::प्रधानआयुक्त (अपील्स) का कार्यालय,वस्तु एवं सेवा करऔर 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
Tele Fax No. 0281 – 2477952/2441142Email: cexappealsrajkot@gmail.com

रजिस्टर्डडाकए.डी.द्वारा :- **DIN-20210264SX000000E0C0**

क	अपील / फाइलसंख्या/ Appeal /File No.	मूलआदेशसं / OIO No.	दिनांक/ Date
	V2/11/EA2/RAJ/2020	**DC/JAM-I/CEX/26/2019-20**	**21.04.2020**

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

RAJ-EXCUS-000-APP-004-2021

आदेश का दिनांक / Date of Order:	**11.02.2021**	जारी करने की तारीख / Date of issue:	**15.02.2021**

श्री गोपी नाथ, आयुक्त (अपील्स), राजकोट द्वारा पारित/
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/वस्तु एवंसेवाकर, 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/ST / GST,
Rajkot / Jamnagar / Gandhidham :

घ **अपीलकर्ता**&प्रतिवादी का नाम एवं पता /Name & Address of the **Appellant** & Respondent :-

M/s. Deep Recycling Industries, Plot No. 773, GIDC Phase-II, Dared, 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 निम्नलिखि+त 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 अपीलें सीमा शुल्क,केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट)की पश्चिम क्षेत्रीय पीठिका,,द्वितीय तल, बहुमाली भवन असार्वा अहमदाबाद- ३८००१६को की जानी चाहिए ।/

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016in 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 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 क्रमश: 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 dutydemand/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,1994की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5में 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 क्रमश: 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,1994की 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 Commissionerauthorizing 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" मे 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 होगे।/
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 कोपुनरीक्षण आवेदन :**
Revision application to Government of India:
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलो में,केंद्रीय उत्पाद शुल्क अधिनियम,1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गतअवर 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 छूट (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 outsideIndia export to Nepal or Bhutan, without payment of duty.

(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (न. 2),1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायावधि पर या बाद में पारित किए गए है।/
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 रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 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 नयाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है। / In case,if the order covers variousnumbers 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 Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। /
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-I in terms of the Court Fee Act,1975, as amended.

(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की और भी ध्यान आकर्षित किया जाता है। /
Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in 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 ::

The Deputy Commissioner, CGST Division-I, Jamnagar has filed Appeal No. V2/11/EA2/RAJ/2020 on behalf of the Commissioner, Central GST & Central Excise, Rajkot (hereinafter referred to as "Appellant Department") in pursuance of the direction and authorization issued under Section 35E(2) of the Central Excise Act,1944 (hereinafter referred to as 'Act') against Order-in-Original No. DC/JAM-I/CEX/26/2019-20 dated 21.4.2020 (*hereinafter referred to as* 'impugned order') passed by the Deputy Commissioner, Central GST Division-I, Jamnagar (*hereinafter referred to as* 'adjudicating authority') in the case of M/s Deep Recycling Industries (100% EOU), Jamnagar (*hereinafter referred to as* 'Respondent').

2. The facts of the case, in brief, are that the Respondent, a 100% EOU, was engaged in the manufacture of Brass ingots, Brass electrical parts, Brass rods etc. falling under Chapter 74 of the Central Excise Tariff Act, 1985. During the test check of records of CGST Range-III, Jamnagar by CERA officers, it was observed that the Respondent had applied for exit from EOU Scheme; that at the time of applying for de-bonding, they had self-assessed value of stock of Brass Billets (lying as work-in-progress) at Rs. 30,38,143/- and had paid applicable duty of Rs. 5,67,183/-; that amount of work-in-progress of Brass billets was shown in the Balance Sheet for the F.Y. 2016-17 as Rs. 38,34,163/-. It appeared to the CERA officers that the Respondent had undervalued their goods by wrongly considering the value of brass billets as Rs. 30,38,142/- instead of Rs. 38,34,163/-, which resulted in short levy of duty amounting to Rs. 3,30,778/-.

