



:: आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर/कीर्करीय 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



सत्यमेव जयते

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रजिस्टर्ड डाक ए.डी.द्वारा

DIN-20220564SX0000666EAF

क	अपील / फारम संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/24/BVR/2021	02/AC/HKM/BVR-2/2-21-22	20.04.2021

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

BHV-EXCUS-000-APP-002-2022

आदेश का दिनांक / Date of Order:	28.04.2022	जारी करने की तारीख / Date of issue:	23.05.2022
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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 / 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. Bharat Sheth, Plot No. 619, B-2/Geetha Chowck, Jain Derasar Road Bhavnagar

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

- (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) बर्गीकरण, मूल्यांकन से सम्बन्धित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं. 2, आर.के. पुरम, नई दिल्ली, को की जानी चाहिए। /
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.
- (ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असारवा अहमदाबाद- 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 मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये 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। स्वयंन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये 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 नियमावली, 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 (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये 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। स्वयंन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये 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/-.



- (ii) 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 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.
- (iii) 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 जमाना विवादित है, या जमाना, जब केवल जमाना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा 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 डी के अंतर्गत रकम
 - (ii) सेनवेट जमा की ली गई रकम 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 स्थान अर्थात् 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 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 गरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबैट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। / In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
 - (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
 - (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो छूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समावाधि 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 संश्लेषण 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 चाहिए। इस तथ्य के होते हुए भी की निष्ठा पत्री 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 filed 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) नियमावली, 1982 में वर्णित एवं अन्य संबंधित 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.cbcc.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.cbcc.gov.in.



ORDER-IN-APPEAL

The present appeal has been filed by Shri Bharat Sheth, Plot No. 619, B-2, Geeta Chowk, Jain Derasar Road, Bhavnagar (hereinafter referred to as "the Appellant") against Order-in-Original No. 02/AC/HKM/BVR-2/2021-22 dated 20.04.2021 (hereinafter referred as the impugned order) passed by the Assistant Commissioner, Central GST, Division-2, Bhavnagar (hereinafter referred to as "the Adjudicating Authority").

2. A case was booked against M/s Salgaocar Engineers Pvt Limited, Plot No 12, Ship Breaking Yard, Sosiya, Dist: Bhavnagar. The unit was engaged in the process of obtaining goods and materials by breaking ships, boats and other floating structures amounting to manufacture in terms of Note 9 of Section XV of the First Schedule to the Central Excise Tariff Act, 1985 and was registered with the Central Excise Department and was availing Cenvat Credit under the Cenvat Credit Rules, 2004 (herein after referred to as the said rules).

3. The Officers of Directorate General of Central Excise Intelligence (herein after called as DGCEI for sake of brevity) gathered an intelligence which indicated that some of the ship breaking units of Alang/Sosiya were engaged in large scale evasion of Central Excise duty by way of clandestine removal of plates to the rolling Mills; diversion of goods; under valuation and mis-declaration of goods etc. and most of the aforesaid type of illicit activities were carried out by ship breakers with the support of some brokers. These brokers obtained orders from different rolling Mills Units and Furnace units and many times, dispatched the material through some transporters without any Central Excise Invoice and without payment of duty. Similarly, they procured orders from the Furnace unit and registered dealers etc for supply of false Cenvat invoices without any physical supply of goods. These brokers took the responsibility of payments from such recipients units by way of various bank instruments; and after making such official payments to the ship breakers, they paid back equivalent cash amount to such recipient units after deduction of the commission. Several brokers had obtained orders for plates and scraps from rolling mills and traders which was supplied without invoices against cash payment. It was also gathered that the ship breakers and brokers were ensuring safe transfer of unaccounted cash amounts through Angadias/ Shroffs etc situated around Bhavnagar. A thorough study was conducted by the DGCEI and on discreet verification of the intelligence, it was gathered that some of the brokers were the main executors and facilitators of the aforesaid illicit transactions, who acted as illegal conduits between the aforesaid chain of ship breakers, rolling Mills, Furnace Units,



Registered dealers, traders, transporters, Angadias and Shroffs etc for execution of the fraud and thereby aided, abetted and facilitated the assesses for large scale of evasion of Central Excise duty.

