:: ORDER IN APPEAL ::

M/s. Madhu Silica Pvt. Ltd., DU-III, Plot No. 53,55 &56/B, GIDC Chitra, Bhavnagar (hereinafter referred to as "Appellant") has filed appeals against Orders-In-Original No. 39 to 43/Excise/Demand/2016-17 dated 27.02.2017 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central Excise, City Division, Bhavnagar (hereinafter referred to as "the lower adjudicating authority"). Since the issue involved is common in nature and connected with each other, the same are taken up together for disposal.

2. Briefly stated facts of the case are that on being asked by the jurisdictional Range Officer, the appellant provided the information regarding availment and utilization of Cenvat credit of Service Tax paid on outward transportation of goods. The scrutiny of information revealed that the appellant during the below given period has availed Cenvat credit of Service Tax paid on outward transportation which was used for transportation of finished goods beyond the place of removal and therefore Cenvat credit was allegedly not available as under :-

Sr. No.	Show Cause Notice No.	SCN date	Amount Rs.	Period Involved
1.	V/15-07/Demand-Madhu Silica/2012-13	21.09.2012	1,44,455/-	Oct -11 to Mar - 12
2.	V/15-113/Dem/HQ/2014-15	22.04.2015	7,83,457/-	May-12 to July-14
3.	V/15-32/Demand-Madhu Silica DU-III/14-15	08.07.2015	56,675/-	Aug-14 to Dec-14
4.	AR-I/SCN-09/MSPL DU-III/Supdt./2015-16	08.09.2015	56,811/-	Jan-15 to Apr-15
5.	V/15-32/Demand-Madhu Silica DU-III/14-15	15.03.2016	1,42,148/-	May-15 to Jan-16

2.1 Show Cause Notices were issued to the appellant for recovery of wrongly availed Cenvat credit alongwith interest under Rule 14 of the Cenvat Credit Rules, 2004 (*hereinafter referred to as* "the CCR) read with Section 11A of the Central Excise Act, 1944. The demands of wrongly availed Cenvat credit alongwith interest and penalty proposed under the SCN was confirmed by the lower adjudicating authority vide impugned orders.

3. Being aggrieved with the impugned orders, the appellant preferred the present appeals on the grounds that judgment dated 28.11.2013 of the Hon'ble High Court of Kolkatta in the case of CCE Vs. Vesuvious India Ltd. reported as

2014 (34) STR 26 (Kol) discussed by the lower adjudicating authority in the impugned orders is not applicable whereas order dated 03.01.2014 of the Hon'ble CESTAT in the case of CCE & ST, Surat Vs. United Phosphorus Ltd. reported as 2016 (46) STR 662 (Tri-Ahmd) at Para 4 held as under :-

> ***"4.*** *Heard learned AR. The main issue involved in the present appeal, as framed by the first appellate authority in Para 5(i) of Order-in-Appeal dated 31-11-2009/8-12-2009, is whether during the period January 2005 to September 2006 the Cenvat credit of Service Tax on the freight charges of outward transportation from the place of removal is admissible to the respondent or not. First appellate authority has allowed the credit in view of CESTAT Larger Bench judgment in the case of ABB Limited & Others (supra), which was subsequently confirmed by Karnataka High Court in Commissioner of Central Excise & Service Tax, Bangalore v. M/s. ABB Limited, Vadodara [2011-TIOL-395-HC-KAR-ST = 2011 (23) S.T.R. 97 (Kar.)]. Deliberating on this issue, jurisdictional High Court of Gujarat in the case of Commissioner of Central Excise and Customs v. M/s. Parth Poly Wooven Pvt. Limited & Others, vide order dated 6-4-2011 in Tax Appeal Nos. 419, 321, 325, 450, 452, 457, 458, 460, 513, 595, 597, 527, 781, 783, 1326, 1704 & 10780 of 2010 held that Cenvat credit admissibility with respect to outward freight from the place of removal is covered within the definition of Rule 2(l) of the Cenvat Credit Rules, 2004. Relevant paras 21, 22 and 23 are reproduced below :-*
>
> *"21. We must, however, for our curiosity reconcile the expression "from the place of removal" occurring in the earlier part of the definition with words "up to the place of removal" used in inclusive part of the definition. Counsel for the assessees submitted that when a manufacturer transports his finished products from the factory without clearance to any other place, such as godown, warehouse etc. from where it would be ultimately removed, such service is covered in the expression "outward transportation up to the place of removal" since such place other than factory gate would be the place of removal. We do appreciate that this could be one of the areas of the application of the expression 'outward transportation up to the place of removal'. We are unable to see whether this could be the sole reason for using such expression by the Legislature.*
>
> *22. Be that as it may, we are of the opinion that the outward transport service used by the manufacturers for transportation of finished goods from the place of removal up to the premises of the purchaser is covered within the definition of "input service" provided in Rule 2(l) of the Cenvat Credit Rules, 2004.*
>
> *23. We answer the question accordingly in favour of the assessee and against the Revenue."*

