



: आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क :
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE

द्वितीय नून, जी एम टी भवन / 2nd Floor, GST Bhavan
रेस कोर्स रिंग रोड / Race Course Ring Road

राजकोट / Rajkot - 360 001

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रजिस्टर्ड टैक्स ए.डी. द्वारा

DIN-20220764SX0000415188

क	अपील / फाइल नं. Appeal / File No.	मूल आदेश नं / O.I.O. No.	दिनांक / Date
	V2/60/BVR/2021	BHV-EXCUS-000-JC-MT- 003-2020-21	18-03-2021

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

BHV-EXCUS-000-APP-004-2022

आदेश का दिनांक / Date of Order:	20.06.2022	जारी करने की तारीख / Date of issue:	04.07.2022
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श्री अखिलेश कुमार, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri Akhilesh Kumar, Commissioner (Appeals), Rajkot.

ग अग्र आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर, राजकोट / जामनगर / गांधिधाम द्वारा
उपर्युक्त आदेश के अन्तर्गत जारी मूल आदेश से उत्पन्न /
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) में उल्लिखित कोई व्यक्ति निम्नलिखित तरीके में उपायुक्त 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 मूल विन 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 मुद्दांकृत में सम्बन्धित सभी मामलों में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के. पुरम नई दिल्ली, को की जानी चाहिए।/
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताया गए अपीलों के अलावा अन्य सभी अपीलों में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टम) की पश्चिम क्षेत्रीय पीठ, द्वितीय नून, बहुमाली भवन असाखा 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 फॉर्म में प्रथम EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, आयात की मांग और नगमाया गया जुमाना, लगभग 5 लाख या उससे कम 5 लाख रुपयों या 50 लाख रुपयों तक अथवा 50 लाख रुपयों 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 मार्जिनल बैंक के बैंक द्वारा जारी ग्यारंटी बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उम आखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थान आदेश (स्ट ऑर्डर) के लिए आवदन-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 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, विन अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमावली, 1994, के नियम 9(1) के तहत निर्धारित फॉर्म S.T.-5 में चार प्रतियों में की जा सकती है एवं एक प्रतिलिपि आदेश के विच्छेद अपील की गयी हो, उसकी प्रति साथ में संलग्न कर। उसमें एक प्रति प्रमाणित होनी चाहिए। और इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, आयात की मांग और नगमाया गया जुमाना, लगभग 5 लाख या उससे कम 5 लाख रुपयों या 50 लाख रुपयों तक अथवा 50 लाख रुपयों 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 मार्जिनल बैंक के बैंक द्वारा जारी ग्यारंटी बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उम आखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थान आदेश (स्ट ऑर्डर) के लिए आवदन-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) विन अधिनियम, 1994 की धारा 35E की उप-धाराओं (1) एवं (2A) के अंतर्गत दरों की गयी अपील, सेवाकर नियमवार्ती, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रथम S.T.-7 में की जा सकेगी एवं उसके साथ अपील, केंद्रीय उत्पाद शुल्क अधिका (अपील), केंद्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियां संलग्न करें। उनमें से एक प्रति प्रमाणित होनी चाहिए। और अपील द्वारा महासूचक अपील अधिका उपायुक्त, केंद्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन करने के लिए देवे जाने 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.
- (iii) सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (अपेल) के प्रति अपील के मामले में केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धारा 35E के अंतर्गत, जो की द्वितीय अधिनियम, 2014 की धारा 35E के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करने समय उत्पाद शुल्क, सेवा कर मांग के प्रति अपील, एवं मांग एवं जुमाना विवादित है, या जुमाना, एवं केवल जुमाना विवादित है, का भुगतान किया जाए, बताने कि इस धारा के अंतर्गत जमा कि जाने वाली अपीलित दर गणित दर करण रूप में अधिक न हो।
 केंद्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
 (i) धारा 11 की के अंतर्गत रकम
 (ii) सेनट जमा की गयी गई गणित
 (iii) सेनट जमा नियमवार्ती के नियम 6 के अंतर्गत दर रकम
 - बताने यह कि इस धारा के शावधान विनियम (सं- 2) अधिनियम 2014 के आदेश में पूर्व किमी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थान अपील एवं अपील को लागू नहीं होगी।
 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 पुनरीक्षणार्थित निम्नलिखित मामलों में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपठन के अंतर्गत प्रथम सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जेवून दीप भवन, समर 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 1994 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:
 (i) यदि मांग के किसी नुकसान के मामले में, जहां नुकसान किसी मांग को किसी कारखाने में अंतरा गृह के गारवमन के दौरान या किसी अन्य कारखाने या फिर किसी एक अंतरा गृह में दूसरे अंतरा गृह गारवमन के दौरान, या किसी अंतरा गृह में या अंतरा गृह में मांग के प्रसंस्करण के दौरान, किसी कारखाने या किसी अंतरा गृह में मांग 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 गृह या क्षेत्र को निर्यात कर रहे मांग के वितरण में प्रयुक्त कच्चे मांग पर अभी गई केंद्रीय उत्पाद शुल्क के छूट (विद्वेष) के मामले में, जो भारत के बाहर किसी गृह 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 मांग निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
 (iv) मुनिशिन उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो कटौती केंद्रित इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मांग की गई है और उसे आदेश की अपील (अपील) के द्वारा विन अधिनियम (सं- 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा ममायाविधि पर या बाद में पारित किए गये 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) उपायुक्त आवेदन की दो प्रतियां प्रथम संख्या EA-8 में, जो की केंद्रीय उत्पाद शुल्क (अपील) नियमवार्ती, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संलग्न के 3 माह के अंतर्गत की जानी चाहिए। उपायुक्त आवेदन के साथ मूल आदेश व अपील अधिका की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35-EE के तहत निर्धारित शुल्क की प्रदायगी के साथ-साथ 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 प्रदायगी 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 रूप में किया जाना चाहिए। इस तथ्य के होने हुए भी की निम्ना पत्री कार्य में बचन के लिए यथास्थिति अपीलीय न्यायाधिकरण को मके अपील या केंद्रीय सरकार को एक आवेदन किया जाना 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) यथासंभोधित न्यायमय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थान आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायमय शुल्क टिकट लगा होना चाहिए।
 One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-1 in terms of the Court Fee Act,1975, as amended.
 (F) सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमवार्ती, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्बन्धित करने वाले नियमों की और भी ध्यान आकर्षित किया जाना है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.
 (G) उच्च अपीलीय प्राधिकारी को अपील दायित्व करने में संबंधित साफक, विस्तृत और त्वरिततम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in का 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, Sihor, Bhavnagar (hereinafter referred to as "Appellant") has filed Appeal No. V2/60/BVR/2021 against Order-in-Original No. BHV-EXCUS-JC-MT-003-2020-21 dated 18.03.2021 (hereinafter referred to as 'impugned order') passed by the Joint Commissioner, Central GST, Bhavnagar Commissionerate (hereinafter referred to as 'the adjudicating authority').

