



:: 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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सत्यमेव जयते

रजिस्टर्ड डाक ए.डी. द्वारा :-

DIN-20230264SX000000CEB7

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / OIO No.	दिनांक/ Date
	V2/24/RAJ/2022	143/ST/2020-21	06-01-2022

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

**RAJ-EXCUS-000-APP-009-2023**

आदेश का दिनांक / Date of Order:	<b>30.01.2023</b>	जारी करने की तारीख / Date of issue:	<b>02.02.2023</b>
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श्री शिव प्रताप सिंह, आयुक्त (अपील्स), राजकोट द्वारा पारित /

Passed by Shri Shiv Pratap Singh, 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 सृजित: /  
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST, Rajkot / Jamnagar / Gandhidham :

घ अपीलकर्ता/प्रतिवादी का नाम एवं पता /Name & Address of the Appellant & Respondent :-

**M/s. Bhavani Industries India LLP, Ganjiwada, Bhavnagar Road, Rajkot-360003.**

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 मामलों 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 (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा 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) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो 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। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

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

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, 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/- 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। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

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



- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9 (2) एवं 9 (2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in 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.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपये से अधिक न हो।  
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है  
(i) धारा 11 डी के अंतर्गत रकम  
(ii) सेनवेट जमा की ली गई गलत राशि  
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम  
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगा। / For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,  
Under Central Excise and Service Tax, "Duty Demanded" shall include :  
(i) amount determined under Section 11 D;  
(ii) amount of erroneous Cenvat Credit taken;  
(iii) amount payable under Rule 6 of the Cenvat Credit Rules  
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.
- (C) भारत सरकार को पुनरीक्षण आवेदन :  
**Revision application to Government of India:**  
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपूरतक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। / A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:  
(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। / In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse  
(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। / In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.  
(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.  
(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समयावधि 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) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। / The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.  
(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।  
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए।  
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.  
(D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.  
(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क 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) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की और भी ध्यान आकर्षित किया जाता है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.  
(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट [www.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)



## अपील आदेश /ORDER-IN-APPEAL

M/s Bhavani Industries India LLP, Ganjiwada, Bhavnagar Road, Rajkot-360 003 (hereinafter referred to as the appellant) has filed appeal No. V2/24/RAJ/2022 against Order-in-Original No. 143/ST/2020-21 dated 06.01.2022 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Central Excise & CGST, Division-I, Rajkot (hereinafter referred to as 'the adjudicating authority').

2. Briefly stated the facts of the case are that vide Order-in-Original No.01/D/AC/2016-17 dated 29.04.2015 Cenvat Credit of Rs.3,39,900/- and interest of Rs.69,563/- was confirmed and penalty of Rs.3,39,900/- was imposed on appellant. As appellant had already paid Cenvat Credit of Rs.3,39,900/-, interest of Rs.69,563/- and penalty of Rs.47,586/- under protest and the said amounts were appropriated. The appellant filed appeal against the said order and Commissioner (Appeals) rejected the appeal filed by appellant. Thereafter the appellant filed appeal before CESTAT who vide order dated 27.08.2018 allowed the appeal. Thereafter, the appellant filed a refund claim of Rs.5,68,080/-. The adjudicating authority, by the impugned order, sanctioned the claim and ordered the amount to be credited to the Consumer Welfare Fund established under Section 12C of the Central Excise Act, 1944.

3.1 Being aggrieved, the appellant filed the present appeal wherein they, *inter alia*, submitted that it is settled law that amount deposited during investigation takes the character of 'deposit' or 'pre-deposit' and not 'duty' and accordingly, principles of unjust enrichment as provided under Section 11B of the Central Excise Act, 1944 do not apply. They relied upon the cases laws of *Team HE Services Pvt Ltd-2020 (38) GSTL.457 (Del)*, *KVR Construction-2012 (26) STR.195 (Kar)*, *Ucal Fuel Systems Ltd-2014 (306) ELT.26 (Mad) ad Balaji Wire Ltd-2018 (12) TMI 1577*.

