



:: 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 / 2nd 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-20230264SX0000520945

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / OIO No.	दिनांक/ Date
	V2/96-98/RAJ/2022 GAPPL/COM/CEXP/225&226/2022	16/BB/AC/2020-21	24-02-2021

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

RAJ-EXCUS-000-APP-025 TO 029-2023

आदेश का दिनांक / Date of Order:	31.01.2023	जारी करने की तारीख / Date of issue:	06.02.2023
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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. Deepson Ceramics, NH-8A, Opp. Ganesh Way Bridge, Lalpur, Morbi-363642.

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) वगीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के. पुरम, नई दिल्ली, को की जानी चाहिए।/
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- ३८००१६ को की जानी चाहिए।/
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवाली, 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। स्थगन आदेश (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 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, 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। स्थगन आदेश (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 fees 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 उत्पादशुल्क 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 रुपए 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) 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 स्थान अर्जी 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 मामले में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपत्र 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 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 क्रेडीट क्रेडीट 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 उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संश्लेषण 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 साथ 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।
जहां 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 पट्टी 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 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) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर 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, अग्रिलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। / For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in



अपील आदेश /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. 16/BB/AC/MRB-II/2020-21 dated 24.02.2021 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Central GST Division-II, Morbi (*hereinafter referred to as 'adjudicating authority'*):-

Sl. No.	Appeal No.	Appellants	Name & Address of the Appellant
1.	V2/96/RAJ/2022	Appellant No.1	M/s Deepson Cermics, 8-A National Highway, Opp. Ganesh Weigh Bridge, Lalpur, Morbi-363 642.
2.	V2/97/RAJ/2022	Appellant No.2	Shri Hardikkumar Vashrambhai Patel, Partner of M/s Deepson Cermics, Morbi.
3.	V2/98/RAJ/2022	Appellant No.3	Shri Vashrambhai Becharbhai Dori, Partner of M/s Deepson Cermics, Morbi.
4.	GAPPL/COM/CEXP/225/2022	Appellant No.4	Shri Vijay Vallabhbhai Adroja, Partner of M/s Deepson Cermics, Morbi
5.	GAPPL/COM/CEXP/226/2022	Appellant No.5	Shri Hemalkumar Jayprakash Bhalodiya, Partner of M/s Deepson Cermics, Morbi

2. The facts of the case, in brief, are that Appellant No. 1 was engaged in manufacture of Ceramic Floor Tiles & Wall Tiles falling under Chapter 69 of the Central Excise Tariff Act, 1985 and was holding Central Excise Registration. Intelligence gathered by the officers of Directorate General of Central Excise Intelligence, Zonal Unit, Ahmedabad (DGCEI) indicated that various Tile manufacturers of Morbi were indulging in malpractices in connivance with Shroffs/ Brokers and thereby engaged in large scale evasion of Central Excise duty. Simultaneous searches were carried out at the premises of Brokers/ Middlemen/ Cash Handlers engaged by the Tile manufacturers and certain incriminating documents were seized.

2.1 Investigation carried out revealed that the Shroffs opened bank accounts in the names of their firms and passed on the bank account details to the Tile manufacturers through their Brokers/ Middlemen. The Tile manufacturers further passed on the bank account details to their customers/ buyers with instructions to deposit the cash in respect of the goods sold to them without bills into these accounts. After depositing the cash, the customers used to inform the Tile manufacturers, who in turn would inform the Brokers or directly to the Shroffs. Details of such cash deposit along with the copies of pay-in-slips were communicated to the manufacturers by the Customers. The Shroffs on confirming the receipt of the cash in their bank accounts, passed on the cash to the Brokers after deducting their commission from it. The Brokers further handed over the cash to the Tile manufacturers after deducting their



(Signature)

commission. This way the sale proceeds of an illicit transaction was routed from buyers of goods to Tile manufacturers through Shroffs and Brokers.