3. The above observation of the CERA officers culminated into issuance of Show Cause Notice No. V.74/GSTR-III/JAM-I/14/2019-20 dated 24.4.2019 to the Respondent calling them to show cause as to why an amount of Rs. 3,30,778/- should not be demanded and recovered from them under Section 11A of the Act, along with interest under Section 11AB and proposed imposition of penalty under Section 11AC of the Act.

4. The above Show Cause Notice was adjudicated by the adjudicating authority vide the impugned order who dropped the demand on the grounds that the respondent had properly assessed the value of said goods by

considering proportionately the value of imported raw materials involved in the said goods in accordance with Notification No. 52/2003-Custom dated 31.3.20003 and properly paid duty on 13.267 MT of Brass billets lying as work-in-progress.

4. The impugned order was reviewed by the Appellant Department and the present appeal has been filed, *inter alia*, on following grounds:

(i) The Adjudicating Authority has erred in holding that the Respondent has correctly self-assessed the duty payable on the basis of value mentioned in the Bill of Entry at the time of importation as prescribed in Para 4 (b) of Notification No. 52/ 2003-Customs dated 31.03.2003.

(ii) That the Respondent imported the goods and also procured goods from D.T.A. without payment of Customs Duty & Central Excise Duty respectively; that the Respondent had paid duty of Rs. 5,67,183/- on 13.267 MT of Brass Billets which were work-in-progress goods, which was self-assessed by Respondent at Rs. 30,38,143/-. Whereas, in their Balance Sheet for Financial Year 2016-17, they have shown the value of Brass Billets (WIP) as Rs. 38,34,163/- The Adjudicating Authority has erred in not considering the value mentioned in the Balance Sheet, for the Brass Billets (WIP) of 13.267 MT, as there was no transaction during the month of April 2017 as per ER-II returns submitted by the Respondent. As the said goods were already valued at Rs. 38,34,163/as per Balance Sheet, the Respondent should have self-assessed as per the value given in Balance Sheet. Instead, the Respondent undervalued the said goods and there was a short levy of duty of Rs. 3,30,778/- by the Respondent during the time of de-bonding.

(iii) The Adjudicating Authority has wrongly held that the value of goods is required to be taken based on imported raw material in accordance with Notification No. 52/2003-Customs dated 31.03.2003. In the present case, the differential duty is demanded with respect to the work-in-process goods. The Adjudicating Authority has not verified, how the value of work in process goods was arrived by taking the value of imported Raw Materials, but simply held that the Respondent assessed the value of the said goods by considering proportionately the value of imported raw materials involved in the said goods. There is no scientific

methodology adopted by the Adjudicating Authority to consider that the value of goods self-assessed by the Respondent is correct and proper. Whereas, the value arrived by the Respondent in his Balance Sheet was as per Accounting Standards (CAS-4 standards), hence, the value shown in the Balance Sheet is the correct value for payment of duty on WIP goods, at the time of de-bonding of EOU.

(iv) The Adjudicating Authority has grossly erred in holding that the Respondent has arrived the value of WIP goods as per Para 4 (b) Of Notification No. 52/2003-Customs dated 31.03.2003 ignoring the fact that the value at the time of import is only available with respect to raw materials and inputs which were imported duty free by the importer. In the present case, the inputs/raw materials are Brass Scrap, which were used to manufacture finished goods, whereas the subject matter of dispute is with respect to valuation of Brass Billets which were WIP goods. These were intermediate goods which were manufactured by using both imported and indigenously procured goods and availed exemption of both Customs duty & Central Excise duty as per Notification No. 52/2003-Cus. dated 31.03.2003 on these goods. Hence, value at the time of import cannot be logically considered for proportionately arriving at the value of WIP goods. Therefore, the value assessed by the Respondent should not be considered for duty payment at the time of de-bonding of EOU. It's a matter of common logic that the raw materials were processed and the work-in-progress goods i.e. Brass Billets had higher intrinsic value than the unprocessed raw materials i.e. Brass scrap. This is the primary reason why the Respondent has shown higher value in Balance Sheet.

