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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 Bhawan.

रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

Tele Fax No. 0281 - 2477952-2441142 Email: cexappealsrajkot@gmail.com

रजिस्टर्ड डाक ए. डी. द्वारा :-

| | | | |
|---|--|--------------------------|------------------|
| क | अपील क्रमांक संख्या Appeal / File No. | मूल आदेश नं / OIO No. | दिनांक / Date |
| | V2/17/EA2/RAJ/2016 | 08/D/AC/2016-17 | 10.06.2016 |

Handwritten notes: 5/11 to 5/112, 5/114, 05/10/17, 12:40 PM

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

RAJ-EXCUS-000-APP-083 -2017-18

| | | | |
|------------------------------------|------------|--|------------|
| आदेश का दिनांक / Date of Order: | 28.09.2017 | जारी करने की तारीख / Date of issue: | 03.10.2017 |
|------------------------------------|------------|--|------------|

कुमार सतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot

ग अपर आयुक्त/संयुक्त आयुक्त/उपायुक्त/सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, राजकोट / जयनगर / गणधीरम, द्वारा उपरोक्तित्वात् जारी मूल आदेश से सुझित /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham

घ अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name&Address of the Appellant & Respondent :-
M/s. Neelkanth Pulp & Paper Boards., Village - Amreli., Taluka - Paddhari.,Rajkot.,

