



::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 कौर्स रिंग रोड / Race Course Ring Road
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रजिस्टर्ड डाक ए.डी.द्वारा

DIN-20211064SX000000E1C1

क	अपील / फाइल नं./ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/116/RAJ/2020	01/JC/VM/Sub-Commr/2020- 21	29-05-2020

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

RAJ-EXCUS-000-APP-039-2021

आदेश का दिनांक / Date of Order:	30.09.2021	जारी करने की तारीख / Date of issue:	01.10.2021
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श्री अखिलेश कुमार, 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 एवं सेवाकर, राजकोट / जामनगर / गांधीधामा द्वारा उपरलिखित जारी मूल आदेश से मूकित: /
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. Antim Thakurdas Modi Plot No.54, Shankar Tekri, Udhyanagar, Jamnagar, Gujarat.

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 प्रांते 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) बर्गीकरण मूल्यों के 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 में 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) 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, अयाज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम में 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 प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की माँग, अयाज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम में 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 fee of Rs. 1000/- 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) विन अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवली, 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 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) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेन्टेट) 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, इन 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 इस 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) सेनबेट जमा की ली गई गलत राशि
 - (iii) सेनबेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
 - बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं- 2) अधिनियम 2014 के अंश में पूर्व किन्ती 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 पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। / A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:
 - (i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। / In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse
 - (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के 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 outside India excise to Nepal or Bhutan, without payment of duty.
 - (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो छुट्टी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं- 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए हैं। / Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
 - (v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील)नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के माध्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। / The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.
 - (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।
जहां संलग्न रकम एक लाख रुपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये 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 दंग से किया जाना चाहिए। इस तथ्य के होते हुए भी की निम्न परी 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) यथामंशोधित 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 संबंधित 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 स्थापक, 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 ::

Shri Antim Thakurdas Modi, Plot No. B-54, Shanker Tekri Udyognagar, Jamnagar - 361005 (hereinafter referred to as "the Appellant") has filed Appeal No. 116/RAJ/2020 against Order-in-Original No. 01/JC/VM/Sub-Commr/2020-21 dated 29.05.2020 (hereinafter referred to as "impugned order") passed by the Joint Commissioner, CGST Sub-Commissionerate, Jamnagar, (hereinafter referred to as "the adjudicating authority").

2. The facts of the case, in brief, are that a case was booked against M/s. Bhavin Impex Pvt. Ltd (100 % EOU), Jamnagar for clandestine removal of imported brass scrap and manufactured goods (ingots) without payment of applicable duties. The investigation carried out by the department in the case resulted in issuance of Show Cause Notice No. JMR/AR-SSBY/ADC/226/2009 dated 27.11.2009 to M/s. Bhavin Impex Pvt.Ltd (100 % EOU) and other co-noticees including the appellant, who was found to be involved in purchase of impugned goods from M/s Bhawin Impex cleared without invoice/bill and without payment of appropriate duty.

2.1. The SCN was adjudicated vide impugned order wherein the adjudicating authority, besides confirming demand and imposition of penalties against M/s. Bhavin Impex Pvt. Ltd (100 % EOU), also imposed penalties upon various co-noticees including the appellant under Rule 26 of Central Excise Rules, 2002 and Section 112 of the Customs Act, 1962 for purchasing brass scrap/ingots without issuance of invoice/bill and without payment of Central Excise duty from M/s. Bhavin Impex Pvt. Ltd (100 % EOU).

3. Being aggrieved, the appellant preferred the present appeal mainly on the following grounds, *inter alia*, contending that,

(i) The adjudicating authority has erred in law as well as on the facts in determining an amount of sum payable Rs. 28,50,000/- without providing a basis for arriving the amount payable; that he has passed the order without any basis and working of the amount payable

(ii) The adjudicating authority has erred in law as well as on the facts as the order violates the limitation as well as order is non-speaking and without affording the proper opportunity of being heard; that the SCN dated 27.11.2009 was served him while making an RTI application; that in response to RTI application he was provided with the copy of acknowledgment along with the proof of service of the notices of hearing however, first receipt of personal hearing letter dated 14.01.2020 was received on 22.01.2020 i.e., only one day ago and he was not in a situation to attend such personal hearing; that second and third personal hearing notice was not received by him and not reached to him .

