



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



द्वितीय तल, जी एस टी भवन / 2<sup>nd</sup> Floor, GST Bhavan,  
रेस कोर्स रिंग रोड, / Race Course Ring Road,  
राजकोट / Rajkot - 360 001

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रजिस्टर्ड डाक ए.डी. द्वारा :-

DIN-20230264SX000000E4DF

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / OIO No.	दिनांक/ Date
	GAPPL/COM/CEXP/237-239/2022	04/D/2022-23	27-04-2022

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

**RAJ-EXCUS-000-APP-035 TO 037-2023**

आदेश का दिनांक /  
Date of Order: **15.02.2023** जारी करने की तारीख /  
Date of issue: **16.02.2023**

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 / गांधीधाम। 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. Rohit Machine Tools, Dhebar Road(South), Atika, Yogeshwar Main Road,  
Morbi-363641.**

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 सम्बंधित 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 (सिस्टेम्) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 360016 को 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, 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 रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। 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 सकेगी 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 रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। 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 or less, Rs.5000/- 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 नियमावली, 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 प्रामाणित 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, बशर्त 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 हैं

- (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

- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थान अर्ज़ी एवं अपील को लागू नहीं होगी।

For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores.

Under Central Excise and Service Tax, "Duty Demanded" shall include :

- (i) amount determined under Section 11 D;  
(ii) amount of erroneous Cenvat Credit taken;  
(iii) amount payable under Rule 6 of the Cenvat Credit Rules

- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

- (C) भारत सरकार को पुनरीक्षण आवेदन :

**Revision application to Government of India:**

इस आदेश को पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, 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 ड्यूटी 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 समायाचिधि 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।

जहां संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 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 Appellate 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-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट 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 दायिल 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 Rohit Machine Tools, 2/3 Lati Plot Corner, Lati Plot Main Road, Morbi, Gujarat-363641 (hereinafter referred to as "appellant") and its two partners have filed the present appeals as per details given below against the Order-In-Original No. 04/D/2022-23 dated, 27.04.2022 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Central GST Division- I, Morbi (hereinafter referred to as "the adjudicating authority").

2. Details of appeals filed against order-in-original No.04/D/2022-23 dated 27.04.2022 confirming duty and recovery of penalties against each appellant are as under:

Sr. No.	Appeal No.	Name of appellant	Excise duty (Rs)	Penalty (Rs)
1	GAPPL/COM/CEXP/239/2022	Rohit Machine Tools	1926371	1926371
2	GAPPL/COM/CEXP/237/2022	Rohitkumar Manshukhlal Padharia, Partner of Rohit Machine Tools		200000
3	GAPPL/COM/CEXP/238/2022	Hemaben Rohitkumar Padharia, Partner of Rohit Machine Tools		200000

3.1 Briefly stated, the facts of the case are that the first appellant is engaged in the manufacture and clearance of Tiles making Machinery like Mosaic Tile making Machinery, Fly-Ash Bricks making Machinery, Interlocking Paver Block Machinery classifiable under Chapter Sub Heading No. 847480 of the Central Excise Tariff Act, 1985 and they have not obtained Central Excise Registration even though the value based exemption limit was exceeded as prescribed in Notification No.8/2003-CE as amended. The second and third appellants are the partner in the said firm.

3.2 Based on the investigation carried out by the officers of Directorate General of GST Investigation, Ahmedabad Zonal Unit, Ahmedabad (DGGI in short) against various Ceramic Tiles manufacturer, the appellant was served with dated 06.11.2019 as to why;

(i) The Central Excise duty amounting to Rs. 19,26,3711 [including Education Cess & Higher Education Cess] as detailed in Annexure B of the show cause notice should not be demanded and recovered from us under Section 11A (4) of Central Excise Act"1944;

(ii) Interest at the appropriate rate under erstwhile Section 11AA of Central Excise Act,1944 on the amount mentioned at (i) above should not be demanded and;



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(iii) Penalty under Section 11AC of Central Excise Act, 1944 should not be imposed.

