



:: 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

Tele Fax No. 0281 - 2477952/2441142 Email: commrappl3-cexamd@nic.in



सत्यमेव जयते

रजिस्टर्ड डाक ए.डी. द्वारा :-

DIN- 20230364SX000000FA89

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / OIO No.	दिनांक / Date
	GAPPL/COM/CEXP/561-562/2022	92/D/AC/2021-22	14-10-2022

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

RAJ-EXCUS-000-APP-063 TO 064-2023

आदेश का दिनांक / Date of Order:	10.03.2023	जारी करने की तारीख / Date of issue:	13.03.2023
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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. Monarch Marketing Pvt. Ltd., 6 Umankant Panditnagar Mavdi Plot, Rajkot-360004. Gujarat

इस आदेश (अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है।/
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय 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) 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, जहाँ 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 जहाँ संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्वयं 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, जहाँ 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 जहाँ संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्वयं 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 जमाना विवादित है, या जमाना, जब केवल जमाना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपये से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
(i) धारा 11 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 प्रावधानी वित्तीय (सं० 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 कोपनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक 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 an 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 क्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं० 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 उत्पादन 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 पढी 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 संबन्धित 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, अपीलार्थी 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

M/s Monarch Marketing Pvt Ltd., 6, Umakant Pandit Udyognagar, Mavdi Plot, Rajkot-360 004 (hereinafter referred to as the first appellant) and Shri Yashpalsinh Jadeja, Director of M/s Monarch Marketing Private Limited (hereinafter referred to as the second appellant) have filed appeal No. GAPPL/COM/CEXP/561-562/2022 against Order-in-Original No.92/D/AC/2021-22 dated 14.10.2022 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Central Excise & CGST, Division-I, Rajkot (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, are that a search was conducted at the factory premises of the first appellant on 02.07.2019 and printed loose sheets of paper with heading 'Ledger-22' containing details of goods cleared from 01.04.2016 to 30.04.2017 were recovered. On comparison of relevant statutory records with serial wise sale bill numbers seized during Panchnama proceedings, they were found to be dummy and falsified documents. Therefore, a show cause notice dated 19.04.2021 was issued demanding Central Excise duty of Rs.25,24,839/- and proposing to impose penalty under Section 11AC of the Central Excise Act, 1944. The adjudicating authority confirmed the demand and imposed penalty of Rs.25,24,839/- under Section 11AC of the Central Excise Act, 1944 on the first appellant. Penalty of Rs.4,00,000/- under Rule 26 of Central Excise Rules, 2002 was imposed on the second appellant.

3.1 Being aggrieved, the first appellant filed appeal wherein they, *inter alia*, submitted that;

- Allegation of clandestine clearance is based on unreliable details/ documents, assumption and presumption and without any corroborative evidence and legally not tenable in the eyes of law.
- Show cause notice was issued under wrong assumption that the appellant is manufacturer of excisable goods. In the statement dated 02.07.2019 and 23.02.2021 of Shri Yogeshbhai Jadeja, Director of the appellant, it was stated that they were engaged in 'trading and supplying of engine parts'.
- Sample invoices of purchase and sales prove that they were purchasing ready parts of particular machine or automotive parts with exact code/model/ size etc.
- The show cause has relied upon only statements listed in RUD and no other documents how the duty has been arrived is available with the department. They submitted copies Audit Report for 2016-17 which stated

Note 2(n) that their major purchased and sold items were same.



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- Whereas in present case the appellant is engaged in business of purchasing various engine parts i.e. cylinder liners, connecting rods etc as wholesale distributor and selling the same without undertaking any process on it to local market. When there is no manufacture, then question of demanding central excise duty is not justified.
- Department has stated that the appellant is engaged in manufacture of engine parts like cylinder liners etc and removed it clandestinely. There is no machinery and plant to manufacture those goods.
- By virtue of several judgments and decisions, it is settled legal position that department must adduce evidence regarding procurement of raw materials, actual production of goods in the factory, removal of the goods. Merely some culpatory statements and loose papers cannot be the weapon in the hands of the department to seek benefit of preponderance of probability. There is always a requirement of adducing corroborative evidences such as purchase of inputs, production and source of funds, sale and receipt of the consideration to prove clandestine clearance. They relied upon the following decisions:

- Ambika Chemicals-2002 (148) ELT.101 (Tri-Chennai)*
- K. Rajgopal-2002 (142) ELT.128 (Tri-Chennai)*
- Sangmitra Mills Pvt Ltd-2004 (163) ELT.472 (Tri-Chennai)*
- Chemco Steels Pvt Ltd-2005 (191) ELT.856 (Tri-Bang)*
- Continental Cement Company-2014 (309) ELT.411 (All)*
- Star Alloys & Chemicals Pvt Ltd-2019 (21) GSTL.174 (Tri-Del)*

