



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



द्वितीय तल, जी एस टी भवन / 2<sup>nd</sup> 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-20220864SX000062146A

क्र	अपील / फाइल संख्या/ Appeal / File No.	मूल क्रमांक / OIONo.	दिनांक/ Date
	V2/311/RAJ/2010	08/ADC/2009	03/03/2009
	V2/312/RAJ/2010	08/ADC/2009	03/03/2009
	V2/313/RAJ/2010	08/ADC/2009	03/03/2009
	V2/314/RAJ/2010	08/ADC/2009	03/03/2009
	V2/315/RAJ/2010	08/ADC/2009	03/03/2009

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

**RAJ-EXCUS-000-APP-228 TO 232-2022**

आदेश का दिनांक /  
Date of Order: **28.07.2022** जारी करने की तारीख /  
Date of issue: **18.08.2022**

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 एवं सेवाकर,  
राजकोट / जामनगर / गांधीधामा द्वारा उपरलिखित जारी मूल आदेश से सुजित: /  
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. Mukund Brass Industries (Unit-II), Plot No. 3, GIDC Industries Estate,  
Shankar Tekri, Jamnagar-361004,**

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 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 बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टट) 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, 2<sup>nd</sup> 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) नियमवली, 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 योग्य, न्याय की योग्य और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपए, 5,000/- रुपए अथवा 10,000/- रुपए 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। स्वयं आदेश (स्टे ऑर्डर) के लिए अविद्यन-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.5,000/- Rs.10,000/- where amount of duty/demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

(B)

अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा 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 योग्य, न्याय की योग्य और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपए, 5,000/- रुपए अथवा 10,000/- रुपए 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। स्वयं आदेश (स्टे ऑर्डर) के लिए अविद्यन-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. 1,000/- 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 अन्याय, केन्द्रीय उत्पाद शुल्क अध्याय अध्याय (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियां संलग्न करें (उनमें से एक प्रति प्रामाणिक होनी चाहिए) और अन्याय द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (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, बशर्त 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 की के अंतर्गत रकम  
(ii) सेनबेट जमा की ली गई मूलत राशि  
(iii) सेनबेट जमा निवमानवली के नियम 6 के अंतर्गत देय रकम  
- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं 2) अधिनियम 2014 के अंतर्गत से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थान नहीं एवं अपील को लागू नहीं होवे। / 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 पुनरीक्षण या वित्त निःसंश्लेषण मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम पत्र के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन् 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 पूरी 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 छूटी केसीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो अन्याय (अपील) के द्वारा वित्त अधिनियम (नं 2), 1998 की धारा 109 के द्वारा निर्यात की गई तरीक अथवा समावाचिधि 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 उत्पाद शुल्क (अपील) नियमवाली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संघर्ष 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 अदावगी 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 OI/O 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 अदावगी 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 कोई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपरोक्त संघ से किया जाना चाहिए। इस तथ्य के होते हुए भी की निम्न पत्रों को संलग्न करने के लिए अध्याधिकारियों 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-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय 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-I in terms of the Court Fee Act, 1975, as amended.
- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमवाली, 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.cbec.gov.in](http://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](http://www.cbec.gov.in)



**ORDER-IN-APPEAL ::**

The below mentioned appeals have been filed by the Appellants (hereinafter referred to as 'Appellant No. 1 to Appellant No. 5', as detailed in Table below) against Order-in-Original No. 8/ADC/2009 dated 3.3.2009 (hereinafter referred to as 'impugned order') passed by the Additional Commissioner, erstwhile Central Excise, Rajkot (hereinafter referred to as 'adjudicating authority'):-

Sl. No.	Appeal No.	Appellants	Name & Address of the Appellant
1.	V2/311/RAJ/2010	Appellant No.1	M/s Mukund Brass Industries Plot No. GIDC Industrial Estate, Shankar Tekri, Jamnagar.
2.	V2/312/RAJ/2010	Appellant No.2	Shri Mukundbhai Somchand Shah, Partner of M/s Mukund Brass Inds, Jamnagar.
3.	V2/313/RAJ/2010	Appellant No.3	M/s Kunjal Udyog, C-2/315-1, GIDC, Jamnagar.
4.	V2/314/RAJ/2010	Appellant No.4	M/s Ashish Industries, C-2/315-2, GIDC, Jamnagar.
5.	V2/315/RAJ/2010	Appellant No.5	M/s Urmi Associates, C-2/307-1, GIDC, Jamnagar.