2.2 Based on the documents seized during search and statements recorded, it appeared that the appellant No.1 had clandestinely cleared excisable goods during the period from July 2015 to December 2015 valued at Rs.56,88,980/- involving total Central Excise duty amounting to Rs.7,11,125/-. Show Cause Notice dated 17.02.2020 was issued to Appellant No.1 calling them to show cause as to why Central Excise duty amounting to Rs.7,11,125/- should not be demanded and recovered from them under proviso to Section 11A(4) of the erstwhile Central Excise Act, 1944 (*hereinafter referred to as "Act"*) along with interest under Section 11AA of the Act and also proposing imposition of penalty under Section 11AC of the Act and fine in lieu of confiscation under Section 34 of the Act. The Show Cause Notice also proposed imposition of penalty upon Appellant No.2 to 5 under Rule 26(1) of the Central Excise Rules, 2002 (*hereinafter referred to as "Rules"*).

3. The above said Show Cause Notice was adjudicated vide the impugned order wherein the demand of Central Excise duty amounting to Rs.18,86,651/- was confirmed under Section 11A(4) along with interest under Section 11AA of the Act. The impugned order imposed penalty of Rs.18,86,651/- under Section 11AC of the Act upon Appellant No. 1 with option of reduced penalty as envisaged under provisions of Section 11AC of the Act. The impugned order also imposed penalty of Rs. 1,00,000/- each upon Appellant Nos. 2 to 5 under Rule 26(1) of the Rules.

4. Being aggrieved with the impugned order, Appellant Nos. 1 to 5 have preferred appeals along with condonation of delay on various grounds, *inter alia*, contending that :-

Appellant No. 1:-

- They were not aware of the so called clandestine removal, issue of summons, show cause notice dated 02.12.2019 and order-in-original dated 24.02.2021 till they received recovery letter dated 19.12.2021 from the office of the CGST, Division-II, Morbi.
- The allegation of clandestine removal and evasion of Central Excise duty is without any corroborative evidences, without any base, on basis of third party statements with whom they have never made any transactions.
- The allegation of Central Excise duty evasion is based on presumption and assumption based on few statements of third person with whom they never made business transaction. Mere allegation of duty evasion without corroborative evidence of any direct financial flow back, use of excess raw



material, consumption of electricity and how and when such removal was occurred are not explained in the order.

- There are numbers of judgments of Tribunal/ High Court and Supreme Court that in the above situation, the appeal of appellant was allowed. They discussed the following decisions in this regard.

- Opel Alloys Pvt Ltd-2005 (185) ELT.A58 (SC)*
- Maan Aluminium Ltd-2015 (322) ELT.184 (SC)*
- Sotex-2007 (209) ELT.9 (SC)*
- Chhajusingh S. Kanwal-2022 (272) ELT.202 (Guj)*
- Nu Trend Business-2002 (141) ELT.119 (Cestat)*
- Utility Alloys-2005 (184) ELT.80 (Tri)*
- P.V. Verghese-2008 (232) ELT.420 (Ker)*
- Omkar Textile Mills-2010 (259) ELT.687 (Guj)*
- Icycold Commercial Enterprise-1994 (69) ELT.337 (Tri)*
- Shree Narottam Udhyog-2003 (158) ELT.40 (Tri)*

- The cross examination of Shri Lalit Ashumal Gangwani and Shri Thakarshi Pemji Kasundra may be allowed.
- They submitted that Hon'ble Supreme Court vide order dated 10.01.2022 have extended the time limit of filing appeal upto 90 days from 01.03.2022.