- There is no record, even private note books containing rough jottings in respect of the raw materials which the revenue has found from the appellant's factory. Entire care has been made on flimsy grounds and the demand made on such assumptions and presumptions is required to be dropped in the interest of justice.
- The appellant wrote the initial reply to department asking for copy of relied upon documents and requested for cross-examination of the witnesses, whose statements were sought to be relied upon in show cause notice. The adjudicating authority has erred in passing order without granting cross examination.
- The period involved in the case is April 2016 to June 2017 and the show cause notice was issued on 19.04.2021. Therefore the demand is barred by limitation under Section 11A of Central Excise Act, 1944. Accordingly the charge of interest and imposition of penalty also not sustainable.

3.2 The second appellant reiterated the 'submissions' made by the first appellant.

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4. Chartered Accountant, Chetan Dethariya appeared for personal hearing on 22.02.2023 and reiterated the submissions in the appeal. He submitted that the appellant is a trader for auto parts, ancillary auto items and other products of varied nature. They have no plant or machinery to manufacture any of these items. However, the department has made false case of evasion of Central Excise duty by clandestine removal of these goods despite the fact that all their purchases and sales are backed by proper invoices from manufacturer/dealers of these goods. Even the statements and Panchnama relied upon the show cause notice is exculpatory as explained in detail in the grounds of appeal. He submitted that the nature of products traded itself reveals that these are impossible to be manufactured by a single manufacturer. Moreover, these has to be some machinery or manufacturing facility with the appellant to make these items. No such plant or machinery has been seized or even mentioned in the Panchnama. No raw materials or semi-finished goods were found during the Panchnama. Thus the entire case is without an iota of evidence. Therefore, he requested to set aside the Order-in-Original and allow the appeals.

5. I have carefully gone through the appeal memorandum and the submissions of the appellants. A case of clandestine removal has been made against the appellant on the basis of printed loose sheets of paper with heading 'Ledger-22' containing details of goods cleared from 01.04.2016 to 30.04.2017 recovered from the premises of the appellant. The adjudicating authority has confirmed the demand and imposed penalties. The appellant has challenged the same on the ground that they have not manufactured goods as they were engaged in trading of goods. Thus, the contentious issue before me is whether the appellant has manufactured and cleared excisable goods so as to demand central excise duty from them.

6. In this regard, I find that the case of clandestine removal has been made against the appellant on the basis of data available in some printed loose sheets of paper with heading 'Ledger-22. However, strangely, these loose sheets find no place in the relied upon documents annexed to the show cause notice. The Annexure RUD to the show cause notice merely mentions Panchnama and three statements as evidence to support the charge of clandestine removal. On perusal of the Annexure-A to the show cause notice where the duty is quantified, I find that the sheet simply shows total value of goods, rate of duty and Central Excise duty, without giving the description of goods, name of buyer or any other details. No investigation appears to have been conducted to ascertain the name of buyer, transportation of goods, recovery of sale proceeds etc. There is only one

statement of Shri Ashok Kumar Maganlal Bhalodia, proprietor of M/s Deep Auto Centre that too without mentioning the name or quantity of goods. It is settled



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law that clandestine removal of excisable goods being a serious allegation, the department was bound to conduct investigation about transportation of goods, buyer of goods and receipt of sale proceeds. Without conducting any inquiry at the buyers end and transportation of goods and without collecting tangible evidences regarding manufacture and removal of goods, the allegation of clandestine removal cannot be established. In the present case, I observe that no investigation has been made by the officers who investigated the case to identify the buyer of the finished goods, the transporter, who transported the goods and to collect evidence of receipt of sale proceeds. In the cases relating to clandestine removal of excisable goods, following are the indicators of clandestine removal activities by a manufacturer:-

- (i) *Excess stock of raw materials found in the factory premises.*
- (ii) *Shortage of raw materials in the records of manufacturer.*
- (iii) *Excess/shortage of manufactured goods found in the factory premises.*
- (iv) *Excess consumption of electricity/power used in the manufacture of finished goods.*
- (v) *Any transit seizure of clandestinely removed goods made by the investigating authority.*
- (vi) *Any cash amounts seized from the factory premises or dealer's premises or residential premises searched during investigation.*
- (vii) *Confessionary statements of the persons concerned with the clandestine manufacture/removal of excisable goods.*