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपरोक्त अधिकारी / अधिकरण के समक्ष अपील दाखल 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 अधीनीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अन्तर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अन्तर्गत 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) इरीकरण मूल्यांकन से सम्बन्धित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अधीनीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जाती 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 बतलाए गए अपीलों के अलावा सभी अपीलें सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अधीनीय न्यायाधिकरण (जिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बध्माली भवन जयनगर अहमदाबाद, 380016 को की जाती 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) अधीनीय न्यायाधिकरण के समक्ष अपील परन्तु करों के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवली, 2001 के नियम 6 के अन्तर्गत निर्धारित फीस नवीं धारा EA-3 को धारा बतियाये में दर्जे किया जाता चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की सीमा 5 लाख की अधिक और लगाया गया जुर्माना, ब्याज 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो ब्याज: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अधीनीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से क्लिप सी सर्वजिनेट बैंक के बैंक द्वारा जारी रेकॉर्ड बैंक द्वारा ट्रेजरी किन्ना जमा चाहिए। संबंधित हुएत का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अधीनीय न्यायाधिकरण की शाखा स्थित है। अथवा आदेश (एन ओडर) के लिए आवेदन-पत्र के साथ 500/- रुपये का निर्धारित शुल्क जमा करना होगा।
The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/- Rs.10,000/- where amount of duty demanded/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/-
- (iv) अधीनीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अन्तर्गत सेवाकर नियमवली, 1994 के नियम 9(1) के तहत निर्धारित धारा 5 T-5 में बतलाने में की जा सकती है एवं उसके साथ फिर आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उसमें से एक प्रति प्रामाणिक होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की सीमा 5 लाख की अधिक और लगाया गया जुर्माना, ब्याज 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो ब्याज: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अधीनीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से क्लिप सी सर्वजिनेट बैंक के बैंक द्वारा जारी रेकॉर्ड बैंक द्वारा ट्रेजरी किन्ना जमा चाहिए। संबंधित हुएत का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अधीनीय न्यायाधिकरण की शाखा स्थित है। अथवा आदेश (एन ओडर) के लिए आवेदन-पत्र के साथ 500/- रुपये का निर्धारित शुल्क जमा करना होगा।
The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1,000/- where the amount of service tax & interest demanded & penalty levied is Rs. 5 Lakhs or less, Rs.5000/- 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) किल अपीलियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अन्तर्गत दायरे की नहीं जाती। सेवाकर विधायिका, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित धारा S.T.-7 में की जा सकती एवं उसके साथ अनुसूक्त केन्द्रीय उत्पाद शुल्क अध्याय अनुसूक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा जारी आदेश की प्रतियाँ संलग्न की जा सकती हैं। (अपील में एक प्रति प्रस्तुत होनी चाहिए) और अनुसूक्त द्वारा संश्लेषक अनुसूक्त अध्याय अनुसूक्त, केन्द्रीय उत्पाद शुल्क सेवाकर, को अपीलिय न्यायाधिकरण को अपील करने वाले को आदेश 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 अपीलिय अधिकरण (सेक्टर) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अपीलियम 1994 की धारा 35ए के अन्तर्गत, जो की विनियम अपीलियम, 1994 की धारा 83 के अन्तर्गत सेवाकर को भी लागू की गई है। इस आदेश के प्रति अपीलिय अधिकरण में अपील करने समय उत्पाद शुल्कसेवा कर साथ के 10 प्रतिशत (10%), जब मात्र एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अन्तर्गत जमा कि जाने वाली अपीलिय देय राशि दल करीब 5000 रूपये में अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अन्तर्गत 'सामूहिक' में निम्न वर्णित है
ii) धारा 11 डी के अन्तर्गत रकम
iii) सेक्टर जमा की गई रकम राशि
iv) सेक्टर जमा विधायिका के नियम 6 के अन्तर्गत देय रकम
- बशर्त यह कि इस धारा के प्रावधान विनियम (सं. 2) अपीलियम 2014 के अन्तर्गत में दूरी किसी अपीलिय अधिकारी के द्वारा विधायिका संश्लेषक अपील 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 be 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 Central Credit taken,
iii) amount payable under Rule 6 of the Central Credit Rules
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.
- (C) **भारत सरकार को पुनरीक्षण आवेदन :**
Revision application to Government of India:
इस आदेश की पुनरीक्षण अधिकार निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अपीलियम, 1994 की धारा 35EE के प्रथम पारुक्त के अन्तर्गत अथवा सेवाकर, भारत सरकार, पुनरीक्षण आवेदन हेतु, किल सरकार, राजस्थान भिंज, चौकी नजिल, जीवन टॉप भवन, अटल भवन, 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 मात्र के किसी नुकसान के मामले में, जहां नुकसान किसी मात्र को किसी कारखाने से अथवा गृह के परामर्श के दौरान या किसी अन्य कारखाने या किल किसी एक अथवा गृह में दूसरे अथवा गृह परामर्श के दौरान, या किसी अथवा गृह में या अथवा गृह से मात्र के प्रसवकाल के दौरान, किसी कारखाने या किसी अथवा गृह में मात्र 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 मात्र के विनिर्माण में प्रयुक्त बर्तन मात्र पर अपी नई केन्द्रीय उत्पाद शुल्क के छूट (सिस्ट) 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 किल किल भारत के बाहर, नेपाल या भूटान को मात्र 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 इन्फो केन्ट्रल इस अपीलियम एवं इसके विनिर्माण प्रावधानों के तहत मात्र की गई है और एक आदेश जो अनुसूक्त (अपील) के द्वारा किल अपीलियम (सं. 2) 1998 की धारा 109 के द्वारा नियत की गई तरीक अथवा न्यायाधिकरण पर का बट से परिणत किया गयी है।
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 धारा सध्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) विधायिका, 2001 के नियम 9 के अन्तर्गत निर्दिष्ट है। इस आदेश के संश्लेषक के 3 महीने के अन्तर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मात्र आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अपीलियम, 1994 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साथ-साथ के साथ या 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 OJO and Order-in-Appeal. It should also be accompanied by a copy of TR-6 Chalan 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 is Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
- (D) यदि इस आदेश में कई मात्र आदेश का समावेश है तो प्रत्येक मात्र आदेश के लिए शुल्क का भुगतान, उपरोक्त इस से किया जाना चाहिए। इस साथ के होते हुए भी की निम्न प्रावधानों के अन्तर्गत के लिए प्रत्येक अपीलिय अपीलिय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाना 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, not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if existing Rs. 1 lakh fee of Rs. 100/- for each.
- (E) यथास्थिति न्यायालय शुल्क अपीलियम, 1975, के अनुसूची-1 के अनुसार मात्र आदेश एवं स्थगन आदेश की प्रति पर निर्धारित रु.50 रुपये का न्यायालय शुल्क दिकरित कर 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. 50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.
- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलिय न्यायाधिकरण (नया विधि) विधायिका, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्बन्धित करने वाले नियमों की और भी धारा सम्बन्धित 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 अपीलिय अधिकारी को अपील दाखिल करने में संबंधित ध्यात्म, विस्तृत और संबंधित प्रावधानों के लिए, अपीलिय विनियम सेवाकर www.cbec.gov.in की देख लनी है।)
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

:: ORDER-IN-APPEAL ::

The present appeal has been filed by the Department against Order-In-Original No. 08/D/AC/2016-17 dated 10/13.06.2016 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central Excise Division-I, Rajkot (hereinafter referred to as "the lower adjudicating authority") in the case of M/s. Neelkanth Pulp & Paper Boards, Village: Amreli, Taluka: Paddhari, Dist.: Rajkot (hereinafter referred to as 'the respondent').