Appellants Nos. 2 to 5 :-

- The appellants reiterated the submissions made by the first appellant. In addition, they submitted that the allegation that the applicant partner was actively involved in the clandestine removal and evasion of Central Excise duty is without any corroborative evidences and solely on presumption and assumption.
- They submitted that the partners never actively participated or abetted in clandestine removal, as the goods were never clandestinely removed and no penalty can be imposed.
- They submitted that once the firm has already been penalized, separate penalty cannot be imposed on partners. They relied upon the following decisions:

- Jaiprash Motwani-2010 (258) ELT.204 (Guj)*
- Mohammed Farookh Mohammed Ghani-2010 (259) ELT.170 (Guj)*
- Chhajusingh S. Kanwal-2011 (272) ELT.202 (Guj)*

5. Shri D. P. Kasnzara and Shri Hitesh Barejiya, consultants appeared for personal hearing on 25.01.2023 and submitted that the appellant did not receive any letter, show cause notice, personal hearing notice or Order-in-Original as their firm was closed down. They came to know of the order-in-original dated 24.02.2021 on receipt of recovery letter dated 10.12.2021. They submitted that the demand has been confirmed and penalty imposed in ex-parte order merely based on statement of Shroff. They denied all the allegations and requested to set aside the order-in-original.



6.1 First of all I would like to take up the application for condonation of delay filed by the appellant. I find that the date of order is 24.02.2021. Though they claimed not to have received the order and came to know about the same on receipt of recovery letter dated 10.12.2021, then the date of receipt of the order can be considered as 10.12.2021. Even then, the appeals at Sr. No.1 to 3 have been filed on 27.05.2022 and appeals at Sr.No.4 & 5 have been filed on 03.06.2022 and thus there is delay in filing all these appeals. However, as per Order dated 10.01.2022 of Hon'ble Supreme Court in Misc. Application No.21 of 2022 in Misc. Application No.665 of 2021 in Suo Moto Writ Petition (C) No.3 of 2020, the period from 15.03.2020 till 28.02.2022 shall stand excluded in computing the period of limitation and all persons shall have a limitation period of 90 days from 01.03.2022. In view of the above, I consider the appeals at Sr. No.1 to 3 filed within prescribed time limit as per Finance Act, 1994 and proceed to decide the appeal on its merits.

6.2 It appears that the appeals at Sr. No.4 & 5 are filed beyond the relaxation of time allowed by the Hon'ble Supreme Court, as the relaxation of time of 90 days allowed by the Apex Court was upto 29.05.2022 while the appeals are filed on 03.06.2022. Therefore, the appeals No. GAPPL/COM/CEXP/225/2022 and GAPPL/COM/CEXP/225/2022 filed by appellants 4 and 5 are to be treated as filed even beyond condonable time prescribed under Section 35 of Central Excise Act, 1944 and hence required to be dismissed.

7. I have carefully gone through the facts of the case, the impugned order, the appeal memoranda and written as well as oral submissions made by the Appellants. The issue to be decided is whether the impugned order, in the facts of this case, confirming demand on Appellant No. 1 and imposing penalty on Appellant Nos. 1 to 3 is correct, legal and proper or not.

8. On perusal of records, I find that an offence case was booked by the officers of Directorate General of Central Excise Intelligence, Ahmedabad against Appellant No. 1 for clandestine removal of goods. As per the *modus operandi* unearthed by the DGCEI, the Tile manufacturers passed on the bank account details of the Shroffs to their buyers with instructions to deposit the cash in respect of the goods sold to them, without bills into these accounts. After depositing the cash, the buyers used to inform the Tile manufacturers, who in turn would inform the Brokers or directly to the Shroffs. Details of such cash deposit along with the copies of pay-in-slips were communicated to the tile manufacturers by the customers. The Shroffs on confirming the receipt of the cash in their bank accounts, passed on the cash to the Brokers after deducting their commission from it. The Brokers further handed over the cash to the Tile manufacturers after deducting their commission. This way the sale proceeds



were allegedly routed through Shroffs / Brokers / middlemen.

