

<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST &amp; CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1<sup>ST</sup> FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
<p>फ़ोन नंबर/ PHONE No.: 079-27544557</p>	<p>फैक्स/ FAX : 079-27544463</p>	<p>E-mail:- <a href="mailto:oaahmedabad2@gmail.com">oaahmedabad2@gmail.com</a></p>

निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं. V.72/15-88/OA/2015-Denovo

आदेश की तारीख/Date of Order: - 28.03.2018

जारी करने की तारीख/Date of Issue :- 05.04.2018

द्वारा पारित/Passed by:-

आर. एम. गौतम / *R.M.Gautam*

अपर आयुक्त / *Additional Commissioner*

**मूल आदेश संख्या / Order-In-Original No. 11/ADC/2018/RMG**

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।

This copy is granted free of charge for private use of the person(s) to whom it is sent.

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद 380015-को प्रारूप संख्या इ.ए-1 (E.A.-1) में दाखिल कर सकता है। इस अपील पर रु .2.00 (दो रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 2.00 only.

इस आदेश के विरुद्ध आयुक्त के शुल्क गये मांगे पहले से करने अपील में (अपील) 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल हैं।

An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. (as per amendment in Section 35F of Central Excise Act, 1944 dated 06.08.2014)

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या इ.ए.-1 में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(17) उक्त अपील की प्रति।

(18) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई हैं, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु) 2.00 .दो रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form EA-1 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(17) Copy of accompanied Appeal.

(18) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.2.00.

**विषय:** -कारण बताओ सूचना/Show Cause Notice F.No. **DGCEI/AZU/12(4)74/2006-07** dated **31.01.2008** issued to **M/s Vipul Copper Pvt Ltd**, 1611/B, phase 1 & 2, GIDC, Naroda, Ahmedabad, Gujarat.

**Brief facts of the Case:**

On the basis of an intelligence gathered by the officers of Directorate General of Central Excise Intelligence, Ahmedabad (here-in-after referred to as DGCEI for the sake of brevity) to the effect that M/s. Vipul Copper Pvt. Ltd., having their factory situated at 1611/B, Phase 1 & 2, GIDC, Naroda, Ahmedabad (here-in-after referred to as 'M/s VCPL' for the sake of brevity) having Registration No. AAACV 9636J XM001 and engaged in the manufacture of Copper Rods/Wires of different shapes by rolling and drawing process in their factory, were availing CENVAT Credit on the strength of Central Excise invoices received from manufacturer or from the Registered Dealers, etc. without actual receipt of the inputs against such documents, the factory premises of M/s.VCPL were searched by the officers of DGCEI on 15.02.2007 and relevant documents/records were resumed under panchnama. Further, during the course of investigations, several other documents/records were also resumed under Section 14 of the Central Excise Act, 1944.

2. Scrutiny of the Central Excise invoices on which M/s VCPL had availed Cenvat credit revealed that they have been procuring various inputs such as copper ingots, copper rod, copper wire, copper wire rod, copper scraps which were either shown to have been used for the manufacture of their final product or sent to the other manufacturers on job work basis for converting such inputs into copper rods and such copper rods were shown to have been used further by M/s VCPL in the manufacture of their final products. M/s VCPL have availed the CENVAT credit on such inputs. These inputs were either purchased from Jammu based units/manufacturers or from local manufacturers or from M/s Ganpati Rollings Pvt. Ltd., 520-A, G.T. Road, Shahdara, Delhi. (here-in-after referred to as M/s Ganpati). Apart from these, M/s VCPL were also procuring inputs from various registered dealers viz. M/s Pranav Metal Mart, Nadiad and M/s Omkar Metal Alloys & Steel, Nadiad (here-in-after M/s Pranav Metal Mart, Nadiad will be referred to as M/s Pranav and M/s Omkar Metal Alloys & Steel, Nadiad will be referred to as M/s Omkar).

3. During investigations, various records/documents resumed during the search or resumed subsequently under summons were scrutinized. The scrutiny of such records/documents revealed that M/s VCPL had availed CENVAT credit mainly on the strength of invoices of M/s Pranav and M/s Omkar, the registered dealers, who had shown purchases of copper ingots from Jammu based units as well as copper ingots/wire/wire rod scrap, etc. purchased from various registered dealers from Delhi.



(iv) Penalty under Rule 25 of Central Excise Rules, 2002 and Section 11 AC of the Central Excise Act, 1944 should not be imposed upon them.

6. Shri Kaluram Heda, Proprietor of M/s Pranav Metal Mart and Shri Shivkumar Kaluram Heda, Proprietor of M/s Omkar Metals & Alloys and Shri Navratan Lal Sharma, Proprietor of M/s Singal Road Carriers, and Partner of M/s Singh Road Carriers, Shri Paramjit Singh Kakar, Proprietor of M/s. Singal Transport Co. and Shri Bhupsingh Chauhan, Proprietor of M/s. Chauhan Road lines were also called upon to show cause to the Joint Commissioner, Central Excise & Customs, Ahmedabad-II, having his office at Customs House, Navrangpura, Ahmedabad-9, as to why penalty should not be imposed upon them under Rule 26 of the Central Excise Rules, 2002 and under Rule 13 of the Cenvat Credit Rules, 2002 or Rule 15 of the Cenvat Credit Rules, 2004, as the case may be, for the aforesaid contraventions.

7. The said SCN was adjudicated vide OIO No.105/JC/2008/JN dated 30.09.2008 wherein the original adjudicating authority confirmed the demand along with interest; imposed equivalent penalty under Section 11AC; imposed personal penalty of Rs.4,00,000/- on Shri Natubhai Patel, Managing Director of M/s. VCPL, personal penalty of Rs.2,00,000/- on Shri Kaluram Heda, Proprietor of M/s. Pranav, personal penalty of Rs.1,00,000/- on Shri Shivkumar Kaluram Heda Proprietor of M/s. Omkar Metals & Alloys, personal penalty of Rs. 50,000/- on Shri Navratan Lal Sharma, Proprietor of M/s. Singal Road Carriers, personal penalty of Rs.50,000/- on Shri Navratan Lal Sharma, Partner of Singh Road Carriers, personal penalty of Rs.50,000/- on Shri Paramjit Singh Kakar Proprietor of M/s. Singal Transport Co. & personal penalty of Rs.50,000/- on Shri Bhupsingh Chauhan, Proprietor of M/s. Chauhan Road Lines.

