::आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा करऔरकेन्द्रीय 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: commrappl3-cexamd@nic.in

सत्यमेव जयते

रजिस्टर्डडाकए.डी.द्वारा

DIN-20220664SX0000515485

क	अपील / फाइलसंख्या/ Appeal /File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/59/BVR/2021	008/CENTRAL EXCISE/DEMAND/2021-22	4/6/2021

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

BHV-EXCUS-000-APP-003-2022

आदेश का दिनांक / Date of Order:	31.05.2022	जारी करने की तारीख / Date of issue:	01.06.2022

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 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.Garg Casteels Pvt. Ltd., Survey No. 43/1, Sihor-Ahmedabad Road, Village-Vadia, Tal- Sihor Bhavnagar-364240

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क ,केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम ,1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है।/

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर॰ के॰ पुरम, नई दिल्ली, को की जानी चाहिए।/

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क,केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, ,द्वितीय तल, बहुमाली भवन असरवा 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 मांग ,ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम,5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो 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,1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 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 मांग ,ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम,5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो 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,1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। /
The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

(ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है

(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की ली गई गलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं॰ 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन 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 outside India 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 आदेशो का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various umbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-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 ::

M/s. Garg Casteels Pvt Ltd, Survey No. 43/1, Sihor – Ahmedabad Road, Village – Vadia, Tal: Sihor, Bhavnagar (hereinafter referred to as "Appellant") has filed Appeal No. V2/59/BVR/2021 against Order-in-Original No. 008/CENTRAL EXCISE/DEMAND/2021-22 dated 04.06.2021 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Central GST, Division: Bhavnagar 1 (hereinafter referred to as 'the adjudicating authority').

2. The facts of the case, in brief, are that the Appellant was having an induction furnace for manufacturing of M.S. Ingots and Hot Re-rolling Mills for manufacturing of Iron and Steel products falling under Chapter 72 of the First Schedule to the Central Excise Tariff Act, 1985. These goods were notified under the erstwhile Section 3A of the Central Excise Act, 1944, ('the Act") and levy and payment of duty thereon were governed by erstwhile Rule 96ZO and 96ZP of the Central Excise Rules, 1944 ("the Rules"). Consequent upon introduction of Hot Re-rolling Steel Mills Annual Capacity Determination Rules, 1997 ('HRSMACD Rules'), the Appellant opted for discharging duty liability based on Annual Capacity of Production (ACP) under erstwhile Section 3A of the Act read with Rule 3(3) of the erstwhile HRSMACD Rules.

2.1 As per formula prescribed under Rule 3 of HRSMACD Rules, as amended vide Notification No. 45/97-CE(NT) dated 30.08.1997, the ACP in the Appellant's case was calculated at 7371.550 MTs. However, the production for the Financial Year 1996-97 was 9382.660 MTs, which was more than ACP calculated. Hence, the Commissioner, erstwhile Central Excise, Rajkot vide letter F. No. IV/16-86/MP/97 dated 28.08.2000, determined the ACP at 9382.660 MTs based on the actual production recorded in the year 1996-97 by following Rule 3 read with Rule 5 of the HRSMACD Rules.

2.2 Further, the Commissioner, erstwhile Central Excise Rajkot vide OIO No. 40-52/TECH/COMMR/2001 dated 25.11.2000, on the basis of ACP fixed at 9382.660 MTs., had adjudicated 13 SCNs issued to the Appellant covering the period from October, 1997 to March, 2000 wherein he had confirmed the demand of central excise duty amounting to Rs. 70,37,010/-. As the appellant had paid the amount of Rs. 31,42,700/-, it was ordered for recovery of balance amount of Rs. 38,94,310/- under erstwhile Rule 96ZP(3) of the Rules read with Section 11A of the Act. The demand of interest and penalty were deferred in view of Hon'ble Supreme Court's Order dated 21.04.1998 till the final outcome of pending Civil Appeal before the Hon'ble Court.