8.1 From the case records I find that the DGCEI had covered 4 Shroffs and 4 brokers / middlemen during investigation, which revealed that 186 manufacturers were routing sale proceeds of illicit transactions from the said Shroffs / Brokers / Middlemen. I find that the DGCEI has, *inter alia*, relied upon evidences collected from the premises of M/s K. N. Brothers, Rajkot / Shree Ambaji Enterprise, Rajkot, M/s Maruti Enterpsie, M/s India Enterprise, M/s Siddhnath Agency and M/s P C Enterprises to allege clandestine removal of goods by the Appellants herein. It is settled position of law that in the case involving clandestine removal of goods, initial burden of proof is on the Department to prove the charges. Hence, it would be pertinent to examine the said evidences gathered by the DGCEI and relied upon by the adjudicating authority in the impugned order to confirm the demand of Central Excise duty.

8.2 I find that records seized from the office premises of M/s K.N. Brothers, Rajkot, Shroff included bank statements of various bank accounts operated by M/s K.N. Brothers, which contained details like particulars, deposit amount, initiating branch code etc. Further, the name of city from where the amount was deposited and code name of concerned middlemen / Broker to whom they had handed over the said cash amount was mentioned in handwritten form.

8.3 I find that the adjudicating authority has observed from the statement dated 23.12.2015 of Shri Suresh Girdharbhai Gangwani, Proprietor of M/s Shree Siddhnath Agency, Lalit Ashumal Gangwani, owner of M/s K.N. Brothers, Rajkot/ Shree Ambaji Enterprise, Rajkot, statement dated 24.12.2015 of Shri Thakarshi Premji Kasundra (Kaka), Broker/ Middleman of Tile manufacturers, Morbi that the Shroffs on confirming the receipt of the cash in their bank accounts, passed on the cash to the Brokers after deducting their commission from it. The Brokers further handed over the cash to the Tile manufacturers after deducting their commission. This way the sale proceeds of an illicit transaction was routed from buyers of goods to Tile manufacturers through Shroffs and Brokers. Further, on analyzing the documentary evidences collected during investigation and from the statements recorded, I find that customers, of Appellant No. 1 had deposited cash amount in bank accounts of Shroffs and Middlemen which was converted into cash and handed over the said cash amount to Appellant No. 1.

9.1 As per the Statements of Shri Suresh Girdharbhai Gangwani, Proprietor of M/s Shree Siddhnath Agency, Lalit Ashumal Gangwani, owner of M/s K.N. Brothers, Rajkot / Shree Ambaji Enterprise, Rajkot and Shri Thakarshi Premji Kasundra (Kaka), of M/s Gayatri Enterprise, Morbi who is Broker / Middleman of Tile manufacturers, Morbi, it is evident that the said Statements contained



plethora of the facts, which are in the knowledge of the deponents only. For example, Shri Thakarshi Premji Kasundra (Kaka), Broker / Middleman of Tile manufacturers, Morbi deciphered the meaning of each and every entry written in their private records. They also gave details of cash delivered to Tile manufacturers with names of concerned persons who had received cash amount. The adjudicating authority also observed from the statement of Shree Thakarshi Premji Kasundra recorded on 24.12.2015 that he has informed about cash payment handed over to his clients, wherein 'Hardikbhai' is mentioned as person coming or and the code used as 'Hardik' for the appellant M/s Deepson. It is not the case that the said statements were recorded under duress or threat. Further, said statements have not been retracted. So, veracity of deposition made in said Statements and information contained in seized documents is not under dispute.

9.2 I find that the Appellant No. 1 had devised such a *modus operandi* that it was almost impossible to identify buyers of goods or transporters who transported the goods. The Appellant No. 1 used to inform the Shroffs / Brokers/ Middlemen about deposit of cash in bank accounts of Shroff on receipt of communication from their buyers and such cash amount would reach them through middlemen / brokers. When cash amount was deposited by buyers of goods in bank accounts of Shroff, the same was not reflected in bank statements of the appellant. So, there was no details of buyers available who had deposited cash amount in bank accounts of Shroff. This way the Appellant No. 1 was able to hide the identity of buyers of illicitly removed goods. It is common sense that no person will maintain authentic records of the illegal activities for items being manufacture by it. It is also not possible to unearth all evidences involved in the case. The adjudicating authority is required to examine the evidences on record and decide the case. The Hon'ble High Court in the case of *International Cylinders Pvt Ltd reported at 2010 (255) ELT 68 (H.P.)* has held that once the Department proves that something illegal had been done by the manufacturer which *prima facie* shows that illegal activities were being carried, the burden would shift to the manufacturer.