7. In the present case, none of above indicators are found. There is no excess/shortage of either raw materials or manufactured goods found in the factory premises. Further, not a single machine was seized from the premises of the appellant. The department failed to prove that the appellant had manufactured goods and cleared clandestinely. On the other hand, the appellant had produced invoices evidencing purchase of goods from other manufacturers/traders. In the statement of the partner of the appellant recorded under Section 14 of the Central Excise Act, 1944, there is no mention of 'manufacture' of the goods by the appellant. In the statement, as pointed out by the appellant, Shri Yashpalsinh Jadeja has stated that they were engaged in trading and supplying of engine parts. Thus the department, at the first instance, failed to prove that the goods mentioned in the document were manufactured by the appellant so as to demand Central Excise duty. At second instance the adjudicating authority has failed to appreciate that numerous varied automobile parts, machinery items and other items such as engine oil, etc cannot be manufactured in a small premises of the appellant and are impossible to be manufactured by a single manufacturer. The investigating officers and the adjudicating authority have overlooked that the sale invoices were backed by purchase invoices and contained branded auto parts manufactured by reputed manufacturers such as Bajaj TVS, Bullet, Hero Honda, etc. The impugned order has nowhere addressed the submissions made by the appellant and has confirmed the demand and



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imposed penalty in a mechanical fashion merely reproducing legal provisions, reiterating the allegations contained in the show cause notice and citing certain case laws.

8. It is observed that the department has not conducted any investigation to ascertain the buyers who purchased the goods mentioned in the loose sheet and the mode of transportation of goods and receipt of sale proceeds. Further, there is no evidence regarding purchase of raw materials for manufacture of these goods. The investigating officers seem to have booked the case blindly and the adjudicating authority seems to have passed the impugned order blindly. Hon'ble Tribunal in the case of *Sakeen Alloys Pvt Ltd-2013 (296) E.L.T. 392 (Tri. - Ahmd.)* held that in a clandestine removal case, the facts of clandestine removal of excisable goods cannot be established only on the basis of certain statement which are retracted later but there has to be positive evidences like purchase of excess raw materials, shortage/excess of raw materials/finished goods found in the stock/factory premises of the appellant, excess consumption of power like electricity, any seizure of cash during the investigation when huge transactions are made in cash. Hon' Tribunal held as under:

"11. From the above settled law, it is clear that in a clandestine removal case, the facts of clandestine removal of excisable goods cannot be established only on the basis of certain statements which are retracted later but there has to be positive evidences like purchase of excess raw materials, shortage/excess of raw materials/finished goods found in the stock/factory premises of the appellant, excess consumption of power like electricity, any seizure of cash during the investigation when huge transactions are made in cash. In the present case also, it is observed, from the annexures to the show cause notice dated 1-5-2009 issued to the appellants, that there were huge cash transactions to the tune of Rs. 11.23 Crores. When such large number of transactions involving huge amounts are being undertaken in clandestine removal activities, it is very likely that some cash would have been seized. There is not a single instance where either seizure of cash is made or any clandestinely removed goods are seized or raw materials/finished goods were found either short or in excess in the factory premises of the appellant or at any other place. As per the Panchnama drawn at the factory premises it is shown that there was no excess/shortage of the raw materials or finished goods found. The documentary evidences collected from the business premises of M/s. Sunrise Enterprise and the statements recorded by investigation, can at the most raise a reasonable doubt that some clandestine removal activities are undertaken by the appellant. However, such a suspicion or doubt has to be strengthened by positive evidences which seem to be lacking in this case. Any suspicion whosoever cannot take the place of evidence regarding clandestine removal of excisable goods. Moreover, after having positive evidences, quantification of duty on clandestinely removed goods also becomes essential. As already mentioned above, the stock lying in the stock yard of M/s. Sunrise Enterprise, Mehsana was found containing the goods received from M/s. Sakeen Alloys Pvt. Limited under proper invoices. When the goods received under proper invoices are found in the stock yard of M/s. Sunrise Enterprise, then it is possible that out of such goods certain quantities were sold to various customers by accepting payment in cash. In such a situation, the quantification undertaken by the investigation becomes doubtful and incorrect. For this purpose cross-examination of the person Incharge looking after the records of M/s. Sunrise Enterprise was must, which was not allowed by the adjudicating authority. In view of the above observations, the demand of duty of Rs. 1,85,10,861/- is not sustainable and is required to be set aside."

