposition of penalty is legal and proper and is required to be upheld.

7. in view of above, I uphold the impugned orders and reject both the appeals.

7.1. अपीलकर्ताओं द्वारा दर्ज की गई अपीलों का निपटारा उपरोक्त तरीके से किया जाता है।

7.1 The appeals filed by the appellants are disposed off in above terms.

सत्यापित,  
  
 निखिल ए. हपारेलिया  
 अधीक्षक (अपील्स)

  
 (कुमार सतोष)  
 आयुक्त (अपील्स)

By R.P.A.D.

To,  
 M/s. GPT Steel Industries Ltd.  
 Plot No. 301, GIDC, Phase-II,  
 Mithirohar,  
 Gandhidham (Kutch).

Copy for kind information and necessary action to :

- 1) The Chief Commissioner, CGST & CX, Ahmedabad Zone for his kind information.
- 2) The Commissioner, CGST & CX, Gandhidham, Kutch Commissionerate.
- 3) Guard File.