2.3 Being aggrieved by the above OIO, the Appellant filed appeal before the Hon'ble Tribunal, Ahmedabad. The Hon'ble Tribunal vide Order dated 09.10.2001, after observing that change in parameters has resulted in reduction of annual capacity of production, held that Rule 5 of the above said Rules is not relevant in the present situation and actual production of 1996-97 cannot be adopted for such circumstances. The Hon'ble Tribunal vide the above said order had set aside the order of the Commissioner and remanded the matter to the Assistant Commissioner for working out duty liability in light of guidelines given therein. The Appeal filed by the department against above order of the Hon'ble Tribunal was dismissed by the Hon'ble High Court of Gujarat vide Order dated 08.03.2002.

2.4. In remand proceedings, the Assistant Commissioner vide OIO No. 394-406/D/EXCISE/2011-12 dated 26.03.2012, relying upon Hon'ble Supreme Court decision in the case of CCE Vs. Doaba Steel Rolling Mills (2011(269) ELT 298(SC) and other case laws and in terms of Rule 5 of HRSMACD Rules, had confirmed the duty demand of Rs. 38,94,310/- along with interest. The Assistant Commissioner had also imposed equivalent penalty under Section 11AC of the Act.

2.5 Being aggrieved by the above OIO, the Appellant filed appeal before the Commissioner (Appeals), Rajkot, who vide OIA dated 17.10.2016, following the decision of Hon'ble Supreme Court in the case of CCE Vs. Doaba Steel Rolling Mills [2011(269) ELT 298(SC)] and Shree Bhagwati Steel Rolling Mills [2007(297)ELT 58(P & H)] upheld the demand of duty but quashed the imposition of interest and penalty.

2.6 The Appellant filed appeal against the above OIA before the Hon'ble Tribunal, Ahmedabad. The Hon'ble Tribunal vide Order dated 22.10.2018 had held that the decision in the case of Doaba Steel Rolling Mills (supra) cannot be made applicable when the Tribunal's order in the Appellant's own case has attained finality. Therefore, the Hon'ble Tribunal vide above order had observed that both the lower authorities erred in not following the Tribunal's direction for re-quantification of duty on the basis of changed parameters, in terms of HRSMACD Rules, and directed the Assistant Commissioner to re-quantity the demand in terms of Hon'ble Tribunal's Order dated 09.10.2001 passed in Appellant's own case.

2.7 The adjudicating authority has, in the remand proceedings, vide the impugned order, re-quantified the Central Excise duty at Rs. 37,62,946/-. As the Appellant had

already paid Rs. 31,42,700/-, he has appropriated the same and confirmed the demand of balance amount of Rs. 6,20,246/- along with interest.

3. Being aggrieved by the impugned order, the Appellant has preferred the present appeal contending, *inter-alia,* as under:

(i) The adjudicating authority has not only acted in defiance of the binding directions of the Hon'ble Tribunal in the order dated 22.10.2018 and earlier order dated 09.10.2001 which had also attained finality but has also gone beyond the scope of SCN while arriving at the excise duty payable per month;

(ii) The adjudicating authority has arrived at the excise duty payable at Rs. 32,83,938/- for the period from Oct-1997 to Nov-1998 by taking ACP at 9382.660 MTs. It is therefore evident that the adjudicating authority has applied the actual production for the F.Y. 1996-97 even for the F.Y. 1997-98 and 1998-99 and ignoring the change in parameters effected by the Appellant with effect from 01.10.1997. The law stands settled that the actual production of F.Y. 1996-97 even though higher than the ACP arrived at under Rule 3 of the HRSMACD Rules cannot be taken into consideration and that Rule 5 of the said Rules cannot be applied once there is a change in parameters. This has been categorically held by the Hon'ble Tribunal vide its order dated 09.10.2001 which had attained finality. The adjudicating authority cannot ignore the change in parameters effected by the Appellant on 01.10.1997 and apply the actual production of F.Y. 1996-97 so as to arrive at the duty liability for the subsequent financial years.