4. The DGCEI conducted a coordinated search operations at the premise of some of the major brokers at Bhavnagar. Several incriminating documents substantiating the above intelligence were recovered during the search. Thereafter, another round of search operation was conducted which showed that several transporters, whose documents were available on records of recipient furnace units, were fake. Searches were also conducted at the premises of various Ship Breaking Units and Rolling Mills. The transporters whose name appeared in specific case were also covered. Preliminary scrutiny of the documents resumed from the various premises as a result of the aforesaid operation validated the intelligence and therefore the DGCEI initiated a thorough investigation into various aspects involving evasion of Excise duty as well as fraudulent availment of Cenvat Credit etc. The intelligence indicated that the Appellant was one of the major brokers of Iron and Steel at Bhavnagar who was also involved in large scale illicit activities of aiding, abetting and facilitating the ship breaking units, Furnace Units and Rolling Mills in clandestine removal of dutiable goods and fraudulently passing on Cenvat Credit without supply of goods. Therefore, a search operation was also conducted at the residence cum office premises of the Appellant, in which certain incriminating documents, were recovered, which led to conclusion that Central Excise was evaded.

5. On conclusion of investigation by the DGCEI, Show Cause Notice No. V/73/03-25/ D/ Rural/ 13-14 dated 4.02.2014 (in brief SCN) was issued inter-alia, proposing imposition of personal penalty on the appellant under sub-rule (1) and (2) of Rule 26 of the Central Excise, 2002. The said Show Cause Notice was adjudicated by the adjudicating authority vide Order in Original Number 05/AC/Rural/BVR/PS/2015-16 dated 15.07.2015 wherein the proposal made in SCN was confirmed. Being aggrieved with the said Order in Original, Appellant preferred an appeal before the Commissioner (Appeals), Rajkot who vide OIA No BHV-EXCUS-OOO-APP-034-2016-17 dated 03.07.2016 had reduced the personal penalty imposed upon the appellant from Rs. 1,00,800/- to Rs 25,000/- under Rule 26(1) & (2) of the CER. The appellant, being aggrieved with the above order of the Commissioner (Appeals), had preferred an appeal before the CESTAT, Ahmadabad who, vide Final Order No A/ 13877/13931/2017 dated 28.12.2017 had remanded the case back to the adjudicating authority to carry out a detailed analysis of the evidences on records. The adjudicating authority has in the remand proceedings passed the impugned order wherein he has upheld the penalty of Rs. 25,000/- upon the appellant.



statements had been shown for confirmation of facts to the appellant. The appellant had agreed upon the facts narrated in the said statements given by the accountant in his statements dated 30.03.2010, 12.04.2010, 27.07.2010 and 04.08.2011 recorded during investigation. Further, the records resumed under the Panchnama dated 30.03.2010 also indicate that the appellant was engaged in supporting such illicit activities for evasion of Central Excise Duty.

13. In the appeal proceedings, it is the contention of the appellant that Rule 26 of the Central Excise Rules, 2002 is bifurcated in two parts, one related to goods cleared without proper invoice, and another related to clearance of goods clandestinely. It is observed that Rule 26 *ibid* has specifically provided for penalty for those persons who had assisted, doing and other related work or activities for removal of excisable goods without payment of invoices as well as related to wrong availment of Cenvat credit. The text of Rule 26 *ibid* is under:

RULE 26. Penalty for certain offences. — [(1)] Any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or these rules, shall be liable to a penalty not exceeding the duty on such goods or [two thousand rupees], whichever is greater.

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

(2) Any person, who issues -

(i) an excise duty invoice without delivery of the goods specified therein or abets in making such invoice; or

(ii) any other document or abets in making such document, on the basis of which the user of said invoice or document is likely to take or has taken any ineligible benefit under the Act or the rules made thereunder like claiming of CENVAT credit under the CENVAT Credit Rules, 2004 or refund, shall be liable to a penalty not exceeding the amount of such benefit or five thousand rupees, whichever is greater.]