3.1 The Appellant relied upon the decision of the Hon'ble High Court of Karnataka dated 29.06.2016 in the case of CCE & ST Vs. Ultra Tech Cement Ltd. reported as 2016 (44) STR 227 (Kar) stating that Cenvat credit is not deniable when the goods are delivered on FOR destination base with risk and ownership remaining with assessee till goods reached customer and added that decision of higher judicial fora cited by them before the lower adjudicating authority have been discarded without proper appreciation of the facts.

3.2 The Appellant contended that the lower adjudicating authority has also not considered the decision of the Commissioner(Appeals), Central Excise, Rajkot given vide Order-in-Appeal No. BHV-EXCUS-000-APP-045-2015-16 dated 26.11.2015 and Order-in-Appeal No. BHV-EXCUS-000-APP-047-2015-16 dated 26.11.2015.

3.3 The Appellant contended that invocation of extended period of demand and imposition of penalty are not proper since the issue was debatable and it involved interpretation of the law and as per settled legal position penalty is not imposable when the question of interpretation of law is involved and relied upon the following case laws :-

(i)	Ambuja Cements Ltd.	2009(14) STR 3(P&H)
(ii)	KSB Pumps Ltd.	2011 (24) STR 642(Bom)
(iii)	CCE Vs. ABB Ltd.	2011 (23) STR 97 (Kar.)
(iv)	CCE Vs. Parth Poly Wooven P. Ltd.	2012 (25) STR 4 (Guj)
(v)	Ultratech Cement Ltd.	2014 (35) STR 751 (Tri-Del)
(vi)	Ultratech Cement Ltd.	2014 (307) ELT 3 (Chattisgarh)
(vii)	Birla Corporation Ltd.	2016 (45) STR 103 (Tri- All)

4. Shri R. R. Dave, Consultant, on behalf of the Appellant, reiterated the grounds of Appeal during personal hearing and submitted that they had not sold the goods ex-factory but on FOR basis; that when delivery of the goods are at the buyers premises then Cenvat credit of Service Tax paid on Goods Transport Agency service of manufacture of goods from factory gate to the premises of the buyers is admissible as has been held by the Hon'ble Gujarat High Court in the case of M/s. Philips Carbon Black Ltd. reported as 2016 (44) STR 235 (Guj) and M/s. Parth Poly Wooven Pvt. Ltd. reported as 2012(25) STR 4 (Guj); that the appellant have borne the cost of freight and not separately recovered from the buyers; that they have taken insurance in their favour to reduce cost of their damage because of sale on FOR basis; that the Service Tax has been paid by them and hence they are entitled to get Cenvat credit in terms of Rule 2(l) of the Rules; that the impugned orders need to be set aside and appeals allowed. Personal hearing notice was also sent to the jurisdictional authority, however, none appeared from the Department.

FINDINGS:-

5. I have carefully gone through the facts of the case, impugned order, grounds of appeal and submissions made by appellant. The limited issue to be decided in the present appeal is that whether the impugned order passed by the adjudicating authority disallowing Cenvat credit of Service Tax paid on Outward transportation charges, is proper or otherwise.

6. I observe that definition of "input service" as provided under Rule 2(l) of Cenvat Credit Rules, 2004 reads as under:-

> *"(l) "input service" means any service,-*
>
> *(i) used by a provider of taxable service for providing an output service; or*
>
> *(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,*
>
> *and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal;".*
>
> *[Emphasis supplied]*

6.1 From the above, it is observed that "input service" means any service used by the manufacturer, whether directly or indirectly, in or in relation to manufacture of final products and clearance of final products upto the place of removal, with the inclusions outward transportation upto the place of removal. It is, therefore, very clear that as per main clause - the service should be used by the manufacturer which has direct or indirect relation with the manufacture of final products and clearance of final products upto the place of removal and also the inclusive clause restricts the outward transportation upto the place of removal. As per the provisions of Section 4(3)(c) of Central Excise Act, 1944, "place of removal" means a factory or any other place or premises of production or manufacture of excisable goods; a warehouse or any other place of premises wherein the excisable goods have been permitted to be stored without payment of duty or a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold.