8. Aggrieved by the above Order-in- Original, M/s. VCPL and (seven) 7 other co-noticees went in appeal. The Commissioner (A) vide Order-in-Appeal No.82-88/2009(Ahd-II)CE/ID/Commr(A)/Ahd dated 27.2.2009 upheld the aforementioned Order-in-Original. Aggrieved by the said OIA, the appellants filed an appeal before the Hon' CESTAT. Shri S.J.Vyas, Id. Advocate on behalf of M/s. Vipul Copper Pvt. Ltd & Shri Nathubhai, Director of the Company, argued before Hon'ble CESTAT that the order was passed in gross violation of principles of natural justice; that the authorities failed to provide the relied upon documents to them as a result they could not file the reply to the show cause notice. Hon'ble CESTAT therefore vide Order No. A/10167-10176/2015 dated 20.07.2015 set-aside the matter and remanded the



- they are small scale common carrier with limited business; that most of their transport business is between Delhi and Gujarat; that they have few vehicles of their own and as and when need arise, they hire vehicles from others; that they are conducting their business strictly as per provisions of the law with necessary registration from the concerned authorities; that except transporting goods to the destination of the consignee, they were not concerned with the activities of either the consignors or the consignees; that all the goods booked were transported under the cover of lorry receipt;
- that for the period June, 2001 to December, 2003, the business was done under the name and style of partnership firm - M/s. Singh Road Carriers; that from January, 2004 onwards the business was done in the name of M/s. Singal Road Carriers, as a proprietary concern of Shri Navratan Lal Sharma; that statement of Shri Subash Chandra Sharma, Manager was obtained by the visiting officers on 28.11.2006 and on the very same day i.e. on 28.11.2006 itself Shri Subash Chandra Sharma, Manager vide his letter retracted his statement alleging that his statement was recorded under force and duress; that Shri Gulab Shankar Pandey was recorded by the DGCEI officers and vide affidavit dated 27.08.2007 Shri Gulab Shankar Pandey also retracted his statement alleging that the officers had applied force for extracting his statement; similarly Shri Atul Navratan Lal Sharma son of Shri Navratan Lal Sharma, Proprietor of M/s Singal Road Carriers also vide affidavit dated 27.08.2007 retracted his statement alleging that the officers had applied force for extracting his statement under threat of arrest and third degree treatment; that on 06.02.2007, statement of Shri Rajendra Pratap Singh, Partner of M/s. Singh Road Carriers was recorded by the DGCEI officers and on 03.09.2007 statement of his son Shri K.P. Singh was recorded; that the transporter of M/s Singh Road Carriers / Singal Road Carriers were in no way concerned with any availment of cenvat credit or with the cenvatable invoices issued by the registered dealers on the strength of which the cenvat credit was availed by M/s Vipul Copper Private Limited (VCPL);
- that the inputs which the transporter carried were not the subject of any seizure and therefore there is no proposal for their confiscation under the provisions of the Central Excise Act, 1944 or the Central Excise Rules, 2002; that penalty under Rule 26 of the Central Excise Rules 2002 is relatable to the excisable goods liable to confiscation under the Central Excise Act, 1944 or the Central Excise Rules, 2002; that the provisions of Rule 13 of the Central Excise Credit Rules, 2002, and rule 15 of Cenvat Credit Rules, 2004 are applicable to



- Hindustan Steel Ltd. Vs. State of Orissa 1978 (2) EL T 159 (SC)
- Praveen Kumar Dalmia Vs. Commissioner of Customs (Madras) 2003 (152) ELT 65 (Tri. - Bang.), and
- Ram Nath Singh Versus Commissioner of Central Excise, Delhi-1 2003 (151) ELT451 (Tri.-Del).
- Kellogg India Pvt. Ltd. Vs. UOI 2006(193) ELT 385(Bom.)

They requested for cross examination of the following persons before the original adjudicating authority:

1. Shri Subash Chandra Sharma, Manager of M/s. Singal Road Carriers, New Delhi with reference to para 13.12.1
2. Shri Gulabshankar Pandey of M/s. Singal Road Carriers with reference to para 13.12.2.
3. Shri Atul Navratan Lal Sharma of M/s. Singal Road Carriers with reference to para 13.12.3

They also requested for personal hearing before adjudicating the case.

**12.** Shri V.B.Sheth, Advocate vide his letter ref. No.VBS/C.Ex./Reply/0075/2007-08 dated 26.02.2008 & letter ref. No.VBS/C.Ex./Submt/0042/08-09 dated 06.09.2008 filed identical reply to the show cause notice at the time of personal hearing in respect of co-noticee Shri Kaluram Ramdaival Heda, Nadiad & Shri Shivkumar Heda, Nadiad: wherein he inter alia stated that;

- The noticee has categorically clarified that the input under consideration was received by them and was sold to the main noticee and the main noticee has also accepted to have received the material at the price paid to the noticee; Department has not produced any evidence to prove that the amount paid by the main noticee to the noticee on account of sale of goods was returned by the main noticee;
- that the department has not produced any evidence to prove that the raw material received by the main noticee has not been used in manufacturing of their final product and the said final product are not cleared with payment of duty; that merely on the basis of the transporters, statement or the probabilities shown in the captioned show cause notice, the duty cannot be confirmed on the main noticee and consequently no penalty can be imposed on the noticee; that penalty under the provisions of Rule 26 and the other rules mentioned under the captioned show cause notice cannot be imposed on the noticee on the basis of the allegations contained in the captioned show cause notice, in as much as, the noticee has not dealt with the goods in the



contention of the department that the noticee has not supplied the material cannot be sustained and accordingly no proceedings can be sustained; that imposition of penalty under Rule 26 is not proper; that they relied upon the decision in case of M/s. Man Industries (India) Ltd. Vs. CCE, Indore reported at 2004(175) ELT 435 (Tri.) Delhi; that the Hon'ble CESTAT has laid down the law that where no positive evidences of personal knowledge or belief are produced, no penalty can be imposed under Rule 209A;