(v) In the present case, as the value of the said goods cannot be determined under the provisions of any of the preceding Rules of Customs Valuation, the value should be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India. As the value determined in Balance Sheet is based on accounting standards and is the available data with respect to subject goods, the Respondent should have paid the duty on Balance Sheet value as per Rule 9 of Customs Valuation Rules, 2007. The Respondent has wilfully suppressed the facts by undervaluing the said goods, which resulted in short levy of duty amounting to Rs. 3,30,778/-.

(vi) The Adjudicating Authority has wrongly relied upon Hon'ble Apex Court judgment of Salora Components Pvt. Ltd.-2020 (371) ELT. A81 (8.0.) and Hon'ble CESTAT judgment of Solitaire Machine Tools Pvt. Ltd.- 2003(152) E.L.T. 384 (Tri-Mumbai), as the facts in the present case are completely different. In the aforementioned Supreme Court judgment, the issue is with regard to enhancement of value of imported goods at the time of de-bonding of EOU unit. Whereas, in the CESTAT judgment, the issue is with regard to nexus between duty liability upon de-bonding and fulfilment of export obligation. In the present case, the valuation of Brass Billets viz. work-in-progress goods in the subject matter of dispute.

(vii) The Adjudicating Authority has wrongly relied upon the Hon'ble CESTAT judgment in the case of Tirumala Seung Han Textiles Ltd.- 2009 (237) ELT 145 (Tri. Bang), wherein it was held that there is no authority for demanding duty on in-process goods at the time of de-bonding of EOU. In the present case, the Respondent has already self-assessed the duty on work-in-progress goods as per Para 6.18 (e) of FTP 2015-20 read with Notification No. 52/2003-Cus dated 31.03.2003. The dispute is only with regard to the valuation of the work in process goods and not with respect to dutiability of the subject goods. Therefore, the Respondent is liable to pay the differential duty on the subject goods

5. Personal Hearing in the matter was scheduled on 28.9.2020. The Respondent vide letter dated 26.9.2020 submitted written submission and waived the opportunity of personal hearing. No one appeared on behalf of the Appellant Department.

5.1 In written submission, the Respondent has contended that,

(i) The respondent was an EOU unit at the relevant time and was importing its raw material i.e. brass scrap by availing duty exemption under Customs Notification No. 52/2003-Cus dated 31.03.2003. The said stock of 'brass billets' was manufactured using imported brass scrap only.

(ii) That paragraph 4 of Notification No. 52/2003-Cus dated 31.03.2003 provides that at the time of de-bonding, duties on goods lying in stock are to be payable based on the value at the time of import of such goods. In the present case, since the subject stock of 'brass billets' were

manufactured using imported brass scrap, the respondent had paid duties on the quantity of imported brass scrap consumed in manufacturing of subject brass billets. This fact has also been accepted by the adjudicating authority in the impugned order and therefore the present departmental appeal is not sustainable in law being against the provisions of Notification No. 52/2003-Cus dated 31.03.2003.

(iii) That the allegation in the present appeal that the intermediate goods (brass billets) were manufactured using both imported and indigenously procured goods by availing exemptions, both under Customs provisions and Central Excise provisions, is completely untrue and therefore untenable in law since the subject brass billets were manufactured only from imported brass scrap. As a matter of fact, there was no such allegation in the relevant Show Cause Notice dated 24.04.2020 and therefore this new allegation in the present departmental appeal is untenable in law being beyond the scope of present proceedings.