7. I also observe that CBEC, New Delhi vide Circular No. 97/8/2007-ST dated 23.08.2007 has clarified the issue regarding admissibility of Cenvat credit in respect of Service Tax paid on goods transport by road. The relevant text reads as under:

> "(c) **ISSUE:** Up to what stage a manufacturer/consignor can take credit on the service tax paid on goods transport by road?
>
> **COMMENTS:** This issue has been examined in great detail by the CESTAT in the case of **M/s Gujarat Ambuja Cements Ltd. vs CCE, Ludhiana [2007 (006) STR 0249 Tri-D]. In this case, CESTAT has made the following observations:-**
>
> *"the post sale transport of manufactured goods is not an input for the manufacturer/consignor. The two clauses in the definition of 'input services' take care to circumscribe input credit by stating that service used in relation to the clearance from the place of removal and service used for outward transportation upto the place of removal are to be treated as input service. The first clause does not mention transport service in particular. The second clause restricts transport service credit upto the place of removal. When these two clauses are read together, it becomes clear that transport service credit cannot go beyond transport upto the place of removal. The two clauses, the one dealing with general provision and other dealing with a specific item, are not to be read disjunctively so as to bring about conflict to defeat the laws' scheme. The purpose of interpretation is to find harmony and reconciliation among the various provisions".*

Similarly, in the case of M/s Ultratech Cements Ltd vs CCE Bhavnagar 2007-TOIL-429-CESTAT-AHM, it was held that after the final products are cleared from the place of removal, there will be no scope of subsequent use of service to be treated as input. The above observations and views explain the scope of the relevant provisions clearly, correctly and in accordance with the legal provisions. In conclusion, a manufacturer / consignor can take credit on the service tax paid on outward transport of goods up to the place of removal and not beyond that.

8.2 In this connection, the phrase 'place of removal' needs determination taking into account the facts of an individual case and the applicable provisions. The phrase 'place of removal' has not been defined in CENVAT Credit Rules. In terms of sub-rule (t) of rule 2 of the said rules, if any words or expressions are used in the CENVAT Credit Rules, 2004 and are not defined therein but are defined in the Central Excise Act, 1944 or the Finance Act, 1994, they shall have the same meaning for the CENVAT Credit Rules as assigned to them in those Acts. The phrase 'place of removal' is defined under section 4 of the Central Excise Act, 1944. It states that,-

"place of removal" means-

(i) a factory or any other place or premises of production or manufacture of the excisable goods ;

(ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be stored without payment of duty ;

(iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory; from where such goods are removed."

It is, therefore, clear that for a manufacturer /consignor, the eligibility to avail credit of the service tax paid on the transportation during removal of excisable goods would depend upon the place of removal as per the definition. In case of a factory gate sale, sale from a non-duty paid warehouse, or from a duty paid depot (from where the excisable goods are sold, after their clearance from the factory), the determination of the 'place of removal' does not pose much problem. However, there may be situations where the manufacturer /consignor may claim that the sale has taken place at the destination point because in terms of the sale contract /agreement (i) the ownership of goods and the property in the goods remained with the seller of the goods till the delivery of the goods in acceptable condition to the purchaser at his door step; (ii) the seller bore the risk of loss of or damage to the goods during transit to the destination; and (iii) the freight charges were an integral part of the price of goods. In such cases, the credit of the service tax paid on the transportation up to such place of sale would be admissible if it can be established by the claimant of such credit that the sale and the transfer of property in goods (in terms of the definition as under section 2 of the Central Excise Act, 1944 as also in terms of the provisions under the Sale of Goods Act, 1930) occurred at the said place.".

7.1 The above Circular was modified vide CBEC Circular No. 988 / 12 / 2014 - CX dated 20.10.2014. The relevant Para 6 of said Circular reads as under:

"4) Instances have come to notice of the Board, where on the basis of the claims of the manufacturer regarding freight charges or who bore the risk of insurance, the place of removal was decided without ascertaining the place where transfer of property in goods has taken place. This is a deviation from the Board's circular and is also contrary to the legal position on the subject.

