



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

द्वितीय तल, सी एस टी भवन / 2<sup>nd</sup> Floor, C.S.T Bhavan,  
रेस कोर्स रोड, / Race Course Road,  
राजकोट / Rajkot - 360 001



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रजिस्टर्ड डाक ए.डी. द्वारा :-

DIN-20220864SX00000055805F

क	अपील / फाइल संख्या / Appeal / File No.	मूल क्रमांक / OIONo.	दिनांक / Date
	V2/335/RAJ/2021	20/DC/KG/2020-21	30-03-2021

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

**RAJ-EXCUS-000-APP-237-2022**

आदेश का दिनांक / Date of Order:	29.07.2022	जारी करने की तारीख / Date of issue:	26.08.2022
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श्री अखिलेश कुमार, आयुक्त (अपील), 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 / गांधीक्षामा 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. Shining Tools Ltd, Survey no.17, Plot no.26, Rani Industrial  
Area, Behind Parin Furniture, Rajkot-360004**

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) बर्गीकरण मूल्यांकन से सम्बन्धित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के.पुरम, नई दिल्ली, को की जानी चाहिए /

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

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 360016 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-360016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्वयंसेवक (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये का निर्धारित शुल्क जमा करना होगा। /

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/- Rs.10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्वयंसेवक (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये का निर्धारित शुल्क जमा करना होगा। /

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied 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/-.

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 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/-.



(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 सकती एवं उसके साथ आवृत्त, केन्द्रीय उत्पाद शुल्क अध्यादेश (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियों संलग्न करें (उनमें से एक प्रति प्रभावित होनी चाहिए) और आवृत्त द्वारा सहायक आवृत्त अध्यादेश उपावृत्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आदेश 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, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपये से अधिक न हो।  
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है

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

- बशर्ते वह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के अंश से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थान नहीं एवं अपील को लागू नहीं होये। /

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 पुनरीक्षणवापिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपत्रक के अंतर्गत बबर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिन, 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 छुट (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 आवेदन को आवृत्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा निवृत्त की गई तारीख अध्यादेश समावाचित पर दो माद 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) नियमावली 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आवेदन के संवेक्षण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आवेदन व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। / The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-in-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।  
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए।  
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

(D) यदि इस आदेश में कई मूल आवेदों का समावेश है तो प्रत्येक मूल आवेदन के लिए शुल्क का भुगतान, उपरोक्त ङग से किया जाना चाहिए। इस तथ्य के होते हुए भी की निम्न पट्टी कार्य से बचने के लिए सहाय्यता 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) ब्याससंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आवेदन एवं स्थगन आवेदन की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट लगाया जाएगा।  
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, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की और भी ध्यान आकर्षित किया जाता है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करते 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 present appeal has been filed by M/s Shining Tools Limited, Survey No. 17, Plot No. 26, Rani Industrial Area, Behind Parin Furniture, Vavdi, Rajkot (herein after referred to as "the appellant") against Order – in – Original No. 20/DC/KG/2020-21 dated 30.03.2021 (herein after referred to as "the impugned order") passed by the Deputy Commissioner, Central Goods and Service Tax, Division – II, Rajkot (herein after referred to as "the adjudicating authority"). The appellant are engaged in the manufacture of Carbide Tools falling under Chapter Heading No. 82 of the First Schedule to the Central Excise Tariff Act, 1985, and were holding Central Excise Registration No. AATCS2354KEM001 under the Central Excise Act, 1944 (herein after referred to as "the Act") and Service Tax Registration No. AATCS2354KSD001 under the Finance Act, 1994.

2. During the course of audit of the records of the appellant, conducted by the officers of the CGST Audit, Rajkot, for the period FY 2014-15 to FY 2017-18 (Up to June-2017), it was observed that they had availed and utilized Cenvat Credit of Rs. 22,25,657/- on the basis of invoices as per details given in table below:

Sr. No.	Invoice No. & Date	Name of the party	Value (in Rs.)	Duty (in Rs.)	Description
1	E-2/10.04.15	Shine Industries	47,48,432	5,93,554	Tools
2	E-3/19.04.15	Shine Industries	27,55,884	3,44,486	Tools
3	E-4/01.05.15	Shine Industries	39,69,100	4,96,138	Tools
4	127/01/01/2015	Shine Industries	9,08,239	1,08,989	Tools
5	130/18/01/2015	Shine Industries	9,33,029	1,11,963	Tools
6	132/01/02/2015	Shine Industries	9,00,876	1,08,105	Tools
7	135/01/02/2015	Shine Industries	8,83,919	1,06,070	Tools
8	138/01/02/2015	Shine Industries	15,68,499	1,96,062	Tools
9	140/01/02/2015	Shine Industries	12,82,316	1,60,290	Tools
Total				22,25,657/-	



as observed by the audit officers that all the above 9(Nine)

invoices were issued in the name of "M/s. Shining Tools Limited (Reg. No. AATCS2354KED001); 10, Samrat Ind. Area, Gondal Road., Rajkot", which was registered as dealer and not in the name of the Noticee. Further, the mode of transport and vehicle registration number was also not mentioned in these invoices. Hence, the audit officers were of the view that these invoices cannot be considered as valid documents under Rule 9 of the Cenvat Credit Rules, 2004 for availing credit.

2.1. It was further observed that the quantity of goods mentioned in above invoices were not shown in input stock account maintained by the appellant and that all the goods mentioned in the invoices were classified as "Tools" falling under "CETSH No. 82079090". From the description of goods mentioned in the invoices, it appeared that the above said goods were in the form of finished goods and hence, cannot be considered as "input" in terms of Rule 2(k) Cenvat Credit Rules, 2004.

2.2. Based on the audit observations, the appellant were issued Show Cause Notice No.VI(a)/8-279/Circle-I/AG-05/2018-19 dated 01.06.2019 by the Assistant Commissioner, Central GST Audit, Circle-I, Rajkot, wherein it was proposed to demand and recover Cenvat credit amount of Rs. 22,25,657/- under Rule 14 of the Cenvat Credit Rule, 2004 read with Section 11A(4) of the Central Excise Act, 1944 along with interest under Rule 14 of *ibid* read with Section 11AA the Act. It was also proposed for imposition of penalty under Rule 15 *ibid* read with Section 11AC the Act.

3. The aforesaid SCN was adjudicated vide the impugned order wherein the proposals made in the SCN were confirmed by the adjudicating authority.

4. Being aggrieved with the impugned order, the Appellant have preferred appeals on various grounds, *inter alia*, as below:-

(i) The impugned order issued by adjudicating authority is without any authority and jurisdiction. The impugned order has been signed by the Assistant Commissioner who was already been transferred from the Division-II, Rajkot in Feb., 2021 whereas the order has been signed on 31.03.2021.

(ii) The impugned order can not be considered as speaking order as adjudicating authority had not followed the established norms. The contention of the appellant made during the adjudication



process has not been discussed by the adjudicating authority. They relied upon the instruction given under Master Circular No. 1053/02/2017-CX., dated 10.03.2017 and decisions of various judicial forms wherein norms have been fixed for adjudication process.

- (iii) The appellant is a limited company registered under Company Law. The appellant is engaged in manufacturing and selling of 'Cutting Carbide Tools' of various size and design. In the year 2015, the appellant had obtained registration as 'registered dealer' under Central Excise Law and having registration no. AATCS2354KED001 for trading of 'Cutting Carbide Tools' of various size and design. The said dealer has purchased 'Cutting Carbide Tools' of various size and design from M/s Shine Industries, which is also registered under the central excise law as manufacturer. All the goods covered under the 9 Invoices in the impugned order were purchased from M/s Shine Industries by the appellant as registered dealer, the said goods also taken on records in its RG23-D Register which is prescribed for dealer. The appellant had also started a manufacturing unit naturally in its name M/s Shining Tools Ltd. and obtained central excise registration having no. AATCS2354KEM002 on 06.04.2015. From these facts, the appellant have separate registered manufacturing premises and had eligible to receive inputs used for manufacturing finished goods and also avail CENVAT credit on such inputs.
- (iv) The invoices in question have complied all formalities required under Rule 11 of the Central Excise Rules, 2002 (hereinafter referred as the said rules). In the said invoices the registration number of the consignee mentioned as AATCS2354KED001 instead of AATCS2354KEM002. As per the provisions of said rules, there is no requirement of registration number of the buyers/consignee. If it is mandatory, then due to small error CENVAT credit can not be denied by the authority. It appears that M/s Shinning Industries mentioned the name of the company, registration number and address as was saved in their data and the appellant had taken the CENVAT by verifying the name of the company and after payment was done. The appellant had relied upon various judgment of tribunals wherein it was



held that there cannot be denial of CENVAT credit of inputs on insignificant reasons or errors.