2. Briefly stated facts of the case are that during the course of audit, it was noticed that the respondent had availed and utilized Cenvat credit of Rs. 2,02,080/- on the original/triplicate copy of invoices of inputs during the period from April, 2013 to September, 2014. The respondent could not produce copy of 'duplicate for transporter copy' (consignee's copy) for total of 148 invoices during the course of audit. The respondent also could not produce any document in respect of receipt of the inputs in the factory of manufacture i.e. Lorry Receipt, Freight payment details etc. under which the inputs may have been received.

3. The above observation culminated into issuance of Show Cause Notice F. No. C.Ex./Audit-III/Cir-II/AC-03/2015-16 dated 16.11.2015 proposing recovery of wrongly availed Cenvat Credit amounting to Rs.2,02,080/- under Rule 14 of the Cenvat Credit Rules, 2004 (herein after referred to as "the CCR, 2004") alongwith interest under Section 11AA of the Central Excise Act, 1944. It was also proposed to impose penalty under Rule 15 of the CCR, 2004 read with Section 11AC of the Central Excise Act, 1944.

4. The said show cause notice was adjudicated by the lower adjudicating authority under which he dropped the charges alleged in the Show Cause Notice No. C. Ex./Audit-III/Cir-II/AC-03/2015-16 dated 16.11.2015.

5. Being aggrieved by the impugned order, the Department preferred the present appeal mainly on the following grounds:

(i) The respondent failed to produce the invoice copies marked as "duplicate copy of transporter", on which the said Cenvat Credit was availed;

(ii) In the defense submission, the respondent submitted Lorry Receipts for the subject inputs in support of their claim of said goods having been received by them. However, on scrutiny of the said Lorry receipts, submitted before the department after issuance of Show Cause Notice, it is observed that the said Lorry

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receipts were nothing but fabricated Lorry Receipts prepared/ manipulated after thought evidencing their claim that the goods were received by them on the specific address. The Department noticed following discrepancies from the scrutiny of Lorry Receipt:

- (a) As per the details pertaining to the Transporter which were mentioned in the respective invoices of the suppliers viz. Gujarat Mineral Development Corporation Limited, it was revealed that in majority of the cases, the goods were transported by M/s. Om Roadways having lorry receipt of twelve digit. Whereas, the lorry receipts, submitted at later stage by the respondent, the Lorry Receipt numbers are of four digits and totally different and not tally with the Lorry Receipt number mentioned in the invoices of the suppliers.
 - (b) The said Lorry Receipts submitted at later stage are not in prescribed format as they should be being the concerned transporter is providing the services under the service category of "Goods Transport Agency". The Lorry Receipts do not contain any details such as Service Tax number, name of the driver, license number of the driver etc. Further all the Lorry Receipts submitted at later stage are marked as "freight paid" but surprisingly without quantification of Service Tax amount and amount of freight paid/payable.
 - (c) The Supplier in their invoice has mentioned all the details of transporter such as Driver's name in short, Driver's license number, vehicle number, LR no. etc. and obviously these details should have been entered only on the strength of Lorry Receipts presented at the time of preparation of invoices by the supplier. Whereas, the Lorry Receipts submitted by the said manufacturer with their defense submission at later stage, in majority of the cases, do not contain any details regarding name of the truck owner/driver, license number, truck number etc.
 - (d) In some of the cases, it also reveals that the goods were also carried out by another transporter company but the lorry receipts and the hand writing of the said transporter seems very identical as if they were issued by the same person.
- (iii) The Appellant submitted that the respondent had submitted fabricated/fake Lorry Receipts at later stage with their submission. It is alleged

by the Department that the respondent had after thought prepared/ fabricated the subject Lorry Receipts which were completely fake and proved malafide intention of the Respondent.

(iv) It is the allegation of the Department that the said Lorry Receipts were taken place at the later stage before the adjudicating authority and not during the course of Audit itself proves that if the said respondent were having these Lorry Receipts at the material time, they would have submitted the same before Audit.

(v) The respondent could not produce any details of the payment of freight made by them towards transportation of the goods. The Lorry Receipts also do not contain any details of the quantum of freight, payment made by whom and the persons by whom the Service Tax obligations/liability were to be discharged.