(iv) That the mechanism for valuation of inventories for the purpose of financial accounts is based on a particular accounting standard and such valuation takes into consideration not only cost of material consumed therein but also includes various overheads, whereas, in case of de-bonding of an EOU units, duties on imported raw material lying in stock, either as such or as contained in work-in-process, is calculated on the basis of 'duty foregone' at the time of import of such raw material and hence, the present departmental appeal, contending recovery of differential duty based on value shown in financial accounts, is untenable in law.

(v) In view of above the present appeal filed by the department is required to be dismissed being against the provisions of para 4 of Notification No. 52/2003-Cus dated 31.03.2003.

6. I have carefully gone through the facts of the case, the impugned order, appeal memorandum and written submission made by the Respondent. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority dropping the proceedings initiated vide Show Cause

Notice No. V.74/GSTR-III/JAM-I/14/2019-20 dated 24.4.2019 is correct, proper and legal or not.

7. On going through the records, I find that the Respondent, a 100% EOU, had imported brass scrap without payment of duty in terms of Notification No. 52/2003-Cus dated 31.3.2003. Subsequently, they applied for exit from EOU scheme and at the time of de-bonding, they self-assessed value of stock of Brass Billets (lying as work-in-progress) at Rs. 30,38,143/- and paid applicable duty of Rs. 5,67,183/-. During the test check of records of CGST Range-III, Jamnagar by CERA officers, it was observed that the Respondent had undervalued their goods by wrongly considering amount of work-in-progress of Brass billets as Rs. 30,38,142/- instead of Rs. 38,34,163/- as shown in the Balance Sheet for the F.Y. 2016-17 and thereby short paid duty amount of Rs. 3,30,778/-. The Show Cause Notice issued to the Respondent for demanding duty of Rs. 3,30,778/- under Section 11A of the Central Excise Act, 1944 has been dropped by the adjudicating authority vide the impugned order by holding that the Respondent had properly assessed the value of 13.267 MT of Brass billets lying as work-in-progress by considering proportionately the value of imported raw materials involved in the said goods in accordance with Notification No. 52/2003-Custom dated 31.3.20003 and had properly paid applicable duty.

7.1 The Appellant Department has contended that the Respondent should have self-assessed in-process 13.267 MT of Brass Billets considering the value of Rs. 38,34,163/- recorded in their Balance Sheet for the Year 2016-17 and that the adjudicating authority erred in considering proportionately the value of imported raw materials involved in the said goods in terms of Notification No. 52/2003-Customs dated 31.03.2003.

7.2 The Respondent has pleaded that mechanism for valuation of inventories for the purpose of financial accounts is based on a particular accounting standard and such valuation takes into consideration not only cost of material consumed therein but also includes various overheads, whereas, in case of de-bonding of an EOU units, duties on imported raw material lying in stock, either as such or as contained in work-in-process, is calculated on the basis of 'duty foregone' at the time of import of such raw material and hence, the present departmental appeal, contending recovery of differential duty based on value shown in financial accounts, is untenable in law.

8. I find that the Respondent had imported brass scrap by availing exemption in terms of Notification No. 52/2003-Customs dated 31.03.2003, which were used in the manufacture of Brass Billets. While applying for de-bonding of the unit, the Respondent considered proportionate import value of brass scrap which were contained in in-process brass billets and paid duty which was foregone on such imported brass scrap. I find it pertinent to examine the provisions contained in Para 4 of Notification No. 52/2003-Customs dated 31.03.2003, which is reproduced as under:

> "4. Without prejudice to any other provision contained in this notification, the said officer may, subject to such conditions and limitations as he may deem fit to impose under the circumstances of the case for the proper safeguard of revenue interest and also subject to such permission of the Development Commissioner, wherever it is specially required under the Export and Import Policy, allow the unit to clear any of the said goods for being taken outside the unit, to any other place in India in accordance with the Export and Import Policy:
>
> Provided that -
>
> (a) ... ...
>
> (b) such clearance of goods (including empty cones, bobbins, containers, suitable for repeated use) other than those specified in clause (a) may be allowed on payment of duty on the value at the time of import and at rates in force on the date of payment of such duty;"