- that the Hon'ble CESTAT also clarified the fact that before imposition of penalty, the personal knowledge is a prime requirement and unless and until the said knowledge is established, no penalty can be imposed; that in case of the applicant, the department has not produced any positive evidence of the knowledge and therefore, no penalty is liable to be imposed; that in any case, the noticee could not have personal knowledge and therefore, also no penalty can be imposed;
- that the goods under consideration are received by the noticee and are sold to the main noticee, which in turn are used in manufacturing their final product; that it is also not the case of the department that the main noticee has shown manufacturing of the final product without receipt of the input and the duty paid on such clearance is not correct and proper; that the annexure attached to the show cause notice admits the receipt of the goods in Gujarat and therefore unless specific consignment is proved not to have been received by the noticee it cannot be said that the noticee has facilitated the customer for wrong avilment of credit and the criteria laid down under the provisions of Rule 26 are fulfilled; that for transportation of goods from Delhi to Ahmedabad, it is not necessary / compulsory to travel through Shamlaji check post only; that during the cross examination of Shri Atul Sharma in case of M/s. Santram Metals & Alloys Pvt. Ltd. before the Hon'ble CCE, Ahmedabad-III, he admitted that the transporter can avoid Shamlaji Check post and bring the goods via Dungarpur to Modasa; that the above fact proves beyond doubt that the allegation contained are not sustainable and the invoices issued by the noticee is liable to be accepted;
- that the allegations contain are of general nature and cannot take the place of proof; that it is well settled proposition of law that suspicion, however grave, cannot take the place of proof; that the show cause notice under consideration is simply based on presumptions and assumptions and therefore, the allegation contained, are not liable to be sustained; that the transporter has retracted his statement immediately after recording by the



Copper Rod from M/s Ganpati Rolling (P) Ltd, and was shown as transported from Delhi to Nadiad by M/s Singh Road Carriers. M/s VCPL purchased Copper wire Rod/Copper wire from M/s. Ganpati Rollings (P) Ltd and shown as transported by M/s Singal Road Carriers to Ahmedabad. The investigation however revealed that consignments of copper scrap/ ingots did not physically enter even the state of Gujarat from the registered dealers of Delhi. However, only on the strength of duty paid invoices, M/s. Pranav & M/s. Omkar took entry in their RG23D Register and issued duty paid invoices to M/s. VCPL on the strength of which M/s. VCPL availed Cenvat credit without physical receipt of inputs.

16. On the above allegations, M/s. VCPL vide letter dated 20.5.2008 had requested the original adjudicating authority to provide copies of Relied Upon Documents (RUD) to enable them to file reply to the show cause notice. Subsequently vide letter dated 15.9.2008 they again requested for copies of RUDs. I find that M/s. VCPL, Shri Natubhai Haribhai Patel (Director of M/s. VCPL), Shri Paramjit Singh Kakar (Proprietor of M/s. Singal Transport Co.) and Shri Bhupsingh Chauhan, Proprietor of M/s. Chauhan Road Lines had not submitted their written submissions before the original adjudicating authority, as in the OIO dated 30.9.2008, the adjudicating authority has recorded only the written submissions made by Shri Navratan Lal Sharma, Proprietor of M/s. Singal Road Carriers & Partner in M/s. Singh Road Carriers and Shri Kaluram Heda and Shri Shivkumar Heda. The plea that RUDs were not provided to M/s. VCPL & Shri Natubhai, Director of M/s. VCPL was also taken before Hon'ble CESTAT based on which the matter was remanded to the original adjudicating authority. I find that though the documents were provided to M/s. VCPL (acknowledgment for the same was given on 8.12.2017) Shri S.J.Vyas sought one week's time to submit the reply which till date was not filed before me. This proves that M/s. VCPL, Shri Natubhai Patel, Director of M/s. VCPL, Shri Paramjit Singh Kakar (Proprietor of M/s. Singal Transport Co.) and Shri Bhupsingh Chauhan, Proprietor of M/s. Chauhan Road Lines were not interested in defending their case. The other co-noticee Shri Navratan Lal Sharma has basically contested the allegations on the grounds that being transporter they were not concerned with the activities of consignors or consignee; all the goods were booked and transported under the cover of lorry receipt; that Shri Subhash Chandra Sharma & Shri Gulab Shankar Pandey have retracted their statements alleging that the officers had applied force for extracting their statement; since the inputs carried were not subject to any seizure therefore there is no proposal for their confiscation hence penalty not imposable. Shri Kaluram Heda & Shri Shivkumar Heda have contested that the inputs under consideration was received by them and was



maximum laden weight of 16200 Kgs transported 8775 Kgs of miscellaneous goods as per the delivery register. I find that the very same fact was further corroborated in the statement of Shri Bhupsingh Chauhan of M/s Chauhan Road Lines stating that they had not physically transported the said consignment. Shri Subhas Chandra Sharma (Manager of M/s. Singal Carriers) in his statement dated 28.11.2006 has categorically mentioned that the imported copper ingots/copper wire bars mentioned in the LRs were not transported to Daman, Vadodara, Ahmedabad or Nadiad and that they had not transported the consignments mentioned in the said LRs. Though Shri Sharma retracted his statement dated 28.11.2006, he was given the opportunity to tender his statement afresh by Superintendent, DGCEI, Vadodara vide letter dated 28.11.2006, which I find was not utilized by him thus such retraction cannot have any legal backing.