(iii) The department had never disputed the duty liability as discharged by them during the relevant period as arrived at on the basis of ACP prior to and after change in parameters as on 01.10.1997. The entire dispute and the consequential duty liability had been raised by the department on the basis of its contention that the actual production of F.Y. 1996-97 being higher than the ACP arrived at in terms of formula as per Rule 3 of HRSMACD Rules, ought to be applied even for the subsequent period. However, the legal position on this issue stands settled against the department by the aforesaid orders dated 09.10.2001 and 22.10.2018 passed by the Hon'ble Tribunal.

(iv) The adjudicating authority has admitted that the change in parameters was effected by the Appellant on 01.10.1997. Consequently, the adjudicating authority ought to have re-quantified the duty liability for the period from Oct-1997 onwards based on the changed parameters only. Merely because the request for re-determination based on such changed parameters was made by the Appellant on 25.11.1998 cannot be a valid ground for not applying the changed parameters for the period from October-1997 to November-1998 as appears to have been done by the adjudicating authority, albeit, in a very oblique manner. No such allegation or contention was ever raised by the department that the changed parameters would be applicable only from the date of intimations/ application made by the Appellant since throughout the proceedings the issue of the SCNs, the case of the department was based upon the determination of ACP for financial years posterior to F.Y.1996-97 only on the basis of the actual production for the F.Y. 1996-97. It is therefore evident that the adjudicating authority while re-quantifying the total duty liability of the Appellant, has gone beyond the scope of the SCNs and has acted without authority of law.

(v) Assuming without admitting the justifiability of the central excise duty liability at Rs. 6.20,246/- vide the impugned order, the recovery of interest as ordered thereon is misconceived, illegal and without authority of law. It is a settled position in law that in case of duty liability arising on account of the determination/ re-determination of the ACP in terms of the relevant provisions of the HRSMACD Rules, no interest liability can be imposed upon the Assessee. The relevant provisions of Rule 96ZP of the erstwhile CER, 1944 have been struck own as ultra vires by the Hon'ble Supreme Court in the case of Shree Bhagwati Steel Rolling Mills Vs. Commissioner -2015(326)ELT209(SC). The Hon'ble Supreme Court has categorically held in this case that interest cannot be levied under Rules, 96ZO, 96ZP and 96ZQ of the erstwhile CER, 1944 as Section 3A of the Act which provided for the compounded levy scheme did not itself stipulate levying of interest. The judgment of the Hon'ble Supreme Court has since then followed in a catena of judicial pronouncements including the following:-(1) Shree Balaji Rollings Pvt ltd Vs. CCE, Goa (2016(343)ELT 346(Tri.Mumbai)(2) Avdesh Tracks Pvt ltd Vs. UOI-(2017(347)ELT 416(P &H)) (3) Assam Tubes Ltd Vs. UOI - (2018(359)ELT 470(Gau.)

(vi) The adjudicating authority has also failed to appreciate and take note of the fact that in the earlier round of litigation in the same case, the Commissioner (Appeals), Rajkot vide OIA dated 17.10.2016 had allowed the appeal filed by the Appellant against the OIO dated 26.03.2012 confirming the demand and also levying interest and penalty on the Appellant and had set aside the interest and penalty. The OIA dated 17.10.2016 apart from the fact that was in consonance with the settled legal position, had not been challenged by the department and had attained finality. Under these circumstances, the adjudicating authority ought not and could not have ordered the recovery of interest on the alleged delayed payment of duty vide the impugned order.

(vii) Even while ordering recovery of interest the adjudicating authority has not at all specified the relevant statutory provisions under which such interest could be levied upon the Appellant and recovered.

4. Personal hearing in the matter was held through virtual mode on 27.04.2022. It was attended by Shri Shailesh Sheth, Advocate and Authorized Representative of the Appellant. The advocate re-iterated the submission made in appeal memorandum and also submitted a paper book during hearing.

5. I have carefully gone through the facts of the case, the impugned order and the written and oral submissions made by the Appellant. The issue to be decided in the case is whether the impugned order confirming demand of Rs. 6,20,646/- along with interest is correct, legal and proper or not.