From the above legal provisions, it is observed that the contention of the appellant is neither correct nor sustainable. Shri Manishbhai Himmatlal Patel, Accountant of the appellant, had confirmed in various statements dated 12.04.2010, 27.07.2010, 14.08.2010 (two statements), 26.08.2010 and 04.08.2011 given to investigation agency that his firm is engaged in supply of goods without Central Excise Invoices to Rolling Mills in Gujarat and Maharashtra. His firm is also engaged to supply only invoices to Furnace Units. He also confirmed that various records seized under Panchnama dated 30.03.2010 during the search operation carried out at the premises of the appellant, were related to details of goods removed without central excise invoices, cash received through Angadia from the recipient of goods, only supply of central excise invoices to the furnace units and cash payment made to such furnace unit after deducting taxes and commission of firm. Facts mentioned in these statements had been confirmed by the appellant vide his statements dated 30.03.2010, 12.04.2010, 27.07.2010 and 04.08.2011. Further, these statements given by the appellant and his accountant had not retracted. From all this action of the appellant, I conclude that the appellant is indulged in abetting of illicit



removal of goods as well as supply of invoice without removal of goods. Hence, the appellant had abetted in illicit activities and he is liable for imposition of penalty under Rule 26 *ibid*. Therefore, the contention of the appellant that the Rule 26 *ibid* is in two parts and that none of the part applicable to him, is not sustainable.

14. The appellant has further contended that he was a middleman and his job was to recognise the purchaser of goods obtained during ship breaking. He also contended that he had not involved directly or indirectly in the so called allegation of clandestine removal. However, from the records of the case and discussion made in para supra, it is established that the appellant was involved in abetting by way of removal of excisable goods without invoice as well as by providing only invoice without supply of goods in order to avail CENVAT fraudulently. Therefore, the contentions of the appellant are not tenable in view of his own admission.

15. The appellant has further contended that he had maintained diaries in question for the work of brokerage and that there is no corroborative evidence disclosing that he himself was involved in these activities. In this regard, I find that various statements of the accountant of his firm was recorded during investigation wherein he had deposed that in diary notes were made in coding and it was related to goods obtained from ship breaker or goods sent to Furnace Units/Rolling Mills by the ship breakers through their firm or cash received from Angadia against goods supplied by their clients. These activities narrated in diary are sufficient to prove that the said diary was not only used for noting of brokerage but also of noting of illicit removal of goods. Therefore, the contention of the appellant is not tenable and is liable for rejection.

16. It has also been contended by the appellant that third party's evidences are not considered as corroborative evidences for the purpose of imposition of penalty under Rule 26 of the Central Excise Rules, 2002. In this regard I find that the version given in the statements given by the accountant of the appellant firm had been confirmed by the appellant himself on various occasions. They have never been retracted and hence the confirmation of statements of the accountant by the appellant is sufficient to impose penalty under Rule 26 *ibid* and the same can be considered as corroborative evidences. Therefore, this contention of the appellant I also liable for rejection.

17. Another contention of the appellant is that he, being a middleman, was not involved the activities of clandestine removal and diversion of goods as alleged in show cause notice. However, this contention is contrary to the



admission by him to the facts narrated by the accountant of his firm. As discussed in *para supra*, the appellant was involved in abetting the ship breakers, furnace unit and rolling mills by way of issuance of invoices for availment Cenvat credit without any supply of goods. Therefore, this contention of the appellant is devoid of any merit.

18. The appellant has also contended that the adjudicating authority had not considered his contention and various case laws which was relied upon by him during adjudication process. In this regard, I find that the adjudicating authority has in Para 13 of the impugned order observed that the adjudicating authority had during earlier round of litigation discussed the role played by the appellant and that he agreed with his findings contained in Order-in-Original dated 28.02.2015 as well as Order-in-Appeal dated 16.05.2016. Hence, this plea also not sustainable.