(iv) Offending goods manufactured and clandestinely cleared by them having value of Rs.3,04,10,968/- should not be held as liable for confiscation under Rule 25(1) of Central Excise Rules, 2002 and as the goods are not available for confiscation, and therefore fine in lieu of confiscation should not be imposed under section 34 of the erstwhile Central Excise Act,1944.

3.3 In the said show cause notice penalty under Rule 26 of the Central Excise Rules, 2002 was proposed to be imposed on the second and third appellants.

3.4 The show cause notice was earlier adjudicated and the matter was remanded back to the adjudicating authority for fresh decision by the Commissioner (Appeals), Rajkot vide Order-in-Appeal No.RAJ-EXCUS-000-APP-052 TO 054-2021 dated 17.12.2021. The adjudicating authority, thereafter, again confirmed the demand and imposed penalty as proposed in the notice as per table above.

4.1 Being aggrieved, the appellants filed present appeals wherein the first appellant contended that;

- Investigation report at Annexure-A to the show cause notice clearly suggests that it has not brought on how the appellant is involved in the clandestine removal of excisable goods. The appellant submitted that no search at the premises of the applicant has been carried out which proves that the appellant has purchased inputs/ raw material used in manufacture and clearance of goods clandestinely; that no stock verification with regard to inventories of inputs/ raw materials/ finished goods was carried out to derive how much quantity have been removed clandestinely; that no investigation at customers of the appellant has been carried out so as to prove that the customer has received goods removed clandestinely by the appellant against which the customers have deposited cash in the accounts of shroffs for onward delivery of the said cash to the appellant though so called middleman; that no investigation at transporters end was carried out to bring on evidence on record so as to prove that the appellant has removed goods clandestinely and transported through any transporters. The appellant contended that Shri Thakarshi Premji Kasundra has not stated anything in his depositions about the ash delivered to the appellant. The appellant submitted that the allegations of clandestine removal and imposition of penalty is based on assumption, surmises and conjectures and, therefore, is not sustainable under law.

The appellant relied upon the following case laws:

- a) *Sunhill Ceramics Pvt Ltd-2007 (217) ELT.353 (Tri-Ahmd)*  
*Synergy Steels altd-2020 (372) ELT.129 (Tri-Del)*

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c) *Manmeet Ispat P. Ltd-2019 (368) ELT.1101 (Tri-Del)*

- The appellant submitted that the evidence in the form of documents produced by Shri Thakarshi Premji Kasundra, a middleman and its decoding deposed in the two statement recorded on 24.12.2019 and 28.12.2019 did not suggest that illicit cash was delivered to the appellant. Hence to connect such cash receipt with clandestine removal of goods by the appellant is factually and legally not correct. The investigation report and relied upon documents suggested that investigation with none of the persons i.e. ATM, Chimanbhai, Dada, Dharmesh, H, Hitul, K, Kanabhai, Lalo, Nikunj, Nitin, R, Rehan, RLD, Sanjay though whom cash were alleged to be delivered to the appellant was carried out. Under the circumstances, the appellant contended that they have not received illicit cash as alleged in the show cause notice.
- The appellant submitted that application of theory of preponderance of probability for relying circumstantial evidences is not applicable for holding clandestine removal of goods and imposition of penalty on the appellant.
- The appellant further contended that, assuming without admitting the cash receipt shown in the documents only against the name of 'RMT' pertained to the appellant, the appellant is not liable to pay Central Excise duty as they remain well below the exemption limit. They contended that scrutiny of Annexure-B vis-à-vis Annexure-54 revealed that they have received total cash of Rs.93,82,240/- mentioned against the word 'RMT'. In the remaining transactions cash totaling to Rs.1,59,07,950/- against which there is no mention of 'RMT', instead there is mentioned of one digit character, or name of other person who are not related to the Rohit Machine Tools. Considering the cash of Rs.93,82,240/-, wherein its specifically mentioned in the documents, belongs to Rohit Machine Tools, then also total value of clearance in the year 2015-16 will come to Rs.1,45,03,018/- considering the value of clearance of Rs.51,20,778/- shown in the profit and loss account, which is still below the exemption limit of Rs.150 lakhs as per Notification No.08/2003-CE. Hence the appellant is not liable to pay any Central Excise duty.
- Regarding the confiscation of goods, the appellant submitted that they have not removed any goods clandestinely. The allegation of clandestine removal is purely based on assumed third party evidences. In the said circumstances, it will be erroneous on the part of adjudicating authority to hold goods liable for confiscation.