6. It is observed that the Appellant was engaged in manufacturing of Iron and Steel products falling under Chapter 72 of the First Schedule to the Central Excise Tariff Act, 1985. They had opted for discharging duty liability on the basis of Annual Capacity of Production (ACP) under erstwhile Section 3A of the Act read with Rule 3(3) of the erstwhile HRS MACD Rules. The Commissioner, erstwhile Central Excise, Rajkot, after

considering the actual production of the appellant during the F.Y. 1996-97 determined ACP at 9382.660 MTs and adjudicated 13 SCNs covering the period from October, 1997 to March, 2000 vide OIO dated 25.11.2000. He confirmed the demand of central excise duty to the tune of Rs. 38,94,310/-. The appeal filed by the Appellant against the above OIO was decided by the Hon'ble Tribunal vide their common order dated 09.01.2001 along with appeals of other similar Appellant-manufacturers. The Hon'ble Tribunal vide above order have held that as a result of change in parameters (specified in formula for determining in ACP under HRSMACD Rules) there was a reduction in the capacity, and hence Rule 5 of the above said Rules did not apply and accordingly remanded the matter to the Assistant Commissioner for a limited purpose of quantification / working out liability as per their directions. The above order dated 09.01.2001 of the Tribunal had attained finality as reference application filed by the department against above order of the Hon'ble Tribunal was dismissed by the Hon'ble High Court of Gujarat vide Order dated 08.03.2002 and the department had not filed further appeal in the matter.

6.1. However, the Assistant Commissioner, in remand proceedings relying upon judicial pronouncements of the Hon'ble Supreme Court, confirmed the demand along with interest and penalty considering the ACP at 9382.660 MTs initially fixed by the Commissioner. In Appeal, the then Commissioner (Appeals) vide OIA dated 17.10.2016 upheld the demand but set aside the interest and penalty. The Appellant preferred appeal before the Hon'ble Tribunal against the above OIA. The Hon'ble Tribunal vide their Order dated 22.10.2018 after observing that both the lower authorities have erred in not following the Tribunal's direction for re-quantification of duty on the basis of changed parameters under Rule 4 of HRSMACD Rules, had directed the adjudicating authority to re-quantify the demand in terms of their earlier order dated 09.10.2001. The Hon'ble Tribunal's order dated 22.10.2018 has also not been challenged by the department on monetary grounds. Resultantly, Hon'ble Tribunal's both orders dated 09.10.2001 and dated 22.10.2018 have attained finality.

6.2. Thus, the adjudicating authority, in the remand proceedings, was required to re-quantify the demand on the basis of changed parameters, in terms of Rule 4 of HRS MACD Rules, as directed by the Hon'ble Tribunal in their Order dated 09.10.2001 and 22.10.2018.

6.3. I find that the adjudicating authority, vide the impugned order, following the directions of the Hon'ble Tribunal in above orders, has observed that as per the changed parameters, the ACP comes to 2,395 MTS in accordance with the provisions of Rule 4

read with Rule 3 of the HRSMACD Rules. Accordingly, the adjudicating authority has re-quantified the central excise duty for the period from October, 1997 to March, 2000 as under: -

ACP taken as per the erstwhile HRS MACD Rules	Rate of Central Excise Duty (Rs.)	Period	Central Excise Duty payable (Rs.)
9,382.660 MTs	300/- per MT	October-1997 to November-1998	32,83,938/-
2,395 MTs	150/- per MT	December-1998 to March-2000	4,79,008/-
		Total (Rs.)	37,62,946/-

As the Appellant had already paid central excise duty amount of Rs. 31,42,700/-, the he has confirmed the demand of Rs. 6,20,246/- [Rs. 37,62,946 - Rs. 31,42,700/-] along with interest.