9.3 In cases of evasion of indirect tax, preponderance of probabilities would be sufficient and case is not required to be proved beyond reasonable doubt. I rely on the Order passed by the Hon'ble CESTAT, Bangalore in the case of *Ramachandra Rexins Pvt. Ltd-2013 (295) E.L.T. 116 (Tri. - Bang.)*, wherein it has been held that,

"7.2 In a case of clandestine activity involving suppression of production and clandestine removal, it is not expected that such evasion has to be established by the Department in a mathematical precision. After all, a person indulging in clandestine activity takes sufficient precaution to hide/destroy the evidence. The evidence available shall be those left in spite of the best care taken by the persons involved in such clandestine activity. In such a situation, the entire facts and circumstances of the case have to be looked into and a decision has to be



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arrived at on the yardstick of 'preponderance of probability' and not on the yardstick of 'beyond reasonable doubt', as the decision is being rendered in quasi-judicial proceedings."

9.4 I also rely on the Order passed by the Hon'ble Tribunal in the case of *A.N. Guha & Co. -1996 (86) E.L.T. 333(Tri.)*, wherein it has been held that,

"In all such cases of clandestine removal, it is not possible for the Department to prove the same with mathematical precision. The Department is deemed to have discharged their burden if they place so much of evidence which, prima facie, shows that there was a clandestine removal if such evidence is produced by the Department. Then the onus shifts on to the Appellants to prove that there was no clandestine removal"

10. After careful examination of evidences available on record, I am of the considered view that the Department has discharged initial burden of proof for alleging clandestine removal of goods and the burden of proof shifts to the assessee to establish by independent evidence that there was no clandestine removal and the assessee cannot escape from the rigour of law by trying to pick loopholes in the evidences placed by the Department. I rely on the decision rendered by the Hon'ble Madras High Court in the case of *Lawn Textile Mills Pvt. Ltd.-2018 (362) E.L.T. 559 (Mad.)*, wherein it has been held that,

"30. The above facts will clearly show that the allegation is one of clandestine removal. It may be true that the burden of proving such an allegation is on the Department. However, clandestine removal with an intention to evade payment of duty is always done in a secret manner and not as an open transaction for the Department to immediately detect the same. Therefore, in case of clandestine removal, where secrecies involved, there may be cases where direct documentary evidence will not be available. However, based on the seized records, if the Department is able to prima facie establish the case of clandestine removal and the assessee is not able to give any plausible explanation for the same, then the allegation of clandestine removal has to be held to be proved. In other words, the standard and degree of proof, which is required in such cases, may not be the same, as in other cases where there is no allegation of clandestine removal."

11. Regarding the request for cross examination of witnesses, I find that, all the persons have admitted their respective role in this case, under Section 14 of the Central Excise Act, 1944, voluntarily, which is binding on them and relied upon in the case of appellant. Further, I find that all the aforesaid persons have not retracted their statements. Therefore, the same are legal and valid pieces of evidence in the eyes of law. Further, I find that the facts available on record and relied upon in the Show Cause Notice are not only in the form of oral evidences i.e. Statement of Shroff/ Broker (Middleman) etc. but also backed by documentary evidences i.e. Bank Statements, Daily Sheet, Writing Pad etc. of the Shroff/ Broker. Therefore, I hold that all these evidences are correctly relied upon in the Show Cause Notice by the investigation agency. Further, I find that it is a settled legal position that cross examination is not required to be allowed in all cases. The denial of opportunity of cross-examination does not vitiate the adjudication proceedings. In this regard, I place reliance upon the judgment of Hon'ble High Court of Madras in the case of *M/s Erode Annai Spinning Mills (Pvt.) 2019 (366) ELT.647*, wherein it was held that where opportunity of cross

examination was not allowed, the entire proceedings will not be vitiated. It has



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been consistently held by the higher appellate authority that cross examination is not mandatory and it depends on facts of each and every case. I rely on the decision rendered by the Hon'ble Bombay High Court in the case of Patel Engineering Ltd reported as 2014 (307) E.L.T. 862 (Bom.), wherein it has been held that,