18. The consignments should pass through various Commercial Tax/RTO check Post while being transported from Delhi to Nadiad. Enquiries with these authorities revealed that all lorry receipts are affixed with a seal in token of having examined the consignment. But the investigation revealed that the lorry receipts were without any seal affixed by various Commercial Tax /RTO check posts authorities. The enquiries made from Pithol Check post of Commercial Tax Department of Madhya Pradesh have revealed that consignments of copper ingots had not passed through the said Check post. While traversing from Delhi to the premises of M/s Pranav, a consignment of copper ingots will necessary pass through Gujarat State and investigations with the commercial tax check posts of Rajasthan and Madhya Pradesh revealed that such consignments had not entered the State of Gujarat. Thus, the said consignments were not transported from Delhi to M/s Pranav, Nadiad.

19. The database of Office of the Transport Commissioner of Gujarat State revealed that out of **16 consignments** of copper as listed in Annexure-A & A-1, only in 3 cases such vehicles have found entered Gujarat within the reasonable time of seven days from the date of issue of LR via Shamlaji Check Post and even in these 3 cases, not a single case pertains to consignment of copper. The trucks mentioned on the LRs showing transportation of copper entered Gujarat State actually did not transport copper rather transported goods other than copper. Even the LRs having endorsement 'Door delivery' were bogus as it is impossible as the actual arrival time of the truck as per the delivery register and the departure time on the same day or next day from Ahmedabad as per Lorry challans of Ahmedabad branch was not enough to transport & deliver the goods at manufacturers at Daman, Surat etc





8 to 11 of Annexure-A did not pass through Ratanpur check post and also Shamlaji check post within 7 days of issue of LR as the said vehicle does not have permit for entering Gujarat. Thus it is evident that the goods were not transported by M/s. Chauhan Road Lines from Faridabad to M/s. Pranav, Nadiad and only LR was issued to enable M/s. Pranav to fraudulently avail and pass on cenvat credit by showing transportation of copper ingots/wire/rod on the strength of bogus LRs.

**22.** Similarly, I also find that with regard to consignment at Sr.No 14 & 15, it is revealed that though it was shown by M/s Ganpati Rolling Mills Pvt. Ltd. that transportation of Copper wire rod/Copper wire were done by M/s Singal Road Carriers, however inquiry with M/s Singal Road Carriers and with Transport Commissioner, Gujarat and Rajasthan revealed that the said two consignments were also not received at the premises of M/s VCPL.

**23.** Thus it is clear from the investigations carried out at M/s Singal Road Carriers, M/s. Singal Transport Co., M/s. Singh Road Carrier, and M/s Chauhan Road Lines, revealed that transportation of consignment (Annexure A & A-1 of the show cause notice) of copper did not take place to Nadiad /Ahmedabad and only lorry receipts were issued to show such transportation. The copper ingots /wire/rods etc. as listed in Annexure-A & Annexure A-1 to the notice, were not received in the premises of M/s Pranav, M/s VCPL and M/s Omkar for Sr.No 1 to 15 of Annexure A and Sr.No 1 of Annexure A-1. I find that M/s Pranav and M/s Omkar have not received the copper consignments in their premises, respectively, even though they have shown the receipt of copper consignments and entered such receipts in the RG 23 D Registers and on the basis of such fictitious receipt of raw materials, M/s Pranav and M/s Omkar raised bogus cenvatable dealer invoices to M/s VCPL, Ahmedabad who on the basis of these bogus invoices availed cenvat credit which was not admissible to them in view of the records and evidences.

**24.** I find that M/s Pranav and M/s Omkar are registered dealers with Central Excise and as per the Cenvat Credit Rules, 2002 and the Cenvat Credit Rules, 2004 they can pass on the Cenvat Credit on the duty paid goods viz. goods manufactured indigenously and cleared on payment of central excise duty and the imported goods on which appropriate additional duty of customs is paid. For this purpose, the registered dealer has to maintain a Register viz. RG 23 D Register and in the register the details viz. consignment wise receipt of the duty paid goods and corresponding details of sales has to be maintained. Further, against the receipt



28. As per sub-rule (1) of Rule 3 of the CCR, 2002 and CCR, 2004, a manufacturer or producer of final products is entitled to take credit of the duties specified in clauses (i) to (xi) as mentioned therein, paid on any inputs, as received by the manufacturer in the factory of production of final product, or used in the manufacture of intermediate product by a job worker availing benefit of Notification No.214/86-CE dtd.25/03/1986 and received by the manufacturer for use in, or in relation to, the manufacture of final product.

29. Thus, by the collective reading of the clause (g) of Rule 2 of CCR, 2002 or clause (k) of Rule 2 of CCR, 2004 and Rule 3(1) of the said Rules, it transpires that CENVAT Credit of specified duties paid on any inputs may be availed if such inputs are received in the factory of manufacture of the final product or in the premises of a job worker who uses the same for the manufacture of intermediate products which are in turn received and used by the manufacturer in or in relation to, the manufacture of the final product. Thus, the essential condition of eligibility of CENVAT credit is that the inputs should be received in the factory of the manufacturer, or to the premises of the job worker and should be used in the manufacture of final products which are cleared on payment of appropriate duty of central excise.

30. Rule 4 of the CCR, 2002 and CCR, 2004, stipulates the conditions for allowing the CENVAT Credit. Sub-rule (1) thereof specifies that the CENVAT credit in respect of inputs may be taken immediately on receipt of the inputs in the factory of the manufacturer.

31. Rule 7 of the CCR, 2002 and Rule 9 of the CCR, 2004 specifies the documents and records on the strength of which the CENVAT Credit can be availed. Under said Rules, the manufacturer of the final products is required to maintain proper records for the receipt and disposal, consumption and the inventory of the inputs in which relevant information regarding the value, duty paid, the person from whom the inputs have been purchased is recorded and the *burden of proof regarding the* admissibility of the CENVAT Credit shall lie upon the manufacturer taking such credit.