- (v) The appellant stated that their premises as registered dealer was being closed and they had issued invoices for goods lying in stock and issued in favour of its registered premises for manufacturer. Therefore, the invoices issued by M/s Shinning Industries were being disputed for availing CENVAT credit then the invoices issued by them as dealer in favour of their register manufacturer may be considered as eligible invoices so that in future no litigation get started. They relied upon Circular No. 1003/10/2015-CX dated 05.05.2015 for instructions given by the Board for facilitation to trade for availment of CENVAT credit on transactions made by the dealer.
- (vi) Both the premises and registration belongs to the appellant only and considering the merger situation as dealer unit is closed and all asset and liability taken by manufacturing unit, they are also eligible to avail CENVAT credit on inputs under Rule 10 of the CENVAT Credit Rules, 2004. All the inputs lying in stock at the dealer premises got transferred to the appellant's manufacturing premises on account of transfer of the premises hence the CENVAT credit in question is eligible and they relied upon various decisions of tribunals.
- (vii) The CENVAT credit can not be denied on trivial or technical reasons. They relied upon the decisions of various legal forums
- (viii) The goods received under invoices in question, is actually inputs as per definition of inputs provided under the CENVAT Credit Rules, 2004. The adjudicating authority has not studied or discussed the manufacturing process, machine used for manufacture and finished goods emerging after the process hence it can not be concluded that the goods in question is finished goods and not inputs. The definition of manufacture is very wide and department is used and expanded the same for levy of duty. They relied upon the decisions of Supreme Court of India wherein deliberated the term 'incidental and ancillary process'. The adjudicating authority has not verified that the process of cutting, sizing, proof machining, stamping and other related process amounts to manufacturer or not. In fact they have enough machinery and manpower for doing such operations. The inputs and finished goods both are same as per



nomenclature of tools. The same is classified under the same heading of tools, but both are different products. On this plea they relied upon the various decisions of legal forums.

- (ix) The extended period can not be invoked in the present case and demand is time barred. They stated that while verification of premises while applying for new registration, the range superintendent had raised query in respect of CENVAT credit of about Rs. 7,70,769/- plus Education and Higher Education Cess on 16.04.2015. In this amount, the amount denied as CENVAT Credit was also included. They have already complied the query which clearly proves that everything was in the knowledge of the department. Further, the inputs received under the said invoices were entered in RG 23A Pt. II register and the finished goods were accounted for in the Daily Stock Account and these facts were entered and reflected in ER Returns for the period in question. They relied upon decisions of various legal forums.
- (x) The demand of CENVAT credit itself is not maintainable no interest under Section 11AA the Central Excises Act, 1944 read with Rule 14 of the CENVAT Credit Rules, 2004 and penalty imposed under Rule 15 *ibid* read with Section 11AC the Central Excises Act, 1944. In support of plea they relied upon various decisions of tribunals and high courts.

5. Personal Hearing in the matter was held in virtual mode on 14.07.2022. Shri Rajesh C. Prasad, Authorised Representative, appeared on behalf of Appellant. He reiterated the submissions made in appeal memorandum. He also submitted a written submission during hearing wherein he reiterated the contentions made in appeal memorandum and also submitted copy of some Invoices.

6. I have carefully gone through the facts of the case, the impugned order, the appeal memorandum and written as well as oral submissions made by the Appellant. The issue to be decided in the present case is whether the impugned order demanding Cenvat Credit amount of Rs. 22,25,657/- from the Appellant along with interest and imposing penalty is legally sustainable or not.

6.1. On perusal of the records, I find that during the audit of the records of the Appellant, it was observed that nine invoices (as per details at Para



02 above), on which CENVAT credit was availed by the appellant, were not issued in the name of the appellant. It is further observed by the audit officers these invoices were issued in the name of appellant firm which was registered as dealer under the Central Excise Law and having its office at 10, Samrat Industrial Area, Gondal Road, Rajkot. It has been alleged that the said invoices cannot be considered as valid documents for the purpose of availing CENVAT Credit as per Rule 9 of the CENVAT Credit Rules, 2004 read with Rule 11 of the Central Excise Rules, 2002. It was further observed from the description of goods mentioned in the said invoices that the goods in question were in the form of finished goods, hence they cannot be considered as 'inputs' as per definition of inputs provided under Rule 2(k) of the CENVAT Credit Rules, 2004. The impugned order has confirmed the allegations in the SCN that the Cenvat Credit in question were availed on the strength of invoices which cannot be considered as valid documents under Rule 9 of the Cenvat Credit Rules, 2004. Further, the Cenvat credit has also been denied on the grounds that the goods received under the invoices in question cannot be considered as inputs under Rule 2 (k) of the CENVAT Credit Rules, 2004. The appellants has contested the demand on jurisdiction, merits as well as on limitation.