6.4. It is further observed that in the present appeals, the Appellant has mainly argued that the adjudicating authority has applied the actual production of 9382.660 MTs for F.Y. 1996-97 for arriving at the duty liability for the period from Octoboer-1997 to November-1998 and has ignored the changes in parameters effected by them w,e,f, 01.10.1997. It is further contended that actual production of F.Y. 1996-97, even though higher than the ACP arrived at under Rule 3 of HRS MACD Rules, cannot be applied once there is a change in parameters, as held by the Hon'ble Tribunal in their order dated 09.10.2001. In short, it is the Appellant's contention that the ACP for the period from October, 1997 to November, 1998 should also be considered as 2395 MTs under Rule 4 of the HRSMACD Rules based on changed parameters.

6.5 It is pertinent to refer to the provisions of Rule 3 to 5 of the HRS MACD Rules as amended vide Notification No. 45/97-CE(NT) dated 30.08.1997, which are reproduced below:-

> *3. The annual capacity of production referred to in rule 2 shall be determined in the following manner, namely :-*
>
> > *(1) a hot re-rolling mill shall declare the values of `d', `n', `i' and `speed of rolling', the parameters referred to in sub-rule (3), to the Commissioner of Central Excise (hereinafter referred to as the Commissioner), with a copy to the Assistant Commissioner of Central Excise;*
> >
> > *(2) on receipt of the information referred to in sub-rule (1), the Commissioner shall take necessary action to verify their correctness and ascertain the correct value of each of the parameters. The Commissioner may, if he so desires, consult any technical authority for this purpose;*

(3) the annual capacity of production of hot re-rolled products of non-alloy steel in respect of such factory shall be deemed to be as determined by applying the following formula :-

Annual Capacity = $1.885 \times 10^{-4} \times d \times n \times i \times e \times w \times$ *Number of utilised hours (in metric tonnes)*

Where :

d = Nominal centre distance of the pinions in the pinion stand in millimetres

n = Nominal revolutions per minute (RPM) of the drive

i = Reduction ratio of the gear box or of the pulley system or combination thereof

w = Weight in Kilogramme per metre of the re-rolled product

the value of 'e' in the formula shall be deemed to be 0.30 in case of low speed mills, and 0.75 in case of high speed of high speed mills

the value of 'w' factor in the formula for the high speed mills shall be deemed to be 0.45 and for the low speed mills shall be deemed to be as under, -

Nominal centre distance of the pinions in the pinion stand in millimetres	'W' in kilogramme per metre
Up to 110	0.100
111 to 160	0.150
161 to 210	0.395
211 to 260	0.888
261 to 310	1.200
311 to 360	2.466
361 to 410	4.850

Number of utilised hours shall be deemed to be as under, -

S.No.	Reheating Furnace		Utilised hours per year
	Type	No. of furnace	
1.	Batch	1	1200
2.	Batch	2	1800
3.	Batch	more than 2	2400
4.	Pusher type	1 or more	2400

Explanation. - For the purpose of this rule :-

(a) a high speed mill means a mill which produces hot re-rolled products at a speed of 8.5 metres per second or more and a low speed mill means a mill which produces hot re-rolled products a speed less than 8.5 metres per second.

(b) nominal centre distance is the pinion centre distance of the pinion stand connecting the last rolling mill drive of the finishing mill excluding any pinch roll. Such a pinch roll is not a finishing stand.",

(4) the Commissioner of Central Excise shall, as soon as may be, after determining the total capacity of the hot re-rolling mill installed in the factory as also the annual capacity of production, by an order, intimate to the manufacturer.

Provided that the Commissioner may determine the annual capacity of the hot re-rolling unit on provisional basis pending verification of the declaration furnished by the hot re-rolling mills and pass an order accordingly. Thereafter, the Commissioner may determine the annual capacity, as soon as may be, and pass an order accordingly.

4. (1) The capacity of production for any part of the year, or any change in the total hot re-rolling mill capacity, shall be calculated pro rata on the basis of the annual capacity of production determined in the above manner stated in rule 3.