19. In view of the above, I find that various pleas taken by the appellant in the appeal memo for non imposition of penalty are not legally tenable in the facts and circumstances of the case. Further, as discussed in *para supra*, it is apparent that the appellant was found indulged in abetting of removal of goods without payment of central excise duty as well as by way of supply of invoices evidencing payment of central excise duty without actual removal of goods to various furnace units or rolling mills. Therefore, it is established that the appellant was abetting in duty evasion activities and he was rightly held liable for penalty imposed under Rule 26 *ibid*. I also rely upon various decisions of the appellate forums which are as under:

- *In the case of Prakash M Patel Shiv Kripa Ispat Pvt Ltd vs Commissioner of Central Excise, Nashik reported in 2009-TIOL-765-CESTAT-MUM wherein it was held that Goods removed clandestinely without payment of any C.Ex. duty - Redemption fine not imposable - Purchaser of goods is aware of non-duty paid character of the goods and hence is liable to penalty under rule 26 of CER,2002 more so since supplier has conceded the offence and paid up the duty and penalties;*
- *Shri Ajay S Singhal, Shri Sandesh T Bhingarde, Shri Amrit Kumar Chauhan Vs Commissioner Of Central Excise & Service Tax, Vapi reported in 2013-TIOL-1916-CESTAT-AHM wherein it was held that Personal penalty under Rule 26 of Central Excise Rules, 2002 - Imposition on Director, Authorized Signatory and Transporter agitated - primary duty liability, interest and 25% of penalty already paid by the firm charged with clandestine manufacture and clearance - Held: Since main manufacturer firm was penalized only to the extent of 25%, personal penalty on Director is excessive and stands reduced from Rs.10 lakh to Rs.3 lakh - Penalty on authorized signatory sustained in terms of the Hansa Gosalia case, but reduced from Rs.5 lakh to Rs.2 lakh - Transporter not maintaining written records and action abetting main firm to evade duty not free from doubt, significant role played by transporter merits penalty but stands reduced from Rs.8 lakh to Rs.2 lakh - Penalties imposed reduced and OIO modified.*



- *Parvesh Jain, Babu Di Fancy Hatti, Jainico Traders Vs Commissioner Of Central Excise, New Delhi reported in 2017-TIOL-1945-CESTAT-DEL wherein it was held that All the firms were manufacturing cosmetic products and selling them through various trading firms - Appellants have challenged the imposition of penalty under Rule 26 of CER, 2002 - In respect of goods purchased without bills, payments were settled in cash and for goods purchased with bills, payments were settled by cheque - A penalty has been imposed on Jainico traders, Proprietor Shri Sanjay Jain - Shri Sanjay Jain, Partner has admitted that they were purchasing goods from Shri Ashok Jain both with bills and without bills every month - Further, goods were seized from their premises which were cleared without payment of duty - **Penalty imposed under Rule 26 is fully justified and merits no interference - A penalty of Rs 1 lakh has been imposed on Shri Parvesh Jain - Shri Parvesh Jain also in his statement has admitted that he has managed the sales without invoices - Consequently, penalty is liable to be imposed on Shri Jain under Rule 26 - No reasons found to interfere with impugned order.***
- *PRAG CARRIERS PVT LTD Vs COMMISSIONER OF CENTRAL EXCISE, THANE-I reported 2016-TIOL-1388-CESTAT-MUM wherein it was held that Appellant transported goods which were cleared without payment of CE duty or without proper duty paying documents - vehicles were seized - in adjudication no penalty was imposed on the ground that appellant are neither a producer, manufacturer, registered person etc.; truck was also held not liable for confiscation - Commissioner (A) in Revenue appeal holding that seized vehicles could be confiscated u/s 115(2) of Customs Act, 1962 (option of redemption fine of Rs.50,000/- each) and appellant could also be imposed with penalty - appeal to CESTAT by transporter. Held: **In the instant case there is no doubt that the appellants were aware that they are dealing with the goods cleared without proper documentation and they were themselves involved in transporting of goods; therefore, they are liable to penalty under Rule 26 of the CER, 2002 - the trucks were used to carry non-duty paid goods and, therefore, the vehicles are liable to confiscation under the section 115(2) of the Customs Act as made applicable to the Central Excise vide Notification No. 68/63 dated 04/05/63 - as regards contention of appellant that the order of the Commissioner (A) is beyond the scope of SCN, section 35A of CEA provides for procedure to be followed in appeal and in the present case appeal has been filed precisely for imposition of penalty and confiscation of vehicles - Commissioner (A) has granted opportunity to the appellant to represent their case, therefore, it cannot be held that the power u/s 35A has not been exercised properly - appeals are dismissed.***
- *M/s Shiv Textiles And Others Vs Commissioner Of Central Excise And Service Tax Surat reported in 2019-TIOL-2158-CESTAT-AHM wherein it was held that M/s. PPL, 100% EOU procured duty free yarn as well as imported yarn and sold in the open market without using in manufacture of export goods - It was shown that yarn was subject to job work and the job worker manufacture the grey fabric and thereafter the goods were supplied to other 100% EOUs - SCN was issued and demand of differential duty of duty free yarn was confirmed against M/s. PPL, 100% EOU who has not filed any appeal before this Tribunal - The present appellants are job workers for job work of the goods on behalf of M/s. PPL, on whom penalties under Rule 26 were imposed - As regards the clandestine removal of duty free yarn procured domestically as well as imported, the case has been established beyond any doubt against M/s. PPL, 100% EOU - M/s. PPL is not in the appeal with the present appellants - The limited issue to be decided is that whether the present appellants are liable for penalty under Rule 26 of CER, 2002 and Rule 209A of erstwhile CER, 1944 for abetting evasion of duty committed by M/s. PPL - The premises of job workers were used to show*