7. On merits of the case, it has been contended by the appellant that they were registered as Dealer of 'Cutting Carbide Tools' for trading purpose, and for that purpose they had obtained registration under Central Excise as registered dealer for passing Central Excise Duty to their customers. They had also started manufacturing the same item and for that purpose they also obtained registration as manufacturer under Central Excise Law at another place. The invoices in question are issued as per Rule 9 of the CENVAT Credit Rules, 2004 read with Rule 11 of the Central Excise Rules, 2002. It is their contention that there are no mandatory provisions to indicate the Registration No. of recipient in the invoice. There was a small mistake in declaring registration number of dealer and not manufacturer as a recipient of goods, for this petty mistake the CENVAT credit can not be denied. Further, the goods received under the said invoices are actually inputs as per Rule 2(k) *ibid*. The adjudicating authority has not verified the manufacturing process on such invoices. Therefore, no penalty and interest are leviable as confirmed under the impugned order.

7.1. On jurisdiction, it has been contended by the appellant that the





impugned order was passed by the adjudicating authority without any authority and jurisdiction as the impugned order has been signed on 30.03.2021 by the adjudicating authority after being transferred from the Division-II, Rajkot in February, 2021. In this regard, I find that the personal hearing in the present case was conducted on 31.08.2020 and the impugned order has been adjudicated by the Adjudicating Authority Smt. Kirti Gupta, Deputy Commissioner, CGST Division-II, Rajkot on 30.03.2021. As per the contentions of the appellant, when the Order was signed by the adjudicating authority on 30.3.2021, she was already transferred to CGST Division-I, Rajkot and she was not holding the charge of CGST Division-II, Rajkot. If that be the case, passing of impugned order by Smt. Kirti Gupta as Dy. Commissioner, CGST Division-II, Rajkot is not legally sustainable, when she was not holding the charge of CGST Division-II, Rajkot. It is pertinent to mention that when hearing is conducted in a case but adjudicating authority is transferred and order is remained to be issued, then in that circumstances, fresh adjudication process is to be carried out by the succeeding officer, which is not done in the present case. I also find that considerable time has also elapsed between conduct of personal hearing and passing of the impugned order. Hence, the impugned order suffer from legal infirmity. I, therefore, find it fit to set aside the impugned order and remand the matter to the present jurisdictional Adjudicating Authority of CGST Division-II, Rajkot with a direction to decide the case afresh. All the issues have been kept open. The Appellant is also directed to furnish his submission with the Adjudicating Authority. Needless to mention that the principles of natural justice should be adhered to while passing the order.

8. I set aside the impugned order and dispose the appeal by way of remand to the adjudicating authority.

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.

सत्यापित / Attested

Date: 29/07/2022

F. No. V2/335/RAJ/2021 N. C. Gajariya  
अधीक्षक  
Superintendent

एन. सी. गजरीया  
अधीक्षक  
Superintendent

29 July, 2022  
(अशिलेश कुमारा)  
आयुक्त (अपील)



<p>To</p> <p>M/s Shining Tools Limited, Survey No.17, Plot NO.26, Rani Industrial Area, Behind Parin Furniture, Vavdi, Rajkot</p>	<p>सेवामें, मेसर्स साइनिंग टूल्स लिमिटेड सर्वे नौ। 17 प्लॉट नंबर 26, रानी इंडस्ट्रियल एरिया, परिन फर्निचर के पीछे, वावडी, राजकोट</p>
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प्रतिलिपि :-

- 1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) प्रधान आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट को आवश्यक कार्यवाही हेतु।
- 3) संयुक्त आयुक्त (मण्डल -10), राज्य वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, 4th मंज़िल बहुमाली भवन रेस कोर्स रिंग रोड, राजकोट को, सेक्शन 107(15) of GST Act, 2017 के अनुसार जानकारी हेतु।
- 4) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क मण्डल राजकोट -II, राजकोट को आवश्यक कार्यवाही हेतु।

5) गार्ड फ़ाइल।



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