(iii) Since other information against above RTI application was not received a letter dated 16.09.2020 was written for further clarification in the matter; that the department.vide letter dated 24.09.2020 informed that the Appellant's letter dated 06.08.2020 cannot be treated as RTI application as prescribed fees for obtaining information was not paid.



(iv) The adjudicating authority has erred in law as well as on the facts in imposition of penalty under Rule 26 of the Rules and/or Section 112 of the Act without considering that the duty payable by seller which was not paid/short paid, how the penalty under Rule 26 of the Rules and / or Section 112 of the Act is invoked on the purchaser of goods;

(v) The order is silent on the quantum of penalty levied under Rule 26 of the Central Excise Rules, 2002 as well as quantum of penalty levied under Section 112 of the Customs Act, 1962; that combined penalty is levied under both the provisions together without providing the working or base as to what amount of penalty is charged under rule 26 and what amount of penalty is charged under section 112 of the Customs Act, 1962.

(vi) The penalty under rule 26 of Central Excise Rules, 2002 is applicable if any excisable goods are involved; that adjudicating authority himself confirmed that no manufacturing activity or any process of manufacturing has been carried out on suspected clandestinely removal of brass scrap and recovery of customs duty is made as per Circular No.62/2001-Cus dated 12th November 2001 from M/s. Bhavin Impex Pvt. Ltd; that it has been appellant had purchased this brass scrap from M/s. Bhavin Impex Pvt.Ltd; that when no manufacturing activity has been carried out and goods are removed as such and no duty of excise is recoverable from such goods then these goods will not qualified as excisable goods; that if the goods are not covered under the definition of excisable goods under section 2(d) of the Central Excise Act, 1944, the penalty under rule 26 of Central Excise Rules, 2002 cannot be imposed; that the decisions in the case of (a) Haresh Garodia Vs. Commissioner of Central Excise, Raigad ([2015] 62 taxmann.com 194(Mumbai-CESTAT) and (b) Commissioner. Central Excise , Lucknow Vs. V.K. Tulsian ([2015]64 taxmann.com 377(Allahabad) support the above contention;

(vii) No penalty under section clause (i) of section 112 is imposable upon them as Brass scrap are not prohibited goods under Customs Act or any other act for the time being in force. Penalty under clause (iii), (iv) and (v) of the section 112 of the Customs Act, 1962 also not imposable upon him. Clause (ii) of section 112 of the Act may be applicable but since the provisions of section 114A of has not been invoked in SCN or impugned order, this clause is also not applicable.

(viii) Quantum of penalty under section 112(ii) of the Act is required to be reworked as per the quantification sheet furnished.

4. Personal hearing in the matter was conducted on 17.08.2021. Shri Sagar Shah, Chartered Accountant, appeared on behalf of the Appellant. He reiterated the submissions made in appeal memorandum and submitted a quantification of penalty amount which could be levied in the case against the appellants as per legal provisions. He relied upon following case laws in support of his contentions:

(i) Haresh Garodia Vs. Commissioner of Central Excise, Raigad ([2015] 62 taxmann.com 194(Mumbai-CESTAT) and

(ii) Commissioner, Central Excise, Lucknow Vs. V.K. Tulsian ([2015]64 taxmann.com 377(Allahabad).



5. I have carefully gone through the facts of the case, the impugned order, and submissions made in appeal memorandum. It is observed that the issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority imposing penalty of Rs. 28,50,000/- upon the Appellant is correct, legal and proper or not.

6. It is observed from the case records that there is no dispute regarding the purchase of goods by the appellant from M/s. Bhavin Impex Pvt. Ltd (100 % EOU), which were allegedly cleared without payment of duty. The Appellant's one of the contentions is that the impugned order has been passed without affording them any opportunity of being heard. In this regard, I find from the case records that in response to RTI application made, the Appellant was provided with the copy of the Acknowledgment along with the proof of service of the notices of hearing which were proposed to be held on 23.01.2020, 10.02.2020 and 27.02.2020. However, the Appellant's argument is that he had received first hearing notice only on 22.01.2020 i.e., only one day ago and other two notices did not receive by them. I find that it is not proper to verify veracity of information provided by the department in reply to RTI application made by the Appellant. Also, if the Appellant was not satisfied with the documentary evidences provided, he should have raised the issue with the competent authority as per the mechanism provided under RTI Act itself. As regards non-receipt of SCN, I find that the Joint Commissioner, Sub-Commissionerate, Jamnagar vide letter dated 11.09.2020 had provided a copy of acknowledgement to the Appellant, which clearly suggests that he had received the SCN dated 27.11.2009 on 09.12.2009, hence the declaration made by him in his affidavit that the SCN dated 27.11.2009 was served to him while making an RTI application, also appears to be untrue. Thus, I find that arguments made by the Appellant in this regard are baseless and devoid of merit.