5) It may be noted that there are very well laid rules regarding the time when property in goods is transferred from the buyer to the seller in the Sale of Goods Act , 1930 which has been referred at paragraph 17 of the Associated Strips Case (supra) reproduced below for ease of reference -

"17. Now we are to consider the facts of the present case as to find out when did the transfer of possession of the goods to the buyer occur or when did the property in the goods pass from the seller to the buyer. Is it at the factory gate as claimed by the appellant or is it at the place of the buyer as alleged by the Revenue? In this connection it is necessary to refer to certain provisions of the Sale of Goods Act, 1930. Section 19 of the Sale of Goods Act provides that where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred. Intention of the parties are to be ascertained with reference to the terms of the contract, the conduct of the parties and the circumstances of the case. Unless a different intention appears; the rules contained in Sections 20 to 24 are provisions for ascertaining the intention of the parties as to the time at which the property in

the goods is to pass to the buyer. Section 23 provides that where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be expressed or implied and may be given either before or after the appropriation is made. Sub-section (2) of Section 23 further provides that where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purposes of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract."

*6) It is reiterated that the place of removal needs to be ascertained in term of provisions of Central Excise Act, 1944 read with provisions of the Sale of Goods Act, 1930. Payment of transport, inclusion of transport charges in value, payment of insurance or who bears the risk are not the relevant considerations to ascertain the place of removal. **The place where sale has taken place or when the property in goods passes from the seller to the buyer is the relevant consideration to determine the place of removal.**".*

[Emphasis supplied]

7.2 The harmonious reading of the above Circulars issued by the CBEC clarifies that the availability or otherwise of Cenvat credit in respect of Service Tax paid on outward transportation charges provides that such credit would be admissible only if the claimant established that the sale and the transfer of property in goods (in terms of the definition as under section 2 of the Central Excise Act, 1944 as also in terms of the provisions under the Sale of Goods Act, 1930) occurred at the said place and that payment of transport, inclusion of transport charges in value, payment of insurance or who bears the risk are not the relevant considerations. The Circulars very categorically says that the place where sale has taken place or when the property in goods passes from the seller to the buyer is the relevant consideration to determine the place of removal.

7.3 Further the Section 19 of Sale of Goods Act, 1930 is reads as under:-

"19. Property passes when intended to pass.—

(1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case."

8. In view of the above provisions of Sale of Goods Act, 1930, it is clear that the title of the goods passes from seller to the buyer at such time as the parties to the contract intend to be transferred. The intention of the parties is to be ascertained with reference to the terms of the contract, the conduct of the parties and the circumstances of the case. In the present case, the appellant has produced the sample copy of documents in the form of invoices issued to some of their buyers, corresponding purchase orders placed by the buyers, insurance policy, etc. to substantiate their claim that the transactions were on F.O.R. basis and that they have satisfied the conditions stipulated under the provisions of the Act, Rules framed thereunder and instructions issued in this behalf. The

scanned image of sample Purchase Order No. 2900003376 dated 01.04.2014 placed by the buyer M/s. MRF Limited, Chennai is re-produced as under:-

MRF Limited
New no: 114 (Old no 124) , Greams Road,
Chennai 600 006.
Phone : 91-44-28292777 Fax : 91-44-28294089

Scheduling Agreement

Supply goods mentioned below according to Terms, Conditions and Instructions specified herein and attached.
Your ECC Code and our respective units ECC Code should appear in your excise invoice.
Delivery Challan accompanying the goods and invoices must be sent in duplicate quoting our respective units TIN & CST numbers.
Please make different challans for different purchase orders. Wherever Excise Duty has been charged, duplicate copy / transporter's copy of Bilexcise invoice should accompany the consignment mentioning in the Way Bill that the same is enclosed.
Original Invoice/documents for payment should be sent immediately to theconcerned Unit of despatch marking "PLANT ACCOUNTS MANAGER".
For all Ex Works despatches transport should be made only through MRF approved carriers. Despatches should be made in the line with our delivery schedules only.
Material should conform to our specifications in all respects. Test Reports should accompany all consignments. The copy of the same should also be sent to our Corporate Technical Department.
Despatch particulars to be sent by faxle-mail to Purchase Department at Chennai and to the concerned unit.
VERY IMPORTANT : Our Purchase Order No., Item Code and Supplier must appear on all invoices, despatch documents, correspondence etc. Page1 of 2