(vi) The Department alleged that the Respondent was failed to maintain proper record for receipt, disposal and consumption and inventory of the input in which relevant information regarding value duty paid, cenvat credit taken and utilized, the person from whom the inputs have been procured is recorded and the burden of proof regarding admissibility of the Cenvat Credit shall lie upon the manufacturer taking credit as per Sub-Rule 5 of Rule 9 of Cenvat Credit Rules, 2004.

6. The personal hearing in the matter was held on 11.09.2017 which was attended by Shri Manish Ashra, Superintendent, AR-I, Division-I, Rajkot on behalf of the Department and reiterated the grounds of appeal. He submitted that the Lorry receipts submitted by the Respondent are fake/ fabricated; on query to submit supporting documents to substantiate the allegations of fake / fabricated LR, he requested for 5 working days; that the cenvat credit has been taken on original/triplicate copies of invoices and not on duplicate copy of invoices as stipulated in the Rules; that the invoices have full details and hence LR should also have all these details as without these details how GMDC had entered these in their invoices. The personal hearing in the matter was again held on 18.09.2017 which was attended by Shri Kanjibhai J. Vaishnav on behalf of the Respondent. He submitted written submission alongwith proof of payment of Service Tax, ledger of GMDC, ledger of Om Roadways and emphasized that LR written in the invoices of GMDC is not LR No. but internal no. of GMDC. No one appeared from the Department appeared on 18.09.2017.

7. With regard to Department's allegation of non production of invoice copies marked as duplicate copy for transporter, the Respondent relied upon the decisions in the case of Goodlass Nerolac Paints Ltd Vs Commissioner of Central Excise, Kanpur - 2014-TIOL-614-CESTAT-MUM, M/s. JCT Ltd Vs CCE, Jalandhar - 2005-TIOL-184-CESTAT-Del., Tata Motors Ltd Vs CCE, Lucknow - 2014-TIOL-2980-CESTAT-Del, CCE, Allahabad Vs M/s. Hindalco Industries Ltd. - 2012-TIOL-257-High Court-ALL-CX.

7.1 With regard to Department's various allegations, the Respondent submitted that it is evident from the impugned order dated 10.06.2016 that the adjudicating authority has already verified all the facts regarding the Lorry Receipts and dispatch of goods at para 13.1 of the impugned order. The Department has not raised any objection against the fact of dispatch and receipt of the goods. The Department has not made any verification at the supplier's end to verify genuineness of dispatch of the goods.

7.2 That being consignee, they have paid the applicable Service Tax in transportation of goods from the supplier's premises to their premises. They have also submitted details of payment of Service Tax on transportation of goods under reverse charge mechanism.

7.3 That on the basis of ACES module as well as in the internet, such verification of existence of Om Roadways cannot be alleged as the Department has not made any physical verification. That they have received the goods from M/s. Gujarat Mineral Development Corporation Limited and accordingly paid the price of the goods. In support, they have submitted the ledger account of the supplier before the adjudicating authority as well as ledger of Om Roadways.

FINDINGS:

8. I have carefully gone through the facts of the case, the impugned order, the appeal memorandum, cross objections filed by the respondent and written/oral submissions made by the Department as well as respondent during the course of personal hearing. The issue to be decided in the present case is as to whether the respondent is eligible for Cenvat credit of Rs. 2,02,080/- on original/ triplicate copy of invoices or not.

9. I find that the Respondent has availed Cenvat credit on the basis of original/ triplicate copy of 148 invoices of inputs during the period from April, 2013 to

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September, 2014 in absence of duplicate copy for transporter. To ascertain the eligibility of availment of Cenvat Credit let us go through the relevant provisions of Cenvat Credit Rules, 2004, which are as below:

RULE 9. Documents and accounts. (1) - The CENVAT credit shall be taken by the manufacturer on the basis of any of the following documents, namely :-

(a) an invoice issued by-

(i) a manufacturer for clearance of -

(i) inputs from his factory or depot or from the premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer;

(ii) inputs as such;

(2) No CENVAT credit under sub-rule (1) shall be taken unless all the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994, as the case may be, are contained in the said document:

(Emphasis supplied)

9.2 On reading of Rule 9 of Cenvat Credit Rules, 2004, it is clear that Cenvat credit can be taken on an invoice issued by a manufacturer for clearance of inputs or capital goods, as the case may be, from his factory or depot or from the premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer. Rule 11(3) of Central Excise Rules, 2002 provides for the Invoices to be marked as Original/ Duplicate/ Triplicate copies meant for the buyer/ transporter/assessee etc. However, neither Rule 9 nor Rule 11 anywhere says that an assessee can take Cenvat credit only on the basis of Duplicate copy of invoice meant for Transporter only. It is very clear that the Cenvat Credit can be taken on any copy either original or duplicate or triplicate, as long as duty is paid and goods/ inputs/ capital goods are received and used for manufacture of final products. Therefore, the grounds taken by the Department is devoid of any merit.