1.1 Since issue involved in above appeals is common, all appeals are taken up together for decision vide this common order.

2. The facts of the case, in brief, are that Appellant No. 1 was engaged in manufacture of Brass Rods and Brass Section falling under Chapter Sub Heading No. 7407.12 and 7407.29 of the Central Excise Tariff Act, 1985 and was holding Central Excise Registration. During visit of the factory of Appellant No. 1 by the jurisdictional Central Excise Range officers on 22.2.1995, it was observed that the Appellant had manufactured and cleared Brass Profile/Section falling under CSH No. 7407.29 on job work basis from the Brass scrap supplied by Appellant No. 3 to Appellant No. 5. It was further observed that said suppliers had filed Undertakings, along with consent letter of Appellant No. 1, claiming benefit of Notification Nos. 83/1994-CE and 84/1994-CE, both dated 11.4.1994, by declaring that they were eligible for benefit of SSI exemption Notification No. 1/93-CE dated 28.2.1993. It was also observed that Brass Profile/Section was not specified goods for claiming



exemption under said SSI exemption notification and, therefore, benefit claimed under Notification Nos. 83/1994-CE and 84/1994-CE, both dated 11.4.1994 was not in accordance with the condition stipulated therein and Appellant No.1 was required to discharge Central Excise duty on Brass Profile/Section manufactured by them on jobwork basis.

2.1 The above observations culminated into issuance of Show Cause Notice No. V.74/15-46/ADJ/95 dated 13.7.1999, for the period from July, 1994 to February, 1995, calling Appellant No. 1 to show cause as to why Central Excise duty amounting to Rs. 6,23,706/- should not be demanded and recovered from them under proviso to sub-Section (1) of Section 11A of the Central Excise Act, 1944 (hereinafter referred to as 'Act') along with interest under Section 11AB and proposed imposition of penalty under Section 11AC of the Act and under Rule 173Q(1) of the erstwhile Central Excise Rules,1944. The notice also proposed imposition of penalty under Rule 209A of the erstwhile Central Excise Rules,1944 upon Appellant Nos. 2 to 5.

2.2 The above Show Cause Notice was adjudicated by then Additional Commissioner, Customs & Central Excise, Rajkot vide Order-in-Original No. 66/Addl. Commissioner/2000 dated 27.11.2000 who confirmed Central Excise duty demand of Rs. 6,23,706/- under Section 11A(1) of the Act along with interest under Section 11AB and imposed penalty of Rs. 6,23,706/- under Section 11AC and Rs. 3,50,000/- under Rule 173Q(1) of the Rules. The impugned order imposed penalty of Rs. 50,000/- each upon Appellant Nos. 2 to 5 under Rule 209A of the Central Excise Rules,1944.

2.3 Being aggrieved, the Appellants filed appeals before the then Commissioner (Appeals), Central Excise, Rajkot, who vide Order-In-Appeal No. 654 to 660/2001 dated 18.7.2001, *inter alia*, set aside recovery of interest under Section 11AB and imposition of penalty under Section 11AC of the Act but upheld the remaining portion of impugned order and partially rejected the appeals. The Department challenged the said OIA so far as it related to setting aside the recovery of interest under Section 11AB of the Act by filing appeal before the Hon'ble CESTAT, Ahmedabad, which was dismissed vide Order No. A/999/WZB/2005/CIII dated 30.6.2005.