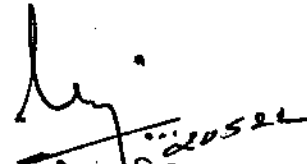
supply of duty free yarn and manufacture there from in that job worker's premises but in the investigation, it is established that the job workers had no manufacturing facility - Therefore, the job work premises were used only to mislead the department by showing fake job work and consequently cleared the duty free yarn in the open market - In the process of duty evasion, the job workers have actively contributed in duty evasion inasmuch as the premises of job worker were shown to have rented out to M/s. PPL - Moreover, the job work challans were also signed by those job workers - Despite the fact known to them that there is only paper transaction is being done, the job workers have signed the blank challans which were used by M/s. PPL for showing the job work - Therefore, the appellants (job workers) were actively involved in facilitating M/s. PPL for clandestine removal of duty free yarn - Accordingly, they are rightly liable for penalties under Rule 26 / 209A - As regards the other appellants, M/s. Regent Overseas Pvt. Limited and M/s. Pooja Tex Prints Pvt. Limited to whom M/s. PPL had shown clearance, had also actively and knowingly connived with M/s. PPL in diversion of duty free raw materials inasmuch as manipulating the documents to show the receipt of grey fabrics of heavier GSM whereas in fact they had received the grey fabrics of lighter GSM - Thus, they have facilitated M/s. PPL by showing receipt of goods from M/s. PPL and are correctly liable for penalty under Rule 209A of erstwhile CER, 1944 / Rule 26 of CER, 2001/2002 - It is not coming out from the record that the appellant have communicated with the department regarding the change of their address - Secondly, from the entire case, it is established that on the basis of evidences, assessee was actively involved in manipulating records for facilitating M/s. PPL in evasion of duty - The Adjudicating Authority has rightly imposed penalties upon all the appellants - No infirmity found in the findings of the Adjudicating Authority.

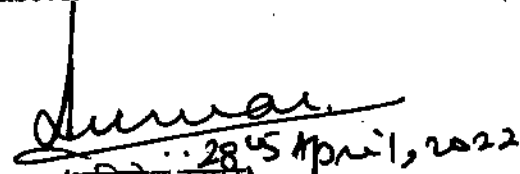
20. In view of above, I uphold the impugned order and reject the appeal filed by the Appellant.

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

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

सत्यापित / Attested


एन. सी. गाजरिया
N. C. Gajariya
अधीक्षक
Superintendent


28th April, 2022
(अखिलेश कुमार)
आयुक्त (अपील)

F.No. V2/24/BVR/2021
Date : 25/ 04 /2022

By RPAD

To Shri Bharat Sheth, Plot No.619, B-2, Geeta Chowk, Jain Derasar Road, Bhavnagar	प्रति, श्री भारत शेठ, प्लॉट नो। 619 B-2, गीता चौक, जैन देरासर रोड, भावनगर
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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/आयुक्त, वस्तु एवं सेवा कर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
- 3) संयुक्त आयुक्त, राज्य वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, S-20, दूसरी मंजिल बहुमाली भवन नीलम बाग पेलेस के पास को, सेक्शन 107(15) of GST Act, 2017 के अनुसार जानकारी हेतु।
- 4) उप आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भवनगर-II ;, को आवश्यक कार्यवाही हेतु।