(Emphasis supplied)

8.1 It is also pertinent to examine the provisions contained in Para 6.18 of the Foreign Trade Policy applicable to a unit at the time of exit from EOU Scheme, which are reproduced as under:

> "(a) With approval of DC, an EOU may opt out of scheme. Such exit shall be subject to payment of applicable Excise and Customs duties and on payment of applicable IGST/ CGST/ SGST/ UTGST and compensation cess, if any, and industrial policy in force.
>
> ...
>
> ...
>
> (e) Unit proposing to exit out of EOU scheme shall intimate DC and Customs authorities in writing. Unit shall assess duty liability arising out of exit and submit details of such assessment to Customs authorities. Customs authorities shall confirm duty liabilities on priority basis, subject to the condition that the unit has achieved positive NFE, taking into consideration the depreciation allowed. After payment of duty and clearance of all dues, unit shall obtain "No Dues Certificate" from Customs authorities. On the basis of "No Dues Certificate" so issued by the Customs authorities, unit shall apply to DC for final

exit. In case there is no proceeding pending under FT (D&R) Act, as amended, DC shall issue final exit order within a period of 7 working days. ... ..."

8.3. On conjoint reading of the provisions contained in Para 6.18 of the Foreign Trade Policy as well as Notification No. 52/2003-Cus dated 31.3.2003, it is observed that duty on goods lying in stock at the time of de-bonding of unit was to be calculated on the value at the time of import and at rates in force on the date of payment of such duty. I find that the Respondent had imported brass scrap without payment of duty by availing the benefit of exemption from duty in terms of Notification No. 52/2003-Cus dated 31.3.2003. The brass scrap so imported was utilized in the manufacture of in processed Brass billets. However, at the time of de-bonding of their EOU, the Respondent paid duty foregone amount considering the proportionate quantity of imported brass scrap involved in Brass Billets lying in stock by taking value at the time of import and at rates in force on the date of payment of such duty, in terms of Notification No. 52/2003-Cus dated 31.3.2003 read with Para 6.18 of the Foreign Trade Policy. Thus, I do not find any infirmity in the valuation method adopted by the Respondent. I, therefore, hold that the Respondent had correctly determined the value of in-process goods lying in stock at the time of de-bonding as Rs. 30,38,143/- for the purpose of discharging duty.

8.4 Regarding contention of the Appellant Department that the Respondent should have considered value of in-process billets as reflected in Balance Sheet for the Financial Year 2016-17, I find that valuation of inventories for the purpose of financial accounts is based on a particular accounting standard and such valuation takes into consideration not only cost of material consumed therein but also includes various overheads, as rightly contended by the Respondent. In any case, when Notification No. 52/2003-Cus dated 31.3.2003 involved in the present case, stipulated to take value at the time of import, it is not correct to consider value as reflected in Balance Sheet at the time of de-bonding of unit.

9. I rely on the Order passed by the Hon'ble CESTAT, Banglore in the case of Tirumala Seung Han Textiles Ltd reported as 2009 (237) ELT 145, wherein it has been held that,

5.1 In respect of in-process goods, the appellants have argued that there is no authority for demanding duty. As per Para 6.18 of the Foreign Trade Policy 2004-09,

an EOU may opt out of the scheme with the approval of the Development Commissioner subject to the payment of Excise Duty. In the policy, only imported and indigenous capital goods, raw materials, components, consumables, spares and finished goods in stock are mentioned. There is no mention about the in-process goods. In the absence of the mention of the in-process goods in the policy, there is no authority for demanding duty on the in-process goods. Hence, we set aside the demand of duty on the in-process goods.