2.4 Being aggrieved, the Appellants filed appeals before the Hon'ble CESTAT, Mumbai, which was decided vide Order No. A/253-256/WZB/Ahd/06 dated 13.12.2006 by way of remand to the adjudicating Authority for re-decision in light of CESTAT's earlier order dated A/1922/WZB/06 dated 26.7.2006 passed in



Appellant's own case.

2.5 In *de novo* proceedings, the Additional Commissioner, erstwhile Central Excise, Rajkot vide Order-in-Original No. 8/ADC/2009 dated 3.3.2009 confirmed Central Excise duty demand of Rs. 6,23,706/- under Section 11A(1) of the Act and imposed penalty of Rs. 6,23,706/- under Rule 173Q(1) of the erstwhile Central Excise Rules, 1944. The impugned order imposed penalty of Rs. 1,00,000/- each upon Appellant Nos. 2 to 5 under Rule 209A of the erstwhile Central Excise Rules, 1944.

2.6 Being aggrieved, the Appellants filed appeals before the then Commissioner (Appeals), Central Excise, Rajkot, who vide his Stay Order No. 2/RAJ/2009 dated 4.8.2009 directed Appellant No. 1 to make pre-deposit of 25% of duty confirmed vide impugned order under Section 35F of the Act.

2.7 Appellant No. 1 vide letter dated 2.9.2009 filed application for modification of stay order by contending, *inter alia*, as under:

(i) It was brought to the notice of this appellate authority to the fact that the benefit of Notification No.83/94 is not availed by them but was availed by supplier of material and therefore the duty liability, if any, can be raised only against the supplier of material.

(ii) Attention was also drawn to the Order of the Hon'ble CESTAT, Bangalore passed in the case of Suvikram Plastex Pvt. Ltd. reported in 2008 (225) ELT 282, wherein it was held that the duty liability lies with the principle manufacturer i.e. supplier of material. It was also held that when periodical declarations are submitted, the extended period is not applicable. The attention of this appellate authority was also drawn to the fact that due to financial crunch also, the company is not in a position to pay the amount of duty and penalty confirmed.

(iii) In view of the fact that the issue under consideration is covered by the decisions of the appellate authority and the company is not in a position to pay the amount ordered, it is requested that the direction given may please be modified and they may be allowed to be heard for final hearing without requiring them to deposit any amount.

2.8 The Commissioner (Appeals) vide Order-in-Appeal No. 469 to 473/2009/COMMR(A)/RAJ dated 30.9.2009 dismissed the appeals for non-compliance of provisions of Section 35F of the Act.



2.9 Being aggrieved, the Appellants filed appeals before the CESTAT, Ahmedabad, who vide its Order No. A/492-496/WZB/AHD/2010 dated 17.5.2010 remanded the matter to the appellate authority for fresh consideration of modification application. The Tribunal observed that the appellate authority was required to pass a separate order on modification application indicating result to the assessee and that rejection of application and consequent dismissal of appeals vide the same impugned order is neither proper nor justified.

3. The Appeal was transferred to callbook in July, 2010 in view of pendency of appeal filed by the Department before the Hon'ble CESTAT, Ahmedabad against Order-in-Appeal No. 202 to 209/2010/Commr(A)/Raj dated 29.4.2010 issued in the case of M/s Mayank Metallurgical Pvt Ltd, Jamnagar. Further, it is observed that the Department appeal filed in the case of M/s Mayank Metallurgical Pvt Ltd, Jamnagar has been withdrawn by the Department from the Tribunal due to monetary limit. Considering the facts of the case, the appeals lying in the call book are withdrawn and the same are now taken up for disposal.

4. Personal Hearing in the matter was scheduled on 8.6.2022 in virtual mode through video conferencing. Shri Paresh Sheth, Advocate, appeared on behalf of all Appellants. He submitted written submission during hearing and reiterated the submission made in the written submission. He further submitted that the demand is hit by limitation as SCN was issued to them on this issue for earlier period.