(2) In case a manufacturer proposes to make any change in installed machinery or any part thereof which tends to change the value of either of the parameters `d', `n', `e', `i' and `speed of rolling' referred to in sub-rule (3) of rule 3, such manufacturer shall intimate about the proposed change to the Commissioner of Central Excise in writing, with a copy to Assistant Commissioner of Central Excise, at least one month in advance of such proposed change, and shall obtain the written approval of the Commissioner before making such change. Thereafter the Commissioner of Central Excise shall determine the date from which the change in the installed capacity shall be deemed to be effective.

5. In case, the annual capacity determined by the formula in sub-rule (3) of rule 3 in respect of a mill, is less than the actual production of the mill during the financial year 1996-97, then the annual capacity so determined shall be deemed to be equal to the actual production of the mill during the financial year 1996-97."

From the legal provisions above, it is clear that for determining ACP based on changed parameters, the Appellant was required to intimate the changes in value of parameters to the Commissioner at least one month in advance and obtain the written approval thereof before making such changes, as stipulated under sub-rule (2) of Rule 4. In my opinion, the provisions for advance intimation were made so that the department can carry out suitable verification about the changes. Hence, if the Appellant was desirous of having ACP of its unit fixed on the basis of changed parameters with effect from 01.10.1997, it ought to have intimated the changes in parameters to the Commissioner at least one month before 01.10.1997 as provided under sub-rule (2) of Rule 4 *ibid.*

6.6. However, I find from the Para 18 of the impugned order that the Appellant had requested for re-determination of ACP on the basis of changed parameters only on 25.11.1998 and department was in no position to verify whether the changes in parameters were actually made with effect from 01.10.1997 or otherwise. Accordingly, it appears that the adjudicating authority has considered the revised ACP with effect from December, 1998 (i.e. month subsequent to intimation dated 25.11.1998) and re-quantified the demand accordingly. As the Appellant has not furnished any documentary evidence showing

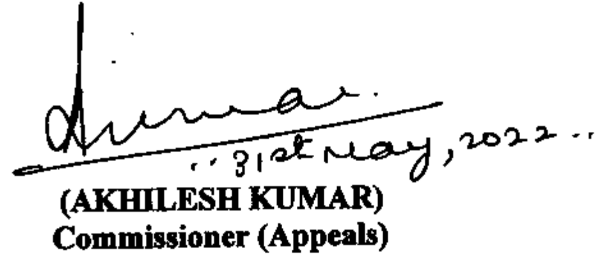
compliance of sub-rule (2) of Rule 4 of the HRSMACD Rules, it's contention for applying the revised ACP with effect from 01.10.1997 cannot be considered in view of the legal provisions discussed above. The same are rejected accordingly being devoid of meirts.

7. As regards the levy of interest in the impugned order, I find that the Commissioner (Appeals), Rajkot had, in the earlier rounds of proceedings, vide OIA dated 17.10.2016 already allowed the appeal filed by the Appellant with respect to the demand of interest and penalty. There is nothing on record or in the findings recorded in the impugned order to suggest that the said portion of the OIA was challenged by the department. Consequently, I find that the adjudicating authority has erred in levying interest on demand of central excise duty. He has also committed judicial indiscipline by not following the binding order of the Commissioner (Appeals). Thus, the contention of the Appellant in this regard is legally sustainable.

8. In view of the above, I uphold the impugned order to the extent of confirming the demand of central excise duty. The order portion to the extent of confirming demand of interest is set aside.

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

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



(AKHILESH KUMAR)
Commissioner (Appeals)

सत्यापित / Attested

केतन दवे
Ketan Dave
अधीक्षक (अपील)
Superintendent (Appeal)

By RPAD

To M/s. Garg Casteels Pvt Ltd., Vill. Vadia, Tal. Sihor, Bhavnagar -364240.	M/s. गर्ग कास्टल्स प्राइवेट लिमिटेड, गांव वाडिया, ताल. सीहोर, भावनगर - 364240.

प्रति:-

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, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।

3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, मण्डल भावनगर 1 को आवश्यक कार्यवाही हेतु।

4) गार्ड फ़ाइल।