32. Rule 10 of CCR, 2002 and Rule 12 of the CCR, 2004 specifies where a manufacturer located at specified areas of North East region, Kutch district of Gujarat and State of Jammu and Kashmir has cleared any inputs or capital goods, in terms of notifications No.56/2002 Central Excise, dated the 14th November, 2002 [GSR (E), dated the 14th November 2002 ] or notification No. 57/2002 Central Excise, dated



penalty in terms of the provisions of Section 11 AC of the Central Excise Act, 1944, in cases where the CENVAT Credit has been taken or utilized wrongly due to fraud, willful mis-statement, collusion or suppression of facts, or contravention of any of the provisions of the Central Excise Act or the Rules made there-under *with intent to evade payment of duty*.

**35.** Thus, by the collective reading of the provisions of the said Rules, it appears that CENVAT credit of the duty paid on the inputs can be availed, subject to the condition that such inputs are received in the factory of manufacture of the final product or in the premises of a job worker who uses the same for the manufacture of intermediate products which are in turn received and used by the manufacturer in or in relation to, the manufacture of the final product. Thus, the essential condition is that the inputs in respect of which Cenvat Credit is being availed should be received in the factory of the manufacturer, or to the premises of the job worker and used in or in relation to the manufacture of final products.

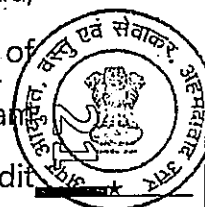
**36.** I find that the investigations as discussed in detail in foregoing paras, reveal that the consignments of copper scrap/ ingots did not physically enter even the State of Gujarat, thus the possibility to have entered the premises of M/s Pranav, Nadiad, M/s Omkar, Nadiad and M/s VCPL, Ahmedabad is impossible. The copper consignments from the registered dealers of Delhi did not reach even State of Gujarat. It was only on the strength of duty paid invoices, M/s Pranav & M/s Omkar took entry in their RG23D Register and issued duty paid invoices to M/s VCPL, on the strength of which M/s VCPL availed Cenvat credit. As the goods did not enter even the State of Gujarat, there was no question of supply of such inputs by M/s Pranav & M/s Omkar to M/s VCPL. Therefore, M/s VCPL fraudulently availed cenvat credit only on the basis of invoices of M/s Pranav without physical receipt of inputs. As per the CENVAT Credit Rules, the burden of proof regarding the admissibility of the CENVAT Credit shall lie upon the manufacturer taking such credit. Therefore, the CENVAT Credit availed by M/s VCPL on such consignments of copper on the basis of invoices of M/s. Pranav & M/s Omkar is inadmissible. Further, two consignments as mentioned at Sr. No. 14 and 15 of Annexure-A to the show cause notice were not received at the premises of M/s VCPL, Ahmedabad from M/s Ganpati, Delhi and hence cenvat credit availed in respect of these two consignments is also inadmissible.

**37.** I find that in view of the discussions in foregoing paras, M/s. Pranav and M/s Omkar have passed on the CENVAT credit to M/s VCPL on the strength of invoices



Ganpati had wrongly passed on the Cenvat credit of **Rs.2,21,755/-** (Rupees Two lakh twenty one thousand seven hundred fifty five only) on the copper wire/copper wire rod during **May,2005 to July, 2005**. Similarly from the Annexure-A-1, it is evident that M/s Omkar had wrongly passed on the CENVAT Credit of **Rs. 1,61,216/-** [Rupees one lakh sixty one thousand two hundred sixteen only] on the copper rod during the period **August, 2003**.

40. I also find that Shri Kaluram Heda, Proprietor of M/s. Pranav and Shri Shivkumar Kaluram Heda, Proprietor of M/s Omkar respectively were looking after day to day affairs of their firms. Shri Kaluram Heda and Shri Shivkumar Kaluram Heda devised a well coordinated plan to defraud the Government exchequer. As per their instructions, the consignments of copper ingot/ scrap/wire/rod were not transported from Delhi to their premises. However, the CENVAT Credit of the duty amount paid on such consignments was passed on by M/s Pranav & M/s Omkar on the strength of only invoices to M/s. VCPL, for the payment of Central Excise duties on final product manufactured by M/s. VCPL. Shri Kaluram Heda and Shri Shivkumar Kaluram Heda were instrumental in arranging the bogus LRs from the transporters to show that the consignments of copper had traveled to Nadiad and freight bills were got raised accordingly. To camouflage such transactions, the payments were made by cheques in respect of such freight bills. They received the payments in cash from such transporters after deducting their commission. Shri Kaluram Heda and Shri Shivkumar Kaluram Heda also fabricated the CENVAT records by showing the receipt of copper scrap/ingots/wire/rod in their RG23D register and by showing the supply of such ingot/ scrap/wire/rod to M/s. VCPL for manufacture of final product. When Shri Kaluram Heda and Shri Shivkumar Kaluram Heda were confronted with the evidences which indicated that the consignments of copper purchased from the registered dealers located at Delhi & units located at Jammu did not reach Nadiad while recording their statements on 24.10.2007 and 09.10.2007 respectively, Shri Kaluram Heda and Shri Shivkumar Kaluram Heda continued to controvert all such evidences and maintained that they had received consignments of copper in their premises. I find that no evidences were put forth by them in support of their claim hence all these facts clearly bring out their mala-fide intentions in committing these offence. Shri Kaluram Heda and Shri Shivkumar Kaluram Heda had illicitly passed on the CENVAT credit (of Rs.6,31,727/- & Rs.1,61,216/- respectively) by way of fraud, willful suppression of facts and mis-declaration with intent to evade the payment of duty on finished products. Therefore, Shri Kaluram Heda and Shri Shivkumar Kaluram Heda are liable to penalty under Rule, 13 of CCR, 2002 or Rule 15 of CENVAT Credit