4.1 In written submission dated 8.6.2022, it has, *inter alia*, been contended that,

(i) The product under consideration, admittedly does not have uniform cross-section along their whole length, and is certified so by Chartered Engineer Shri P. P. Bhadresa in his certificate dated 07-10-1991, which was produced at the time of first adjudication proceedings and is directed to be considered by the Hon'ble CEGAT, Mumbai, but unfortunately the adjudicating authority while passing adjudication order had ignored such direction and had relied only on the observation of his predecessor, which is bad in law.

(ii) In the area of Jamnagar, same product is being manufactured by various manufacturers but Department has neither raised issue of classification nor has demanded any duty from such manufacturers, which



itself proves beyond doubt that the Department has accepted that the product under consideration is not classifiable as Brass profile.

(iii) The Commissioner (A) in Para 10 of his OIA No. 108/2008/Commr(A)/Raj dated 2.5.2008 has held that "Though the product in question may not have uniform cross-section along their whole length, it is also fact that, the same do not conform to the definition given for bars, rods, wire, plates, sheets, strip, foil, tubes or pipes in the Chapter 74. This observation itself proves beyond doubt that the product under consideration is not covered under the definition of "Profile" as given under clause (e) of Chapter Note 1 of Chapter 74.

(iv) That it is well settled proposition of law that the certificate of an expert cannot be brush aside. In our case the Hon'ble CEGAT, Mumbai had categorically directed the adjudicating authority to consider the certificate issued by Chartered Engineer and hence, the adjudicating authority was bound to consider the same and was not to dragged by the observation of his predecessor. In fact, he was in possession of sample drawn by the Department and could have satisfied himself by observing such sample.

(v) That it is well settled proposition of law that burden to prove classification lies with the Department and relied upon following case laws:

- (a) Remi Process Plant & Machinery Ltd - 2004 (170) ELT 348
- (b) Echjay Industries Ltd - 1994 (72) ELT 98
- (c) Prince Marine Transport Service Pvt Ltd - 2015 (327) ELT 283
- (d) Garware Nylons Ltd - 1996 (87) ELT 12.

(vi) From the facts and circumstances mentioned herein above, it is submitted that the demand raised by the Department invoking extended period of limitation be set aside or else the matter may be remanded back with the direction to the adjudicating authority to produce sample withdrawn and to allow them to file submission with issue of limitation kept open.

5. I have carefully gone through the facts of the case, the impugned order, the grounds raised in Appeal Memorandum and additional written submission as well as oral submission made at the time of hearing. The issue to be decided in the present appeal is whether Brass Profile/Section manufactured by Appellant on work basis is classifiable under CSH No. 7407.29, as held by the



adjudicating authority, or under CSH No. 7419.99, as contended by the Appellants, and whether said product was eligible for benefit of SSI exemption under Notification No. 1/1993-CE dated 28.2.1993 or not.

5.1 Since, the present order is passed pursuant to Tribunal's remand Order dated 17.5.2010, it is pertinent to examine relevant portion of the Tribunal's Order, which is reproduced as under:

"4. As is seen from the above, the modification application as also the appeal, were rejected vide same impugned order, which according to us is not in accordance with the law. The appellants having filed the modification application and the appellate authority having heard the same, the appellate authority was required to pass a separate order on the said application indicating result to the assessee. Rejection of the application and consequent dismissal vide same impugned order is neither proper nor justified.

5. As such, we set aside the impugned order and remand the matter to the Commissioner (Appeals) for fresh consideration of the modification application. Needless to say that the appellant's reliance on Tribunal's order in the case of M/s Suvikram Plastex would be considered as also their plea of financial difficulty. It may be mentioned here that the Appellant's financial condition at the time of deposit is required to be examined and not the financial condition for the year to which the matter belongs, as has been done by the appellate authority. The Appellants would also produce documentary evidence, if any, to substantiate the financial difficulty."