2. The facts of the case, in brief, are that based on the intelligence that M/s. Diamond TMT & Procon Private Limited (herein after referred to as "M/s. Diamond") was engaged in evasion of central excise duty by way of clandestine removal of their final products i.e., CTD/TMT/Round bars, investigation was carried out by the Anti-Evasion wing of the erstwhile Central Excise, Bhavnagar Commissionerate. During the course of investigation, it was also noticed that M/s. Diamond was also procuring MS Ingots & MS billets from various Iron & Steel units clandestinely, including from the Appellant. The investigation culminated into the issuance of SCN dated 06.08.2015 to M/s. Diamond and other co-noticees including the Appellant. In the above said SCN, in the case of the Appellant it was proposed to demand Central Excise duty amount of Rs. 3,65,136/- under proviso to Section 11A(4) of the Central Excise Act, 1944 ("the Act") along with interest under Section 11AA of the Act. It was also proposed to impose penalty under Section 11AC (1)(a) of the Act read with Rule 25 of the Central Excise Rules, 2002("the Rules").

2.1. While adjudicating the SCN, the adjudicating authority vide impugned order, had dropped the proceedings in respect of M/s. Diamond and other 11 co-noticees, who opted for SVLDRS Scheme, 2019. However, the adjudicating authority, in the case of the Appellant, has confirmed the central excise duty demand of Rs. 3,65,136/- along with interest and also imposed equivalent penalty of Rs. 3,65,136/- under the provisions of Section 11AC(1)(a) of the Act.