8.1 The above decision of Tribunal has been affirmed by Hon'ble Gujarat High Court as reported at 2014 (308) E.L.T. 655 (Guj.) wherein it is held that;

"7. As can be noted from the decision of the Tribunal, it has extensively dealt with the entire factual presented before it. The Tribunal rightly concluded that in the case of clandestine removal of excisable goods, there needs to be positive evidences for establishing the evasion, though contended by



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the Revenue. In absence of any material reflecting the purchase of excessive raw material, shortage of finished goods, excess consumption of power like electricity, seizure of cash, etc., the Tribunal noted and held that there was nothing to bank upon except the bare confessional statements of the proprietor and of some of the persons connected with the manufacturing activities and such statements were retracted within no time of their recording. The Tribunal also noted the fact that the requisite opportunity of cross-examination was also not made available so as to bring to the fore the true picture and therefore, it concluded against the Revenue observing that not permitting the cross-examination of a person in-charge of records of M/s. Sunrise Enterprises and absence of other cogent and positive evidences, would not permit it to sustain the demand of Rs. 1.85 Crores raised in the Demand notice and confirmed by both the authorities below."

9. In the case of *Shree Maruti Fabrics-2014 (311) E.L.T. 345 (Tri. - Ahmd.)* Hon'ble Tribunal has held that duty demand can be sustained only when the goods are manufactured and cleared. Hon'ble Tribunal held as under:

"7.....The duty demand can be sustained only when the goods are manufactured and cleared. However in the instant case there is not a single consignee of the goods, no transporter of the goods. No investigation has been done at the factory as to the manufacture of the goods. There is no investigation as to how the raw materials were procured, the consumption of electricity, the payments of wages, etc. The show cause notice or the adjudication order even does not show how the amounts received in the Bank accounts of these dummy concerns were transferred to appellant's account, if any. I therefore agree with the submissions made by the appellant and hold that the demands are not sustainable."

10. In the present case also, there is not a single consignee of goods and no transporter of goods identified by the department. In the statement of the Director he has mentioned that they were engaged in trading of goods. No evidence has been adduced by the department to contradict the said claim and also failed to prove that the offending goods were manufactured in the factory of appellant. Thus, the statement of Shri Yashpalsinh Jadeja cannot be considered as evidence in demanding Central Excise duty as Central Excise duty is levied on goods manufactured in a factory. In the present case, the demand has been made alleging clandestine manufacture and removal of goods and as held in the case of *Sakeen Alloys Pvt Ltd (supra)* by the Tribunal, which is affirmed by the Hon'ble Gujarat High Court also, the facts of clandestine manufacture and removal of excisable goods cannot be established only on the basis of certain statement but there has to be positive evidences like purchase of excess raw materials, shortage/excess of raw materials/finished goods found in the stock/factory premises of the appellant, excess consumption of power like electricity, any seizure of cash during the investigation when huge transactions are made in cash. The adjudicating authority had confirmed the demand without first establishing manufacture of goods and without having any confirmation from the buyers about receipt of goods and also without having any evidence of transportation of goods. There is no excess/ shortage of finished goods or raw materials found by the officers at the time of visit of the factory. Thus, the ingredients, that are essential for confirming clandestine manufacture and removal of excisable goods, are lacking in the present case. When the department

failed to prove clandestine manufacture and removal of excisable goods, the



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impugned order confirming demand of Central Excise duty and imposition of penalty under Section 11AC of the Central Excise Act, 1944 on the first appellant and imposition of penalty under Rule 26 of Central Excise Rules, 2002 on the second appellant suffered infirmity. Therefore, I hold that the impugned order is not sustainable.

11. In view of above, I set aside the impugned order and allow the appeal.

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

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

सत्यपित / Attested

आर. एस. बोरीचा / R. S. BORICHA
अधीक्षक / Superintendent
के. व. एवं सेवा कर अपील, राजकोट

By R.P.A.D.

CGST Appeals, Rajkot

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

सेवा में, मेसेर्स मोनार्क मार्केटिंग प्राइवेट लिमिटेड 6, उमाकांत पंडित उद्योगनगर, मावड़ी प्लॉट, राजकोट-360 004	To M/s Monarch Marketing Pvt Ltd., 6, Umakant Pandit Udyognagar, Mavdi Plot, Rajkot-360 004.
यशपालसिंह जडेजा, डाइरेक्टर मेसेर्स मोनार्क मार्केटिंग प्राइवेट लिमिटेड 6, उमाकांत पंडित उद्योगनगर, मावड़ी प्लॉट, राजकोट-360 004	Yashpalsinh Jadeja, Director M/s Monarch Marketing Private Limited 6, Umakant Pandit Udyognagar, Mavdi Plot, Rajkot-360 004

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।