7. As regards the contention of the appellant regarding imposition of penalty, I find that the adjudicating authority has discussed the contents of the statement dated 05.03.2008 of the Appellant recorded under Section 14 of the Central Excise Act, 1944 at Para-43 of the impugned order, from which it is evident that the Appellant had purchased (sheet cutting) Brass Scrap weighing to **990.300 kg valued at Rs. 2,61,703/-** from Shri Sanjaybhai of M/s. Bhavin Impex Pvt. Ltd without bill or invoice. The statement given under Section 14 of the Central Excise Act, 1944 is an admissible piece of evidence. The validity and admissibility of statement recorded under Section 14 of the Central Excise Act, 1944 has been established by the Hon'ble Supreme Court in the case of (a) Surjeet Singh Chhabra Vs. UOI 1997(89) ELT646(SC) and (b) Naresh J. Sukhwani Vs. UOI 1996(83)ELT258(SC). I also find that the Appellant has not retracted his above statements nor denied the contents of the same in his submissions. Thus, it is clear that the Appellant had abetted M/s. Bhavin Impex Pvt. Limited in clandestine clearance of impugned goods. For above abetment, the Appellant is liable for imposition of penalty under relevant legal provisions. However, I find some force in Appellant's argument that the impugned order is silent on the quantum of penalty levied under Rule 26 of the Central Excise Rules, 2002 as well as under Section 112 of the Customs Act, 1962 and that combined penalty is levied under both provisions together without providing the working or base as to what amount of penalty is charged under Rule 26 and what amount of penalty is charged under Section 112 of Customs Act, 1962.

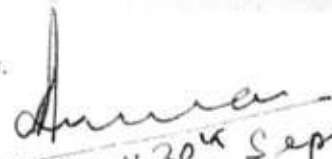
7.1 I find that while imposing the penalty of Rs. 28,50,000/- upon the Appellant, the adjudicating authority at Para-61 of the impugned order has observed, "I impose penalty on the following co-noticee under Rule 26 of the Central Excise Rules, 2002 and under section 112 of the Customs Act, 1962 as applicable on the Noticee Nos. 4 to 14 for the Acts of omission/commission as discussed in paras supra.". Thus, the adjudicating authority has not specifically mentioned as to under which provisions i.e., under Rule 26 of the Central Rules, 2002 or Section 112 of the Customs Act, 1962, the penalty has been imposed upon the Appellant. Further, the adjudicating authority has also not recorded any findings or justification regarding quantum of penalty imposed. Thus, I find the impugned order is a non-speaking on above count.

8. In view of the above, I set aside the impugned order so far as it relates to imposition of penalty of Rs. 28,50,000/- upon the Appellant, and remand the matter to the adjudicating authority with a direction to pass a speaking order about imposition of penalty upon the Appellant specifically invoking penal provisions and also giving findings about quantum of penalty arrived upon. Needless to mention that principles of natural justice should be adhered to while passing *de novo* order.

9. I set aside the impugned order to the extent of imposition of penalty upon the Appellant and dispose the appeal by way of remand to the adjudicating authority.

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

10. The appeal filed by the Appellant is disposed off as above.


(Akhilesh Kumar)
Commissioner (Appeals)
20th September, 2021.

Attested


(Ketan Dave)
Superintendent (Appeals)

By RPAD

To Shri Antim Thakurdas Modi, Plot No. B-54, Shanker Tekri Udyognagar, Jamnagar -361005	प्रति श्री अंतिम ठाकुरदास मोदी, प्लॉट नंबर बी-54, शंकर टेकरी उद्योगनगर, जामनगर -361005
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प्रतिलिपि :-

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