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

(i) The entire case of the department against the Appellant was based upon some records including inward gate passes alleged to have been maintained by M/s. Diamond and which allegedly reflected the receipt of certain consignments of finished goods viz., M.S. Ingots/M. S. Billets from the Appellant without cover of invoice and without payment of excise duty. The allegation was sought to be corroborated by the statements of the Directors of M/s. Diamond and the brokers and transporters who were interrogated during the course of investigation by the officers;



(ii) Except alleged records stated to have been maintained by M/s. Diamond and/or the statements of third parties, there is not an iota of independent evidence brought on records by the department which would justify or support the allegation of removal of finished goods by the Appellant without cover of central excise invoices and without payment of excise duty. The inference drawn in the SCN that the inward gate passes maintained by the said company (M/s. Diamond) were valid documents confirming the receipt of the goods in the factory premises was not only self-serving in nature but invalid and untenable in law in the absence of any valid and positive corroborative evidence suggesting the actual removal of goods as reflected in the said inward gate passes from the factory of the Appellant without cover of central excise invoice and without payment of excise duty payable thereon. No incriminating documents whatsoever have been found or seized from the possession of the Appellant which would substantiate the allegation of clandestine removal of goods made on the basis of the inward gate passes and other records alleged to have been maintained by the said company. No stock taking of the raw material and finished goods have been undertaken at the factory of the Appellant nor any discrepancies have been alleged except merely stating that the quantity of finished goods viz., M/S/Ingots / M.S. Billets allegedly reflected in the entries in the inward gate passes alleged to have been maintained by the said Company and received from the Appellant herein was not reflected in the sales register, R.G.-1 register etc, maintained by the Appellant. However, this allegation is based on purely surmises and conjectures and invalid in the absence of any independent corroborating evidence;

(iii) In his only statement recorded on 24.02.2015 by the officers, Shri Suresh Kumar, Authorised person of the Appellant had not admitted any clandestine removal of finished goods without cover of excise invoice and without payment central excise duty. The statement was entirely exculpatory.

(iv) From the explanation of the Authorised person of the Appellant, it is evident that the suggestion of the investigating officers that the there had been clandestine removal of goods by the Appellant was never admitted or confessed by Shri Suresh Kumar. It is also pertinent to note that even though, Shri Suresh Kumar had categorically stated that his company has not manufactured M. S. Ingots since last two years, the SCN has raised the demand on M.S. Billets/ M.S. Ingots.

(v) Even the statements of the Director of the company (M/s. Diamond), as well as the transporter and the broker are also exculpatory and do not implicate the Appellant in any manner whatsoever. Further no corroborative evidence like transport documents, receipt of cash from the said company against the goods alleged to have been clandestinely removed, payment of transport charges in cash, for the clandestine transportation of the goods and such other evidence substantiating the allegations of the clandestine removal of goods by the Appellant without cover of excise invoices and payment of excise duty have been brought on records by the department.

(vi) Consequently, the entire allegation of the clandestine removal of finished goods by the Appellant without cover of invoice and without payment of duty was based on assumption and presumptions, surmises and conjectures, invalid and the consequential demand on the basis thereof was illegal and without authority of law.

(vii) The contention of the Appellant that the name "Garg Castings/ Garg Casteel" mentioned in the handwritten inward gate passes alleged to have been prepared by the said company did not belong to the Appellant, has not been judiciously appreciated and dealt with by the adjudicating authority. A serious allegation of



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clandestine removal and evasion of duty cannot be based, much less confirmed on such flimsy, inconclusive and extraneous material and that also kept by the third party and with which neither the Appellant has any connection nor the Appellant has any control thereon.

(viii) The burden to establish the clandestine removal of goods and evasion of duty by leading valid and credible evidence lies on the department. In the present case, the department has miserably failed to discharge this burden cast upon it in law rendering the demand of duty raised and confirmed against the Appellant invalid and without authority of law.

(ix) In support of these submission, the Appellant refers to and relies upon the following judgments: -

- (a) Rama Shyama Papers Ltd Vs. CCE, Lucknow (2004(168)ELT 494(Tri.Del)
- (b) Kumar Trading Co. Vs. Commissioner of Trade Tax , Lucknow - (2008(230)ELT 240(All)
- (c) Bhandary Industrial Metals Pvt ltd Vs. CCE, Goa-(2009(245)ELT 613(Tri.Mumbai)
- (d) Sakeen Alloys Pvt Ltd Vs. CCE, Ahmedabad -(2013(296)ELT 392(Tri.Ahmd)
- (e) CCE & ST Raipur Vs. P.D.Industrial Pvt Ltd -(2016(340)ELT 249(Tri.Del)
- (f) Shree Sidhali Ispat Ltd Vs. CCE, Nagpur -(2017(357)ELT 724(Tri.Mumbai)
- (g) Synergy Steels Ltd Vs. CCE, Alwar-(2020(372)ELT 129(Tri.Del)
- (h) M/s. Super Smellers Ltd & Ors Vs. CCE & ST -(2020-TIOL-1666-CESTAT-KOL)

(x) The impugned order has been passed by the adjudicating authority without authority of law in as much as the powers of adjudication have been exercised by him without being appointed as "adjudicating authority" in the present case rendering the impugned order liable to be set aside on this count also.