5.2 It is observed that subsequent to remand Order dated 17.5.2010 *supra*, the appeals were transferred to callbook in the year July, 2010, in view of the appeal filed by the Department before the Hon'ble CESTAT, Ahmedabad in the case of M/s Mayank Metallurgical Pvt Ltd, Jamnagar. On examining the said Order-in-Appeal, it appears that the issue involved in the said case was whether the job worker was liable to pay Central Excise duty on intermediate goods consumed captively for manufacture of final goods or not. While the issue involved in the present case is whether Brass Profile/Section manufactured on jobwork basis was classifiable under CETSH No. 7407.29, as held by the adjudicating authority, or under CSH No. 7419.99, as contended by the Appellants, and whether said product was eligible for benefit of SSI exemption under Notification No. 1/1993-CE dated 28.2.1993 or not. Thus, issue involved in the present case is different from the issue involved in the case of M/s Mayank Metallurgical Pvt Ltd, Jamnagar *supra*. Since, the issue involved in the present case is different than M/s Mayank





Metallurgical Pvt Ltd appeal and the fact that the Departmental appeal was withdrawn from the Tribunal on monetary limits, the present appeals have been retrieved from the callbook. As can be seen, there has been considerable lapse of time subsequent to issuance of remand order by the Hon'ble CESTAT and it would not be justifiable at this stage to decide application for modification of Stay Order. Additionally, there is *prima facie* merit in the contentions raised by the Appellants and, therefore, I waive the requirement of pre-deposit of duty and the penalty under Section 35F of the Act and proceed to decide the appeals based on available records.

6. As per facts emerging from records, it is observed that an offence case was booked against Appellant No. 1 for evasion of Central Excise duty on Brass Profile/Section manufactured by them on job work basis. Appellant No. 3 to Appellant No. 5 had supplied Brass scrap to Appellant No. 1 claiming benefit of Notification Nos. 83/1994-CE and 84/1994-CE, both dated 11.4.1994, and by declaring that they were eligible for benefit of SSI exemption Notification No. 1/93-CE dated 28.2.1993. It was held by the adjudicating authority that Brass Profile/Section was not specified goods for claiming exemption under said SSI exemption Notification No. 1/93-CE dated 28.2.1993 and, therefore, benefit claimed under Notification Nos. 83/1994-CE and 84/1994-CE, both dated 11.4.1994 was not in accordance with the condition stipulated therein and Appellant No.1 was required to discharge Central Excise duty on Brass Profile/Section manufactured by them on job work basis during the period from July, 1994 to February, 1995. The Show Cause Notice was issued by invoking extended period of limitation under proviso to Section 11A(1) of the Act on the grounds of mis-statement/ suppression of facts. The adjudicating authority confirmed duty demand and imposed penalty upon Appellant Nos. 1 to 5.

6.1 The Appellant has, inter alia, contended that the demand raised by the Department invoking extended period of limitation be set aside as SCNs were issued to them on this issue for earlier period.

7. It is observed that the Show Cause Notice was issued to the Appellants in the present case on 13.7.1999 for the period from July, 1994 to February, 1995 by invoking extended period of limitation under proviso to Section 11A(1) of the Act. It is further observed from Para 3.12 of the impugned order that Appellant No. 1 was also issued 4 more Show Cause Notices on the same issue / same set of facts for subsequent period from April, 1995 to 22.7.1996, as detailed in table below:-



Sl. No.	Details of SCN / Order-in-Original	Period involved
1.	Order-in-Original No. 6/JMN/1997 dated 24.1.1997	(i) April, 1995 to June 1995, (ii) November, 1995 to March, 1996 and (iii) April, 1996 to 22.7.1996
2.	SCN dated 4.1.1996, Order-in-Original No. 32/JAM/2001	July, 1995 to October, 1995