43. M/s VCPL had wrongly availed the CENVAT Credit on the consignments of copper ingot/ scrap purchased from M/s. Pranav, M/s Ganpati and M/s Omkar as detailed in Annexure-A and Annexure-A-1 to the notice, only on the basis of duty paying documents without physical receipt of such goods in their factory. The copper ingot/scrap/wire/wire rod purchased from M/s. Pranav, M/s. Ganpati and M/s Omkar were neither received by them in their factory premises nor used in the manufacture of final products. From the Annexure-A, it is evident that M/s VCPL had wrongly availed the CENVAT Credit of **Rs.14,62,745/-** [Rupees fourteen lakh sixty two thousand seven hundred forty five only] on the copper wire/copper wire rod shown on record to have been received from M/s Pranav during the period **March, 2003 to November, 2005**; it is also evident that M/s VCPL had wrongly availed the CENVAT Credit of **Rs.2,21,755/-** (Cenvat Rs.2,17,407/- + Edu. Cess Rs. 4,348/-) [Rupees two lakh twenty one thousand seven hundred fifty five only] on the copper wire/copper wire rod shown on record to have been received from M/s Ganpati during the period **May, 2005 to July, 2005**. Similarly, from the Annexure-A1, it is evident that M/s VCPL had wrongly availed the CENVAT Credit of **Rs.1,61,216/-** [Rupees one lakh sixty one thousand two hundred sixteen only] on the copper rod shown on record to have been received from M/s Omkar during the period **August, 2003**. Thus, M/s VCPL have wrongly availed cenvat credit amounting to **Rs.18,45,716/-** [Rupees eighteen lakh forty five thousand seven hundred sixteen only] as detailed in Annexure-A and Annexure-A1 annexed to this show cause notice. The CENVAT Credit wrongly availed by M/s VCPL is recoverable from them under the provisions of rule, 12 of the CCR, 2002 or rule 14 of CCR, 2004, as the case may be.

44. As per the proviso to sub-section (1) of Section 11A if duty of excise has not been levied or paid or has been short levied or short paid or erroneously refunded by reasons of fraud, collusion or any wilfull mis-statement or suppression of facts or contravention of any provisions of Central Excise Act, 1944 or Rules made there under, with intent to evade payment of duty, the duty shall be demanded by invoking extended period of five years. As M/s VCPL have wrongly availed CENVAT credit on the strength of duty paying documents viz invoices by way of suppression of facts, wilfull mis-statement, contravention of provisions of CCR, 2002 or CCR, 2004 with intent to evade central excise duty. Therefore, the wrongly availed CENVAT credit of **Rs. 18,45,716/-** is recoverable from them by invoking extended period of five years under rule 12 of the CCR, 2002 or rule 14 of CCR, 2004, read with proviso to sub-section 1 of **Section 11A** of Central Excise Act, 1944. M/s VCPL are liable to pay



Omkar did not reach his factory at Ahmedabad while recording his statement on 31.01.2008, Shri Natubhai Haribhai Patel continued to controvert all such evidences and maintained that they had received consignments of copper in their factory. All these facts clearly bring out his mala-fide intentions in committing these offences. Shri Natubhai Haribhai Patel is, therefore liable for severe penalty under rule 13 of Cenvat Credit Rules, 2002 or rule 15 of CENVAT Credit Rules, 2004 for his involvement in the fraudulent availment of CENVAT credit by way of fraud, willful suppression of acts and mis-declaration with intent to evade the payment of duty on finished products.

48. I also find that Shri Natubhai Haribhai Patel, Director of M/s.VCPL, was fully aware that the final excisable goods had been manufactured in the factory of M/s VCPL out of non-duty paid inputs and such final excisable goods had been cleared on payment of duty from inadmissible CENVAT credit taken on the strength of duty paying documents viz. invoices of M/s. Pranav, M/s Ganpati and M/s Omkar. Thus final products manufactured by M/s VCPL were actually cleared without payment of duty. He was fully aware that the final products manufactured by M/s VCPL and cleared on payment of duty from inadmissible CENVAT credit, were liable to confiscation under rule 25 of Central Excise Rules, 2002. He being in-charge of all the day to day business activities of M/s VCPL was concerned in manufacturing, storing, depositing, concealing, removing, selling and purchasing the excisable goods which he knew and had reasons to believe that such goods were liable for confiscation under the Central Excise Rules, 2002 & CENVAT Credit Rules, 2002 and CENVAT Credit Rules, 2004. For all such acts of omission / commission, Shri Natubhai Haribhai Patel, Director of M/s. VCPL is liable to penalty under Rule 26 of the Central Excise Rules, 2002. I therefore impose a penalty of **Rs.4,00,000/-** on him.

49. I find that M/s. Singal Transport Co. have issued 1 LR, showing transportation of copper wire from Delhi to M/s. Pranav, Nadiad. The vehicle shown on the LR did not enter State of Gujarat through Ratanpur or Shamlaji check posts and no stamp of any commercial check posts was affixed on the LR. The proprietor of the firm Shri Paramjit Singh Kakar, in his statement dated 09.08.2007 admitted that they have only prepared Lorry receipt for the said consignment and no transportation of copper consignment took place. It is thus evident that M/s. Singal Transport Co., issued bogus LR for transportation of copper from Delhi to M/s Pranav, Nadiad and thus enabled M/s. Pranav to fraudulently pass on Cenvat credit of Rs.1,60,282/- to M/s VCPL. Shri Paramjit Singh, Proprietor of M/s. Singal Transport



recorded on 24.8.07 on the basis of documents recovered from their Ahmedabad office. However, immediately on reaching Delhi, he sent an affidavit dated 24.8.07 alleging use of threat for recording his statement. Summons dated 18.09.2007 and 21.09.2007 were issued to Shri Navratan Lal Sharma, Proprietor of M/s Singal Road Carriers but he never appeared. It is evident from above that as per his instructions, the employees of M/s Singal Road Carriers as well as his son retracted the statements recorded on the basis of documents.