9.3 I also find that Rule 11(2) of Central Excise Rules, 2002 envisages that "The invoice shall be serially numbered and shall contain the registration number, address of the concerned Central Excise Division, name of the consignee, description, classification, time and date of removal, mode of transportation and vehicle registration number, rate of duty, quantity and value of goods and the duty payable thereon." On going through the copies of the invoices submitted by the Superintendent, Central Excise AR-I, Division-I, Rajkot vide his letter F. No. AR-IV/Neelkanth/Audit/2014-15 dated 12.09.2017, it is evident that the requirements mentioned in Rule 11(2) of Central Excise Rules, 2002 stand satisfied.

9.4 Rule 11(3) of the Central Excise Rules, 2002 states that "the invoice shall be prepared in triplicate in the following manner, namely:- (i) the original copy being marked as ORIGINAL FOR BUYER (ii) the duplicate copy being marked as DUPLICATE FOR TRANSPORTER (iii) the triplicate copy being marked as TRIPLICATE FOR ASSESSEE.


9.4.1 On going through Rule 11 of Central Excise Rules, 2002, also, I find no mention that Cenvat Credit can be taken only on Duplicate copy of the invoices and not on the basis of original copy of the invoice during the relevant period.

10. The grounds of appeal alleged that Lorry receipts submitted by the respondent were fabricated/ manipulated and after thought ones. In this regard, I find that the respondent has produced copies of invoices issued by the supplier, namely M/s. Gujarat Mineral Development Corporation (GMDC), a Gujarat Government Undertaking and the lower adjudicating authority has verified the Cenvat Credit Register produced by the respondent wherein details of all these invoices have been entered and Credit availed thereon as detailed in the impugned order. Thus, it is proved beyond doubt that the supplier has supplied the goods on payment of duty and the Respondent has received the goods and then taken Cenvat credit. The respondent has also produced copies of ledger evidencing payment to supplier of the goods as well as to the transporter. Once the receipt of goods, payment to the supplier and to the transporter is not in doubt, then the fabrication of documents/ lorry receipt is not substantiated in absence of any evidence produced by the Department. The Department has made its entire case on basis of 12 digits of lorry receipt number in the invoices whereas it is revealed that this 12 digit number is not lorry receipt but, internal number maintained by GMDC.

11. In view of the above facts, I find that the respondent is eligible for Cenvat Credit and the appeal filed by the Department is devoid of any merit and hence liable to be rejected. Accordingly, I uphold the impugned order and reject the appeal.

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

12. The appeal filed by the Department is disposed of in above terms.


(कुमार सतीश)
आयुक्त (अपील्स)

30,

By R.P.A.D.

To,

M/s. Neelkanth Pump & Paper Boards,
Village: Amreli, Taluka: Paddhari,
Dist.: Rajkot

મે. નીલકંઠ પલ્પ એન્ડ પેપર બોર્ડ્સ, ગાંઠ:
અમરેલી, તહસીલ: પડધરી, જિલ્લા: રાજકોટ

Copy to:

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
- 2) The Commissioner, GST & Central Excise, Rajkot.
- 3) The Assistant Commissioner, GST & Central Excise, Division - I, Rajkot.
- 4) The Superintendent, GST & Central Excise, AR-I, Rajkot.
- 5) Guard File.

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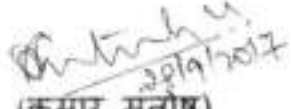
11. In view of the above facts, I find that the respondent is eligible for Cenvat Credit and the appeal filed by the Department is devoid of any merit and hence liable to be rejected. Accordingly, I uphold the impugned order and reject the appeal.

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

12. The appeal filed by the Department is disposed of in above terms.

सत्यापित,

आर. एस. बोरीचा,
अधीक्षक (अपील्स)


30/9/2017
(कुमार संतोष)
आयुक्त (अपील्स)