(Emphasis supplied)

9.1 I find that the adjudicating authority relied upon the above case law in the impugned order, however, the Appellant Department has distinguished the said case law on the grounds that in the said case, the Hon'ble Tribunal held that there was no authority for demanding duty on in-process goods at the time of de-bonding of EOU whereas in the present case, the Respondent has already self-assessed the duty on work-in-progress goods as per Para 6.18 of FTP 2015-20 read with Notification No. 52/2003-Cus dated 31.03.2003 and that the dispute is only with regard to the valuation of the in-process goods and not with respect to dutiability of the subject goods. I am not in agreement with the rationale behind the contention raised by the Appellant Department in as much as when it is held by the Tribunal that duty itself is not payable on in-process goods by EOU at the time of de-bonding, there is no point in examining whether valuation of goods for the purpose of discharging duty was proper or not. The Appellant Department has not disputed about the findings of the Hon'ble Tribunal on the aspect of dutiability of goods. Under the circumstances, the Appellant Department cannot selectively contest valuation issue without contesting dutiability of the disputed goods. So, valuation aspect on goods in dispute is irrelevant when the goods are not liable to duty as held by the Hon'ble Tribunal *supra*. Further, voluntary payment of duty by the Respondent in the present case would not mean that the said Order of the Hon'ble Tribunal will not be applicable in their case.

10. The Appellant Department has contended that the in-process goods were manufactured by using both imported and indigenously procured goods and availed exemption of both Customs duty & Central Excise duty as per Notification No. 52/2003-Cus dated 31.03.2003 on these goods and hence, value at the time of import cannot be considered for proportionately arriving at the value of in-process goods. It was further contended that the value assessed by the Respondent should not be considered for duty payment at the time of de-

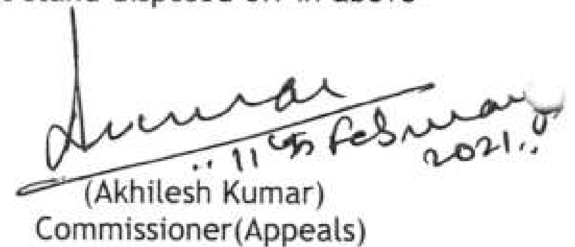
bonding of EOU. On the other hand, the Respondent has argued that brass billets were manufactured only from imported brass scrap. It is further argued that there is no such allegation in the Show Cause Notice dated 24.04.2020 and therefore this new allegation is beyond the scope of present proceedings. I find that the Appellant Department has not brought on records any evidence in support of their contention that the Respondent had used both imported and indigenously procured goods and availed exemption of both Customs duty & Central Excise duty. There is nothing in the Show Cause Notice which suggests that the Respondent had also procured goods from DTA. I, therefore, discard this contention as contrary to facts.

11. Regarding applicability of Rule 9 of Customs Valuation Rules, 1988 relied upon by the Appellant Department, I find that valuation of in-process goods was correctly determined by the Respondent in terms of provisions contained in Para 6.18 of FTP 2015-20 read with Notification No. 52/2003-Cus dated 31.03.2003 as held by me herein above. I, therefore, hold that Rule 9 of Customs Valuation Rules,1988, which prescribes residual method for valuation of goods has no application in the present case.

12. In view of above, I uphold the impugned order and reject the appeal filed by the Appellant Department.

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

13. The appeal filed by the Appellant Department stand disposed off in above terms.



(Akhilesh Kumar)
Commissioner(Appeals)

Attested

(V.T.SHAH)
Superintendent(Appeals)

By RPAD

To, M/s. Deep Recycling Industries Plot No. 773, GIDC Phase-II, Dared, Jamnagar.	सेवा में, मैसर्स दीप रीसाइक्लिंग इंडस्ट्रीज, प्लॉट न° 773, जीआईडीसी फेस 2, दरेड, जामनगर।

<u>प्रतिलिपि :-</u>

1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट को आवश्यक कार्यवाही हेतु।
3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, जामनगर-1 मण्डल, को आवश्यक कार्यवाही हेतु।
4) गार्ड फ़ाइल।