**52.** As evident from Annexure-B to this show cause notice, M/s Singal Road Carriers issued 275 LRs showing transportation of 29,21,349 Kgs. of copper involving cenvat credit of approximately Rs.7.01 Crores to the manufacturers of copper located in Daman and Gujarat only. In respect of M/s Pranav, M/s Singal Road Carriers have issued 45 bogus LRs, out of which 1 bogus LR pertained to copper consignment from M/s Smita Global (P) Ltd., Delhi and 2 bogus LRs were issued by M/s Singal Road Carriers showing transportation of two copper consignments from M/s Ganpati to M/s VCPL and covered in the present investigations. Further, 39 bogus lorry receipts pertained to imported consignments of copper, the show cause notice for which has already been issued. Thus, M/s Singal Road Carriers, by issuing 1 No. of bogus LR to cover transportation of consignments of copper, enabled M/s Pranav to fraudulently pass on cenvat credit of Rs. 1,38,940/- to M/s. VCPL. Further M/s Singal Road Carriers, by issuing 2 No. of bogus LRs to cover transportation of two consignments of copper from M/s Ganpati to M/s VCPL, enabled M/s VCPL to fraudulently avail cenvat credit of Rs. 2,21,755/-. Therefore, Shri Navratan Lal Sharma, Proprietor of M/s Singal Road Carriers deserves severe penal action to prevent him in indulging in such activities. It is worth mentioning that other transporters stopped issuing bogus LRs after initiation of investigations by DGCEI in respect of fraudulent availment of cenvat credit on imported copper cleared from ICD, Tughlaqabad and even the manufacturers of articles of copper stopped the said modus operandi. However, Shri Navratan Lal Sharma started issuing bogus LRs for transport of copper from Jammu & Delhi based units. Therefore, he deserves severe penalty as it was on his instructions that the bogus LRs were issued to show the transportation of consignments of copper from Delhi to M/s Pranav, Nadiad & M/s VCPL. To show such bogus transactions as genuine, he was also receiving the payments by cheques for the full distance from Delhi to Nadiad & Ahmedabad and a part of the amount was returned in cash to M/s Pranav & M/s VCPL after deducting their commission. He had issued bogus LRs to M/s Pranav and M/s VCPL to enable them fraudulently avail cenvat credit which was used by such manufacturers towards



to enable them to fraudulently pass on cenvat credit which was used by such manufacturers towards payment of duty on the goods manufactured by them. Thus actually goods manufactured by the copper manufacturers were cleared without payment of duty and hence liable to confiscation under Central Excise Rules, 2002. Therefore, Shri Navratan Lal Sharma had dealt with the excisable goods, which are liable to confiscation under the provisions of Central Excise Act, 1944. Thus, Shri Navratan Lal Sharma is liable to penalty under Rule 26 of the Central Excise Rules, 2002 and Rule 13 of the CCR, 2002 or Rule 15 of Cenvat Credit Rules, 2004, as Partner of M/s Singh Road Carriers as well as Proprietor of M/s Singal Road Carriers. I therefore impose penalty of **Rs.50,000/-** on Shri Navratan Lal Sharma as Partner of M/s Singh Road Carriers and penalty of **Rs.50,000/-** as Proprietor of M/s Singal Road Carriers.

56. Similarly, I find that M/s. Chauhan Road lines, Faridabad have issued 4 LRs showing transportation of copper scrap/wire rod/rod from Faridabad to M/s. Pranav, Nadiad. The vehicles shown on the LR did not enter State of Gujarat through Ratanpur or Shamlaji check posts and no stamp of any commercial check posts was affixed on the LRs. The vehicle shown on the LRs also does not have the permit to enter state of Gujarat. It is thus evident that M/s Chauhan Road lines issued bogus LRs for transportation of copper from Faridabad to M/s. Pranav, Nadiad and thus enabled to M/s. Pranav to fraudulently pass on Cenvat credit of **Rs. 4,51,012/-** to M/s VCPL. Therefore Shri Bhupsingh Chauhan, Proprietor of M/s. Chauhan Road lines is liable to penal action under Rule 26 of Central Excise Rules, 2002 and Rule 13 of the CCR, 2002 or Rule 15 of Cenvat Credit Rules, 2004. I impose a penalty of **Rs.50,000/-** on Shri Bhupsingh Chauhan.

57. Regarding retraction of statement by Shri Subhash Chandra Sharma, Shri Gulabshankar Pandey and Shri Atul Navrantam Lal Sharma. I find that Shri Sharma vide his letter dated 28.11.2006, retracted his statement recorded on 28.11.2006 by alleging that his statement was recorded under force and duress. The facts narrated by Shri Sharma in his statement are duly corroborated by other evidences gathered during the investigations. It is a well settled law that if a statement made before a Central Excise officer, finds corroborated from independent sources, it will be admissible, even if retracted later. In Surjeet Singh Chhabra vs. UOI: 1997 AIR SCW 2507, it was held that Customs officers were not police officers, and confession made before Customs officer was binding even if retracted later. The facts narrated by Shri Subhash Chandra Sharma in his statement dated 28.11.2006 give the true account of





MT of copper on the same day. Moreover, in the Delivery Registers recovered from their office, there is not even a single entry for transportation of copper and name of consignee, consignor, etc as given in the LRs for transportation of copper. Thus, statement was recorded on the basis of documents only and not under any threat or duress. However, in his Affidavit, he had contended that his statement was recorded under threat of arrest and third degree treatment. The allegations in the Affidavit are totally false just to take advantage during adjudication proceedings because Shri Atul Sharma is fully aware that M/s Singal Road Carriers did not transport any copper and issued bogus LRs only to enable the manufacturers of articles of copper to fraudulently avail cenvat credit. He is thus aware that for issue of bogus LRs, he is liable for penal action and therefore, he had sent the said Affidavit. The affidavit is totally false and no cognizance can be taken on such a false Affidavit.