"23. Therefore, we are of the opinion that it will not be correct to hold that irrespective of the facts and circumstances and in all inquiries, the right of cross examination can be asserted. Further, as held above which rule or principle of natural justice must be applied and followed depends upon several factors and as enumerated above. Even if there is denial of the request to cross examine the witnesses in an inquiry, without anything more, by such denial alone, it will not be enough to conclude that principles of natural justice have been violated. Therefore, the judgments relied upon by Shri Kantawala must be seen in the factual backdrop and peculiar circumstances of the assessee's case before this Court."

12. Regarding the contention of the Appellant that no other evidence of manufacture of tiles, procurement of raw materials including fuel and power for manufacture of tiles, deployment of staff, manufacture, transportation of raw materials as well as finished goods, payment to all including raw material suppliers, transporters etc. in cash have been gathered and no statement of any of buyers, transporters who transported raw materials and finished goods etc. are relied upon, I find that the investigating officers gathered evidences from the premises of M/s K.N. Brothers, Rajkot and M/s Maruti Enterprise, Rajkot, Shroffs, which indicated that Appellant No. 1 routed sales proceeds of illicitly removed goods through the said Shroff and Middlemen/ Broker. The said evidences were corroborated by the depositions made by Shri Suresh Girdharbhai Gangwani, Proprietor of M/s Shree Siddhnath Agency, Lalit Ashumal Gangwani, owner of M/s K.N. Brothers, Rajkot / Shree Ambaji Enterprise, Rajkot and Shri Thakarshi Premji Kasundra (Kaka), of M/s Gayatri Enterprise, Morbi broker, during the course of adjudication. Further, Appellant No. 1 had devised such a *modus operandi* that it was difficult to identify buyers of goods or transporters who transported the goods. In catena of decisions, it has been held that in cases of clandestine removal, it is not possible to unearth all the evidences and Department is not required to prove the case with mathematical precision. I rely on the Order passed by the Hon'ble CESTAT, Ahmedabad in the case of *Apurva Aluminium Corporation- 1996 (261) E.L.T. 515 (Tri. Ahmd.)*, wherein at Para 5.1 of the order, the Tribunal has held that,

"Once again the onus of proving that they have accounted for all the goods produced, shifts to the appellants and they have failed to discharge this burden. They want the department to show challanwise details of goods transported or not transported. There are several decisions of Hon'ble Supreme Court and High Courts wherein it has been held that in such clandestine activities, only the person who indulges in such activities knows all the details and it would not be possible for any investigating officer to unearth all the evidences required and prove with mathematical precision, the evasion or the other illegal activities".

13. In view of above, the various contentions raised by Appellant No. 1 do not merit consideration and they have failed to discharge the burden cast on them



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that they had not indulged in clandestine removal of goods. On the other hand, the Department has adduced corroborative evidences to demonstrate that Appellant No.1 indulged in clandestine removal of goods and evaded payment of Central Excise duty. I, therefore, hold that confirmation of demand of Central Excise duty by the adjudicating authority is correct, legal and proper. Since demand is confirmed, it is natural consequence that the confirmed demand is required to be paid along with interest at applicable rate under Section 11AA of the Act. I, therefore, uphold order to pay interest on confirmed demand.