✓ 5/ गार्ड फाइल।



6. Being aggrieved by the impugned order, the appellant has filed this appeal on the following grounds:

- Rule 26 of the Central Excise Rules, 2002 is bifurcated in two parts one related to goods cleared without proper invoice and another related to clearance of goods clandestinely;
- The appellant is a middleman and his job to recognise the purchaser of goods obtained during ship breaking;
- The appellant had not involved directly or indirectly in the so called allegation of allegation of clandestine removal;
- The appellant had maintained diaries in question for the work of brokerage. There no corroborative evidence disclosing that himself was involved in this activities;
- The third party's evidences are not considered as corroborative evidences for the purpose of imposition of penalty under Rule 26 of the Central Excise Rules,2002 ;
- Being a middleman, the appellant is not involved the activities carried out for clandestine removal and diversion of goods as alleged in show cause notice ;
- The adjudicating authority has not considered his various contentions regarding wrong imposition of penalty under Rule 26 *ibid* ;
- The appellant He has relied upon various case laws during the course of every adjudication but the same was not considered by the adjudicating authority;
- The appellant has requested to set aside impugned order and allow his appeal

7. Personal hearing in the matter was scheduled on 01.12.2021, 17.12.2021, 30.12.2021 and 05.04.2022 through virtual mode. The appellant did not turn up for personal hearing on any of the dates. He had vide letter dated 14.12.2021 requested for granting another date of personal hearing instead of those fixed on 17.12.2021. Therefore, next date of personal hearing was fixed on 30.12.2021. The appellant has filed another written submission wherein he reiterated submissions made in the appeal memorandum. The last opportunity of personal hearing was given on 05.04.2022 but the appellant did not turn up for the same.

8. The adjudicating authority has vide letter no. V.72/02-03/Appeal/Bharat Sheth/21-22 dated 19.08.2021 informed that the appellant was involved in illicit removal of clandestine removal of goods which is confirmed by his various statements recorded during the investigation. These confirmations were given by



the appellant after examination of documents seized, in his statements in question. Further, the said statements have not been retracted by the appellant. This action confirms the credibility of the truthfulness of the evidence on the records. The whole issue is also discussed in the impugned order.

9. I have gone through the facts of the case, submissions made in the Appeal Memorandum, materials available on record and the impugned order passed by the adjudicating authority. I find that the issue to be decided in the case is whether penalty imposed under Rule 26 *ibid* on the Appellant in the impugned order is correct and legal or not.

10. The present appeal was filed with this office on 02.07.2021 whereas the impugned order has been communicated by the department and received by the appellant on 22.04.2021. Hence, the present appeal has been filed by the appellant after passing 60 days from the date of communication of impugned order. Further, the appellant has not filed any application in respect of condonation of delay in filing appeal. Hence, the appeal is liable for rejection on the ground of being time barred under Section 35(1) of the Central Excise Act, 1944. However, the Board vide Circular No. 157/13/2021-GST dated 20.07.2021 has clarified that the extension of timelines granted by the Hon'ble Supreme Court vide its Order dated 27.04.2021 is applicable in respect of any appeal which is required to be filed before the appellate authority under GST Laws. Thus, the timelines for filing of appeals has been extended until further orders and the appeal filed by the appellant is considered to have been filed well within the time.

11. I find that the impugned order has been passed in remand proceedings as per the directions of the Hon'ble CESTAT, Ahmadabad, who vide Final Order No. A/13877-13931/2017 dated 28.12.2017 had remanded the case back to the adjudicating authority to analyse the evidences in detail and record findings on the said evidences relied upon in raising the demand and proposing penalties against the appellants. The adjudicating authority has imposed the penalty of Rs. 25,000/- under Rule 26 *ibid* in the remand proceedings after analysing the evidences on records.

12. It is observed that the adjudicating authority has considered the statements given by Shri Manishbhai Himmatlal Patel, Accountant in the appellant's firm, wherein he has given details of involvement of his firm in abetting the ship breakers, Furnace Unit and Rolling Mills in removal of goods without invoice, as well as providing only invoice without supply of excisable goods for availing Cenvat credit under the Cenvat Credit Rules, 2004. These