58. I place reliance on the decision of Principal Bench, New Delhi passed in the case of M.P.Goenka reported at 2014 (310) E.L.T. 361 (Tri. - Del.) wherein it was held that the appellant's argument that the penalty was not imposable for charge of smuggling on the ground that confessional statement which formed the basis thereof had been retracted, was not acceptable as there were other independent materials which implicated the appellants. This decision was affirmed by Hon'ble Supreme Court reported at 2015 (324) E.L.T. A81 (S.C.). Further in the case of P. ALAVIKUTTY, Appellate Tribunal For Foreign Exchange, New Delhi reported at 2013 (294) E.L.T. 172 (ATFE) the tribunal held that "***the burden of proving the fact that the said confessional statement was obtained under duress and threat was on the appellant himself which he has not been able to discharge. It has been observed by the Supreme Court in K.T.M.S. Mohd v. UOI - AIR 1992 SC 1831 that it is only for the maker of the statement who alleges inducement, coercion, threat, etc., to establish that force was adopted which burden has not been discharged by the appellant for want of evidence. In K.I. Pavunny v. Assistant Collector (HQ.), Central Excise Collectorate, Cochin, (1997) 3 SCC 721 = 1997 (80) E.L.T. 241, it has been observed by the Supreme Court that the retracted confessional statement can become the basis of confession if the Court is satisfied from the evidence that it is voluntary and is proved. The Court would seek assurance getting corroboration from the evidence produced by the prosecution.***"

59. I place reliance in the case decided by the Principal Bench, New Delhi in case of CCE, Ludhiana Vs. Indian Special Castings (P) Ltd. reported at 2008(227) ELT 322 (Tri. Delhi) wherein it has held as under:

*"CENVAT/Modvat - Fraudulent availment of credit - Fake Transportation of goods under invoices containing fictitious vehicle numbers - Possibility of clerical mistake in noting vehicle*



61. As requested by the Advocate of the co-noticee, cross examination was granted to Shri Subash Chandra Sharma, Manager of M/s. Singal Road Carriers, New Delhi, Shri Gulabshankar Pandey of M/s. Singal Road & Shri Atul Navratan Lai Sharma of M/s. Singal Road Carriers on 30.09.2008 by the original adjudicating authority. However, nobody appeared for the cross examination nor had given any intimation in this regard. I find that no request for cross examination was made by the noticees during the personal hearing.

62. In view of the above discussion, documentary evidences and facts, I pass the following order:

**ORDER**

- i. I confirm the demand of CENVAT credit amounting to **Rs.18,45,716/-** [Rupees eighteen lakh forty five thousand seven hundred sixteen only] [**Rs.18,41,368/-** as CENVAT and **Rs.4,348/-** as Education Cess] wrongly availed by M/s. Vipul Copper Pvt. Ltd. on consignments of copper, purchased from M/s Pranav, M/s Omkar and M/s Ganpati, as detailed in **Annexure-A** and **Annexure-A1** to the Show Cause Notice, under Rule 12 of the Cenvat Credit Rules, 2002 / Rule 14 of the Cenvat Credit Rules, 2004, read with Section 11A of Central Excise Act, 1944 by invoking extended period as per proviso to Sub-Section (1) of said Section 11 A;
- ii. I order to recover interest under Rule 12 of the CENVAT Credit Rules, 2002 / Rule 14 of the CENVAT Credit Rules, 2004 as the case may be, read with Section 11AB of the Central Excise Act, 1944;
- iii. I impose penalty of **Rs.18,45,716/-** [Rupees eighteen lakh forty five thousand seven hundred sixteen only] under Rule 13 of the CENVAT Credit Rules, 2002 / Rule 15 of the CENVAT Credit Rules, 2004 as the case may be, read with Section 11 AC of the Central Excise Act, 1944;
- iv. The penalty imposed under (iii) above stands reduced to 25% of the duty determined if the entire amount of duty confirmed under clause (i) above, and interest is paid along with the reduced penalty within one month of issue of this order.
- v. I impose penalty of **4,00,000/-** (Rupees Four lakh only) on Shri Natubhai Patel, Managing Director of M/s. Vipul Copper Pvt. Ltd. under Rule 26 of Central Excise Rules, 2002 and Section 11 AC of the Central Excise Act, 1944.
- vi. I impose penalty of **Rs.2,00,000/-** (Rupees Two lakh only ) on Shri Kaluram Heda, Proprietor of M/s. Pranav Metal Mart under Rule 26 of Central Excise Rules, 2002 read with Rule 13 of the CENVAT Credit Rules, 2002 / Rule 15 of the CENVAT Credit Rules, 2004;
- vii. I refrain from imposing penalty on Shri Shivkumar Kaluram Heda, Proprietor of M/s. Omkar Metals & Alloys under Rule 26 of Central Excise Rules, 2002 read with Rule 13 of the CENVAT Credit Rules, 2002 / Rule 15 of the CENVAT Credit Rules, 2004, as he has passed away;



- 6) Shri Paramjit Singh Kakar,  
Proprietor, M/s. Singal Transport Co.,  
4882/2, Paras Nath Marg, Sadar Bazar, Delhi-6.
- 7) Shri Navratan Lal Sharma,  
Partner, M/s Singh Road Carriers,  
3316, Kuch Kashgiri, Bazar  
Sitaram, Delhi- 110006.
- 8) Shri Bhupsingh Chauhan Proprietor,  
M/s Chauhan Road Lines,  
18/1, Mathura Road, Ajroni,  
Faridabad-121002

**Copy to:**

1. The Commissioner, CGST & C.Ex, Ahmedabad-North. (Att. RRA)
2. The Additional Director General, DGCEI, AZU, Ahmedabad.
3. The Assistant Commissioner, Central Excise, Division-I, Ahmedabad North.
4. The Superintendent, CGST & C.Ex., Range-III, Division-I, Ahmedabad North.
5. Guard File.