The appellant submitted that had the department not made wrongful collection of amount prior to issuance of show cause notice, this entire chain of issues itself would not have arisen. In the circumstances, department cannot be permitted to allege that the appellant was casual in filing the refund claim.

The appellant further submitted that the adjudicating authority erred in not appreciating that para 3.1 of the Circular dated 16.09.2014 cannot be read to make the excess amount of deposit a 'duty'. The said para only states that amounts paid over and above the amounts stipulated under Section 35F shall not be treated as deposit under the said section. It does not say that such

will be treated as 'duty'.



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The appellant submitted that since the appellant has been deprived of its monies wrongfully and without authority of law, they are entitled to interest on the same from the date of deposit itself.

4. Advocate Rahul Gajera appeared for personal hearing held on 23.01.2023 in virtual mode. He submitted that the appellant had claimed refund of Rs.4,57 lakhs paid during the course of audit on insistence of audit officers in respect of Cenvat credit availed on insurance paid, in terms of CESTAT order. However, the adjudicating authority has sanctioned only part of the refund claim which could be treated as pre-deposit under Section 35F of the Central Excise Act, 1944 in terms of CBEC Circular dated 16.09.2014. He submitted that the said circular would be applicable only when the said amount claimed was paid under Section 35F, which is not the case here. Further, the adjudicating authority has although sanctioned the remaining amount of refund claim but has wrongly credited the same to Consumer Welfare Fund, applying doctrine of unjust enrichment. He submitted that being pre-deposit made during audit, the doctrine is inapplicable to such amount. In this regard they have submitted CA certificate and rely on the same.

5. I have carefully gone through the facts of the case, the impugned order and the submissions made in the appeal memorandum as well at the time of personal hearing. In this case, though the refund is sanctioned, part of the refund amount has been ordered to be credited to the Consumer Welfare Fund on the premises that the appellant was not able to prove that the burden of duty has not been passed on to any other person. The moot question to be answered is whether unjust enrichment is applicable in the refund claim of appellant.

6. The adjudicating authority has observed that as per Section 35F of the Central Excise Act, 1944 only 10% of the duty is considered as pre-deposit and as per Circular No.984/8/2014-CX dated 16.09.2014 amounts over and above the amounts stipulated under Section 35F of the Central Excise Act, 1944 shall not be treated as deposit under the said Section. Accordingly, the adjudicating authority has sanctioned the amount of Rs.33,900/- considering it as pre-deposit along with interest under Section 35FF ibid. Thus the dispute is in respect of the refund amount of Rs.4,23,059/- sanctioned and ordered to be credited to the Consumer Welfare Fund under Section 12C of the Central Excise Act, 1944.

7. In respect of the refund amount of Rs.4,23,059/-, the adjudicating authority has ordered the same to be credited to the Consumer Welfare Fund on the premises that the appellant was not able to prove that the burden of duty has not been passed on to any other person. He has observed that it is certified



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by the Chartered Accountant in his second certificate that the amount had been expensed out by the claimant in his books. The adjudicating authority observed that once the said amount has been debited to the Profit and Loss Account as expenditure, the same get factored in the sale price of their products and consequently the burden of duty would be deemed to have been passed on the buyers of the goods, though not directly.

8. I find that the appellant has not adduced any evidence before me to negate the above findings of the adjudicating authority. The appellant failed to explain as to how the incident of duty was not passed on to the buyers by showing cost structure, etc. In the case of *Hindustan Petroleum Corpn Ltd-2015 (328) ELT.490 (Tri-Mumbai)*, it is held that in each case, the C.A. certificate must elaborate on how it arrived at the conclusion that it did not pass on the incidence of duty to the buyers and that it must be explained as to how the duty, incidence was not passed on to the buyers by showing cost structure, etc. Hon'ble Tribunal held as under:

*"5.4 The next aspect to be considered is whether the refund claim is hit by the bar of unjust enrichment. The Revenue has referred to the case of HPCL (supra) holding that if the claimant himself has treated the refund amount due as expenditure and has not shown the same as receivable, the claimant cannot be said to have passed the test of unjust enrichment. In the present case, the appellant have not denied that the duty paid was shown as expenditure and form part of the Profit & Loss account. The appellant, however, have referred to the case of Flow Tech Power - 2006 (202) E.L.T. 404 (Mad.) and the case of Cummins India - 2008 (221) E.L.T. 525 (T) in support of their stand that even if duty paid is shown as expenditure, the same is not a sufficient evident to show that the duty has been recovered from the customers. We have seen these case laws. The judgments, held that if the certificate from the C.A. states that incidence of duty has not been passed on to the customers, merely because the amount is shown as expenditure under the Profit and Loss account, it does not establish that it has been recovered as duty from the customers. We do not accept reliance on these cases because in each case, the C.A. certificate must elaborate on how it arrived at the conclusion that it did. It must be explained as to how the duty, incidence was not passed on to the buyers by showing cost structure, etc. Above all we do not see from the records whether any C.A. certificate was produced. The orders of lower authorities have also not discussed this aspect."*

9. In the case of *Philips Electronics India Ltd-2010 (257) E.L.T. 257 (Tri. - Mumbai)* Hon'ble Tribunal has held that once the amount had been shown as expenses in the Profit & Loss account for the period, it must have been factored into the price of the goods manufactured by them. The tribunal held as under:

*"13. The appellant produced a certificate dated 10-2-2004 of their Chartered Accountant in support of their claim for refund of duty of Rs. 17,45,42,335/-. The C.A. certified that the assessee had paid the said amount of duty @10% (20 - 10%) by raising excise invoices for the period from 13-5-93 and that the amount had not been recovered from their customers. It was further certified that the amount had been shown as expenses in the Profit & Loss account for the aforesaid period whereas it is contended by the assessee that they collected cum-duty prices from their customers and that the prices at which the customers sold the goods were also cum-duty prices. The C.A.'s certificate of non-recovery of duty by the assessee from their customers loses its probative value (if any) in the face of the above contention of the assessee. The above refund claim was filed by the appellant as manufacturer of the goods. Therefore, if the amount was shown as expenses in their Profit & Loss account for the relevant period, as certified by the C.A., it must have been factored into the price of the goods manufactured by them - which situation would fit well in the contention that the goods were sold at cum-duty prices by the assessee and their customers -and consequently the burden of duty would be deemed to have been passed on to the buyers of the goods. As already*



*Signature*

*found, the appellant has failed to rebut this presumption”*

10. In the case of *Mahindra Engg. & Chemical Products Ltd-2019 (368) E.L.T. 84 (Tri. - Mumbai)* also it is held as under:

*“9. The refunds under Indirect taxes have to cross the bar of ‘Unjust Enrichment’. If the amount of Tax/Duty sought to be refunded has been recovered from the buyers, then the claimant is not entitled to refund. Even if [sic] such amount of tax, though not directly recovered from the client, but has been charged to expenses in the books of accounts, then also it is consistently held that the claimant has indirectly recovered the tax and hence failed to cross the bar of unjust enrichment. The only possible way to pass the bar of unjust enrichment is that the disputed tax/duty is not expensed off in the accounts, but booked as ‘Receivables’”*

11. In view of above discussions, I do not find any infirmity in the order by which adjudicating authority and accordingly, I reject the appeal filed by the appellant.

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

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

सत्यापित / Attested

*Joseph*  
Superintendent  
Central GST (Appeals)  
Rajkot

*Shiv*  
20-1-2023

(शिव प्रताप सिंह/ SHIV PRATAP SINGH)  
आयुक्त (अपील)/Commissioner (Appeals)

By R.P.A.D.

सेवा में, भवानी इंडस्ट्रीज इंडिया एलएलपी, गंजीवाड़ा, भावनगर रोड, राजकोट - ३६० ००३।	To M/s Bhavani Industries India LLP, Ganjiwada, Bhavnagar Road, Rajkot-360 003
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प्रतिलिपि:-

- 1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद।
- 2) प्रधान आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट।
- 3) ऊप आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, मंडल-1, राजकोट।
- 4) गार्ड फ़ाइल।