14. Regarding the imposition of penalty on the appellants, I find that the Appellant No. 1 was indulged in clandestine removal of goods and routed the cash through Shroff/ Middlemen/ Broker. The *modus operandi* adopted by Appellant No. 1 was unearthed during investigation carried out against them by DGCEI, Ahmedabad. Thus, this is a clear case of suppression of facts with intent to evade payment of duty. Considering the facts of the case, I hold that the adjudicating authority had correctly invoked extended period of limitation. Since invocation of extended period of limitation on the grounds of suppression of facts is upheld, penalty under Section 11AC of the Act is mandatory, as has been held by the Hon'ble Supreme Court in the case of *Rajasthan Spinning & Weaving Mills reported as 2009 (238) E.L.T. 3 (S.C.)*, wherein it is held that when there are ingredients for invoking extended period of limitation for demand of duty, imposition of penalty under Section 11AC is mandatory. The ratio of the said judgment applies to the facts of the present case. I, therefore, uphold penalty imposed under Section 11AC of the Act.

15. Regarding penalty imposed upon Appellant No. 2 to Appellant No. 3 under Rule 26 of the Rules, I find that the said Appellants were partners of Appellant No. 1 and were looking after day-to day affairs of Appellant No.1 and were the key persons of Appellant No. 1 and were directly involved in clandestine removal of the goods manufactured by Appellant No. 1 without payment of Central Excise duty and without cover of Central Excise Invoices. They were found concerned in clandestine manufacture and removal of such goods and hence, they were knowing and had reason to believe that the said goods were liable to confiscation under the Act and the Rules. I, therefore, find that imposition of penalty upon Appellant Nos. 2 to 3 under Rule 26(1) of the Rules is correct and legal. With regard to the contention of the appellants that when penalty is imposed on partnership firm no penalty is imposable on partners, I find that partnership firm and partners are two distinct persons and hence the penalty has been correctly imposed on the partners.

In view of above, I uphold the impugned order and reject the appeals of Appellant Nos. 1 to 3. The appeals of appellant No.4 & 5 are rejected on




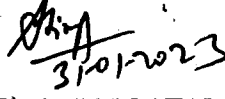
limitation.

१७. अपीलकर्ताओ द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है।

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

सत्यापित / Attested


Superintendent
Central GST (Appeals)
Rajkot


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

By R.P.A.D.

सेवा में मेस्सेर्स दीपसन केरमीक 8-A, नेशनल हाइवे, लालपुर मोरबी-363 642	M/s Deepson Cermics, 8-A National Highway, Opp. Ganesh Weigh Bridge, Lalpur, Morbi-363 642.
श्री हार्दिक कुमार वाशरमभाई षटेल, पार्टनर मेस्सेर्स दीपसन केरमीक 8-A, नेशनल हाइवे, लालपुर मोरबी-363 642	Shri Hardikkumar Vashrambhai Patel, Partner of M/s Deepson Cermics, 8-A National Highway, Opp. Ganesh Weigh Bridge, Lalpur, Morbi-363 642.
श्री वाशरमभाई बेचारभाई डोरी, पार्टनर मेस्सेर्स दीपसन केरमीक 8-A, नेशनल हाइवे, लालपुर मोरबी-363 642	Shri Vashrambhai Becharbhai Dori, Partner of M/s Deepson Cermics, 8-A National Highway, Opp: Ganesh Weigh Bridge, Lalpur, Morbi-363 642.
श्री विजय वल्लभभाई अद्रोजा, पार्टनर मेस्सेर्स दीपसन केरमीक 8-A, नेशनल हाइवे, लालपुर मोरबी-363 642	Shri Vijay Vallabhbai Adroja, Partner of M/s Deepson Cermics, 8-A National Highway, Opp. Ganesh Weigh Bridge, Lalpur, Morbi-363 642.
श्री हेमलकुमार जयप्रकाश भालोडिया, पार्टनर मेस्सेर्स दीपसन केरमीक 8-A, नेशनल हाइवे, लालपुर मोरबी-363 642	Shri Hemalkumar Jayprakash Bhalodiya, Partner of M/s Deepson Cermics, 8-A National Highway, Opp. Ganesh Weigh Bridge, Lalpur, Morbi-363 642.

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) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क मण्डल मोरबी-II, राजकोट।
- 4) गार्ड फाइल।