7.1 The aforesaid 4 Show Cause Notices were adjudicated by the Assistant Commissioner, erstwhile Central Excise Division, Jamnagar vide Order-in-Original No. 32/JMN/2001 (SCN dated 4.1.1996) and Order-in-Original No. 6/JMN/1997 dated 24.1.1997. The Show Cause Notice in the present case was issued by the Addl. Commissioner, Central Excise, Rajkot on 13.7.1999 i.e. after issuance of Show Cause Notices for subsequent period from April, 1995 to 22.7.1996. So, when Show Cause Notice was issued in the present case, it was well within the knowledge of the Department that Appellant No. 1 was manufacturing Brass Profile/Section on job work basis out of Brass Scrap supplied by Appellant Nos. 3 to 5, by virtue of aforesaid 4 Show Cause Notices issued for the period from April, 1995 to 22.7.1996. Further, entire period of Show Cause Notice is beyond normal period of limitation. Under the circumstances, invocation of extended period of limitation under proviso to Section 11A(1) of the Act on the grounds of mis-statement/suppression of facts, is not sustainable. I rely on the judgment passed by the Hon'ble Supreme Court in the case of Nizam Sugar Factory reported as 2006 (197) E.L.T. 465 (S.C.), wherein it has been held that,

“8. Without going into the question regarding Classification and marketability and leaving the same open, we intend to dispose of the appeals on the point of limitation only. This Court in the case of *P & B Pharmaceuticals (P) Ltd. v. Collector of Central Excise* reported in (2003) 3 SCC 599 = 2003 (153) E.L.T. 14 (S.C.) has taken the view that in a case in which a show cause notice has been issued for the earlier period on certain set of facts, then, on the same set of facts another SCN based on the same/similar set of facts invoking the extended period of limitation on the plea of suppression of facts by the assessee cannot be issued as the facts were already in the knowledge of the department. It was observed in para 14 as follows :

“14. We have indicated above the facts which make it clear that the question whether M/s. Pharmachem Distributors was a related person has been the subject-matter of consideration of the Excise authorities at different stages, when the classification was filed, when the first show cause notice was issued in 1985 and also at the stage when the second and the third show cause notices were issued in 1988. At all these stages, the necessary material was before the authorities. They had then taken the view that M/s. Pharmachem Distributors was not a related person. If the authorities came to



the conclusion subsequently that it was a related person, the same fact could not be treated as a suppression of fact on the part of the assessee so as to saddle with the liability of duty for the larger period by invoking proviso to Section 11A of the Act. So far as the assessee is concerned, it has all along been contending that they were not related persons, so, it cannot be said to be guilty of not filling up the declaration in the prescribed proforma indicating related persons. The necessary facts had been brought to the notice of the authorities at different intervals from 1985 to 1988 and further, they had dropped the proceedings accepting that M/s. Pharmachem Distributors was not a related person. It is, therefore, futile to contend that there has been suppression of fact in regard M/s. Pharmachem Distributors being a related person. On that score, we are unable to uphold the invoking of the proviso to Section 11A of the Act for making the demand for the extended period."

This judgment was followed by this Court in the case of *ECE Industries Limited v. Commissioner of Central Excise, New Delhi* reported in (2004) 13 SCC 719 = 2004 (164) E.L.T. 236 (S.C.). In para 4, it was observed :

"4. In the case of *M/s. P&B Pharmaceuticals (P) Ltd. v. Collector of Central Excise* reported in [2003 (2) SCALE 390], the question was whether the extended period of limitation could be invoked where the Department has earlier issued show cause notices in respect of the same subject-matter. It has been held that in such circumstances, it could not be said that there was any wilful suppression or mis-statement and that therefore, the extended period under Section 11A could not be invoked."

Similarly, this judgment was again followed in the case of *Hyderabad Polymers (P) Ltd. v. Commissioner of Central Excise, Hyderabad* reported in [2004 (166) E.L.T. 151 (S.C.)]. It was observed in para 6 :

"..... On the ratio laid down in this judgment it must be held that once the earlier Show Cause Notice, on similar issue has been dropped, it can no longer be said that there is any suppression. The extended period of limitation would thus not be available. We are unable to accept the submission that earlier Show Cause Notice was for a subsequent period and/or it cannot be taken into consideration as it is not known when that Show Cause Notice was dropped. If the Department wanted to take up such contentions it is for them to show that that Show Cause Notice was not relevant and was not applicable. The Department has not brought any of those facts on record. Therefore, the Department cannot now urge that findings of the Collector that that Show Cause Notice was on a similar issue and for an identical amount is not correct."