(xi) Whereas first corrigendum dated 26.10.2016 to the SCN was issued erroneously, the 'Joint Commissioner, Central Excise/GST Bhavnagar' was never appointed as adjudicating authority in the present case. It is also pertinent to note that even after the appointment of 'Assistant Commissioner, GST Division-Bhavnagar-I' as the adjudicating authority vide corrigendum dated 11.07.2017, the hearing had been fixed before the Additional Commissioner, Central GST Bhavnagar on 27.03.2019. This is despite the fact that no suitable and requisite corrigendum was apparently issued during the intervening period. Similarly, no corrigendum appointing 'Joint Commissioner of Central GST and Central Excise, Bhavnagar Commissionerate' as adjudicating authority in the present case has apparently ever been issued in the present case.

(xii) As the impugned order upholding the demand raised against them is not sustainable in law as discussed above, it is not liable for any penal action in terms of Section 11AC(1)(a) of the Act and the penalty imposed on the Appellant thereunder vide the impugned order is illegal and the same is liable to be set aside as being untenable in law.

(xiii) As the impugned order is not sustainable, it is not liable for payment any interest in terms of Section 11AA of the Act.



4. Personal hearing in the matter was held through virtual mode on 27.04.2022. It was attended by Shri Shailesh Sheth, Advocate. He re-iterated the submission made in appeal memorandum. He also submitted copies of judgments relied upon in appeal 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 central excise duty demand of Rs. 3,65,136/- against the appellant along with interest and penalty is correct, legal and proper or not.

6. On perusal of the case records, it is observed that the preventive wing of erstwhile Central Excise, Bhavnagar had carried out investigations against M/s. Diamond which revealed that the said company was engaged in clandestine clearance of their final products i.e., CTD/TMT/Round bars. It was also noticed by the officers that M/s. Diamond was procuring inputs from various iron and steel units including the Appellant clandestinely without invoices and without accounting the same in statutory records.

6.1. It is observed that the Appellant, besides contesting the issue on merits, has questioned the jurisdiction of the adjudicating authority to adjudicate the impugned SCN. The Appellant has stated that ever since the issuance of SCN dated 06.08.2015, various Corrigendum dated 26.10.2016, 20.12.2016 & 11.07.2017 to the SCN have been issued, but even after the appointment of 'Assistant Commissioner, GST Division-Bhavnagar-F' as the adjudicating authority vide corrigendum dated 11.07.2017, the hearing had been fixed before the Additional Commissioner, Central GST Bhavnagar on 27.03.2019. It is further contended by the Appellant that no suitable and requisite corrigendum was issued during the intervening period and no corrigendum appointing 'Joint Commissioner of Central GST and Central Excise, Bhavnagar Commissionerate' as adjudicating authority in the present case has ever been issued. On the basis of above arguments, it has been contended by the Appellant that the impugned order has been passed by the adjudicating authority without authority of law.

6.2 In this regard, I find that the issue of jurisdiction has not been raised by the Appellant before the adjudicating authority while filing the written submission. It is also observed that the Appellant had not attended the personal hearing fixed by the adjudicating authority. Thus, it is obvious that adjudicating authority, while passing the impugned order, has not recorded any findings on this aspect of the case. Under the circumstances, it is imperative that the adjudicating authority should decide the issue of jurisdiction/



competency to adjudicate the impugned SCN as contended by the Appellant and thereafter record his findings on the merits of the case.

7. In view of the above, I set aside the impugned order and remand the matter to the adjudicating authority to decide the matter afresh including the issue of jurisdiction / competency raised by the Appellant, as discussed at *para supra*. Needless to mention that principles of natural justice should be adhered to while passing *de novo* order.

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

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

सत्यापित / Attested



केतन दवे
Ketan Dave
अधीक्षक (अपील)

Superintendent (Appeal)


20th June, 2021.
(AKHILESH KUMAR)
Commissioner (Appeals)

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.
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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) संयुक्त आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तालय, भावनगर, को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फाइल।