The appellant submitted that in the facts of the case as submitted above, the confirmation of demand and imposition of penalty equivalent to duty



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and personal penalty imposed is not justified and not sustainable under law.

4.2 The second and third appellants reiterated the submissions made by the first appellant. They submitted that neither the first appellant nor the second the third appellants have played any role as alleged and confirmed by the adjudicating authority and hence the penalty imposed on the appellants is not correct and not sustainable.

5. Shri Vijay Thakar, Consultant appeared for personal hearing in virtual mode on 25.01.2023 and submitted that DGCEI had booked the case merely based on statements of the Shroff, the middlemen and the documents seized from them showing entries of cash transactions. However, the name of the appellant nowhere figures in the statement of the middleman in the matter. So, all allegations are without any admissible evidence. Further, turnover of the appellant is below Rs.1.50 crore and, therefore, he is eligible for SSI exemption. He requested to set aside the order-in-original and to allow the appeal.

6. 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.

7. 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 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 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



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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.

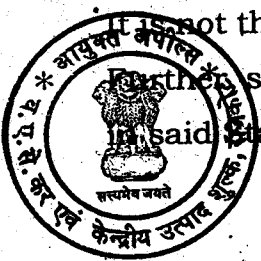
8.2 I find that records seized from the office premises of M/s K.N. Brothers, Rajkot, Shroff included bank statements of various bank accounts operated by M/s K.N. Brothers, which contained details like particulars, deposit amount, initiating branch code etc. Further, the name of city from where the 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 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 manufacturers after deducting their commission. This way the sale proceeds of an illicit transaction was routed from buyers of goods to the 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.

It is not the case that the said statements were recorded under duress or threat.

Further, the said statements have not been retracted. So, veracity of deposition made in said statements and information contained in seized documents is not under



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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 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



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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 contention of the Appellant that no other evidence of manufacture, procurement of raw materials including fuel and power for manufacture, 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"*.

12. 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 that they had not indulged in clandestine removal of goods. On the other hand,



*(Signature)*

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. Consequently, the contention raised by the appellant, that their turnover is below the exemption limit and hence not liable to pay Central Excise duty, is also not tenable. 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.

13. 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 Central Excise Act, 1944.

14. 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.



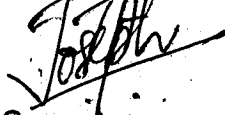
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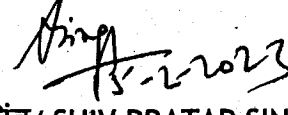
15. In view of above, I uphold the impugned order and reject the appeals of Appellant Nos. 1 to 3.

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

16. 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 रोहित मशीन टूल्स 2/3, लाटी प्लोट कोर्नर लाटी प्लोट में रोड मोरबी-363641	M/s Rohit Machine Tools, 2/3 Lati Plot Corner, Lati Plot Main Road, Morbi, Gujarat-363641
रोहितकुमार मनसुखलाल पधारिया पार्टनर, मेस्सेर्स रोहित मशीन टूल्स 2/3, लाटी प्लोट कोर्नर लाटी प्लोट में रोड मोरबी-363641	Rohitkumar Mansukhlal Padharia, Partner of M/s Rohit Machine Tools, 2/3 Lati Plot Corner, Lati Plot Main Road, Morbi, Gujarat-363641
श्रीमति हेमबेन रोहितकुमार पधारिया पार्टनर, मेस्सेर्स रोहित मशीन टूल्स 2/3, लाटी प्लोट कोर्नर लाटी प्लोट में रोड मोरबी-363641	Smt Hemaben Rohitkumar Padharia Partner of M/s Rohit Machine Tools, 2/3 Lati Plot Corner, Lati Plot Main Road, Morbi, Gujarat-363641

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-1, राजकोट।
- 4) गार्ड फ़ाइल।