9. Allegation of suppression of facts against the appellant cannot be sustained. When the first SCN was issued all the relevant facts were in the knowledge of the authorities. Later on, while issuing the second and third show cause notices the same/similar facts could not be taken as suppression of facts on the part of the assessee as these facts were already in the knowledge of the authorities. We agree with the view taken in the aforesaid judgments and respectfully following the same, hold that there was no suppression of facts on the part of the assessee/appellant.

10. For the reasons stated above, Civil Appeal Nos. 2747 of 2001 and Civil Appeal No. 6261 of 2003 filed by the assessee are accepted and the impugned orders are set aside on the question of limitation only. The demands raised against them as well as the penalty, if any, are dropped. Civil Appeals @ Special Leave Petition (C) Nos. 9271-9278 of 2003 filed by the department are dismissed. Questions of classification and marketability are left open. Parties shall bear their own costs."

7.2 It is further observed that the Appellant had raised the issue of limitation before the adjudicating authority in reply to Show Cause Notice as well as during de novo adjudication and also before the appellate authority. However, no



concrete findings were recorded by the respective adjudicating authority or the then appellate authority.

8. In view of above discussion, it is clear that confirmation of demand of Rs. 6,23,706/- under proviso to Section 11A(1) of the Act by invoking extended period of limitation is not legally sustainable and is required to be set aside and I order to do so. Since, demand is set aside, imposition of penalty of Rs. 6,23,706/- upon Appellant No. 1 under sub-rule (1) of Rule 173Q of erstwhile Central Excise Rules, 1944 and imposition of penalty of Rs. 1,00,000/- each upon Appellant Nos. 2 to 5 under Rule 209A of erstwhile Central Excise Rules, 1944 are also set aside.

9. I set aside the impugned order and allow the appeals filed by Appellant Nos. 1 to 5.

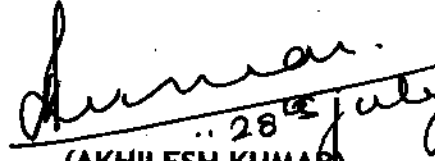
10. अपीलकर्ताओं द्वारा दर्ज की गई अपीलों का निपटारा उपरोक्त तरीके से किया जाता है।

10. The appeals filed by the Appellants are disposed off as above..

सत्यप्रियत,



विपुल शाह  
अधीक्षक (अपील)

  
28 July, 2022.  
(AKHILESH KUMAR)  
Commissioner (Appeals)

By RPAD

To, 1. M/s Mukund Brass Industries Plot No. 3, GIDC Industrial Estate, Shankar Tekri, Jamnagar.	सेवा में, मेसर्स मुकुंद ब्रास इंडस्ट्रीज प्लॉट नंबर 3, जीआईडीसी इंडस्ट्रियल एस्टेट, शंकर टेकरी, जामनगर।
2. Shri Mukundbhai Somchand Shah, Partner of M/s Mukund Brass Inds, Jamnagar.	श्रीमुकुंदभाई सोमचंद शाह, पार्टनर, मेसर्समुकुंदब्रासइंडस्ट्रीज, जामनगर।
3. M/s Kunjal Udyog, C-2/315-1, GIDC, Jamnagar.	मेसर्स कुंजल उद्योग, सी-2/315-1, जीआईडीसी, जामनगर।
4. M/s Ashish Industries, C-2/315-2, GIDC, Jamnagar.	मेसर्स आशीष इंडस्ट्रीज, सी-2/315-2, जीआईडीसी, जामनगर।
5. M/s Urmi Associates, C-2/307-1, GIDC, Jamnagar.	मेसर्स उर्मी एसोसिएट्स, सी-2/307-1, जीआईडीसी, जामनगर।

प्रतिलिपि :-

1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।



- 2) प्रधान आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट को आवश्यक कार्यवाही हेतु।
- 3) संयुक्त आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फाइल।