Qtn NO:	Date:	P.O No: 2900003376	Date:01.04.2012
Supplier : Code:100106 MADHU SILICA PVT LTD PLOT NO 53 ,55 ,56 /B G I D C ESTATE CHITRA BHAVNAGAR 364004 INDIA		Payment Terms: Bank Transfer 90 days on despatch Currency: INR Incoterms : FOR MRF LTD	
Delivery : MRF LIMITED - MEDAK P B NO.2, SADASIVAPET, MEDAK Andhra Pradesh-502291		Validity Start: 01.04.2012 Validity End: 31.03.2013	

Sl. No	Item Code	Item Description	U.O.M	Rate	Quantity	Total Price
1	M2468	PRECIPITATED SILICA ED :12.00 % BED+2.00 % CESS+1.00 % Hr..Edn.CESS CST: 2.00 %	KG	46.60	1,000,000	46,600,000.00
2	M2466	POWDER SILICA ED :12.00 % BED+2.00 % CESS+1.00 % Hr..Edn.CESS CST: 2.00 %	KG	46.60	125,000	5,825,000.00
		Total Order Value	INR			52,425,000.00

Special Instructions : QUANTITY IS NOTIONAL. DESP AS PER SCHDL.
EF 1.5.11.

Shipping Instructions :

MRF's SALES TAX REGISTRATION NOS	CST : NZS/07/01/1245 DT 20.02.90 TIN NO : 28620142408 ECC : AAACM4154GXM003	For MRF Limited AUTHORISED SIGNATORY

53

GENERAL TERMS AND CONDITIONS OF PURCHASE

CASH DISCOUNT

1. The purchaser reserves the right to withhold payment of invoice until goods have been received and checked and does not waive the right to deduct the cash discount if payable.

PRICE AND PAYMENT

2. No change may be made in terms, conditions, specifications or prices appearing on the order without the written permission of the buyer. Rates quoted shall be inclusive of packing and delivery charges, unless specified otherwise.

3. All payments will be made by cheque. Terms of payment shall be stated in this order and delay in payment caused by the failure of the sellers to comply with the terms and conditions, shall be excused on the grounds of such failure.

INVOICE

4. Supplier invoices must be in triplicate and contain (a) Buyer's order No. & Date (b) Supplier's Challan No. & Date (C) Place of supply. Buyer's purchase order number must be stated on the supply challans as otherwise materials will not be accepted.

INSPECTION

5. All goods are subject to approval of the buyer's final inspection regarding quantity and specifications.
6. Any goods or work done which fail to pass such inspection will be liable for rejection at supplier's risk and must be replaced or be redone by the supplier forthwith or as may otherwise be agreed without further charges.

INTEREST ON ADVANCE FOR DELAYED DELIVERY

7. In the case of advance payment made against the order, if the delivery is delayed beyond the agreed date, interest @ 18% p.a. will be charged on the advance amount for the delay period.

CANCELLATION OR DEFERMENT OF DELIVERY

8. Rejected goods should be taken back by the supplier within 7 days of intimation. Buyer is not responsible for storage of rejected goods and if the seller delays taking delivery within the said period of 7 days the buyer shall be entitled to storage charges but shall not be liable for any deterioration of the goods.

9. The order may be cancelled by the buyer at any time in the event of the seller being in default of any terms and conditions on the order and hereof, and in case of such cancellations, the seller shall not be entitled to any costs of damages. In case of delay in delivery, we will have the option to cancel the order.

10. The buyer reserves the right to cancel or amend the order or any parts thereof by reason of change in process of manufacture or any reasons beyond the control of the buyer.

11. In the event of buyer's normal course of manufacture being interrupted, restricted, hindered or delayed by any cause whatsoever beyond control of the buyer or by any exceptional cause whatsoever, the buyer is at liberty to defer the date or dates of delivery. If the delivery is deferred as mentioned above, the price applicable shall be the contract price or the ruling market price, whichever is lower.

MISCELLANEOUS

12. The seller in accepting this order agrees to comply with all the state laws applicable to the manufacture and sale of the products specified hereon.

13. The buyer assumes no obligations in relation to goods delivered in excess of those specifically ordered.

14. All materials are to be delivered full in the place specifically mentioned in the purchase order free of delivery and unloading charges.

15. MRF Ltd. is not responsible for any order placed by unauthorised persons.

16. Time shall be the essence of this contract.

17. All orders placed by the buyer are strictly confidential. The seller must not publish or cause to be published by any means whatsoever any details concerning the goods the s of this order without the previous consent in writing of the buyer.

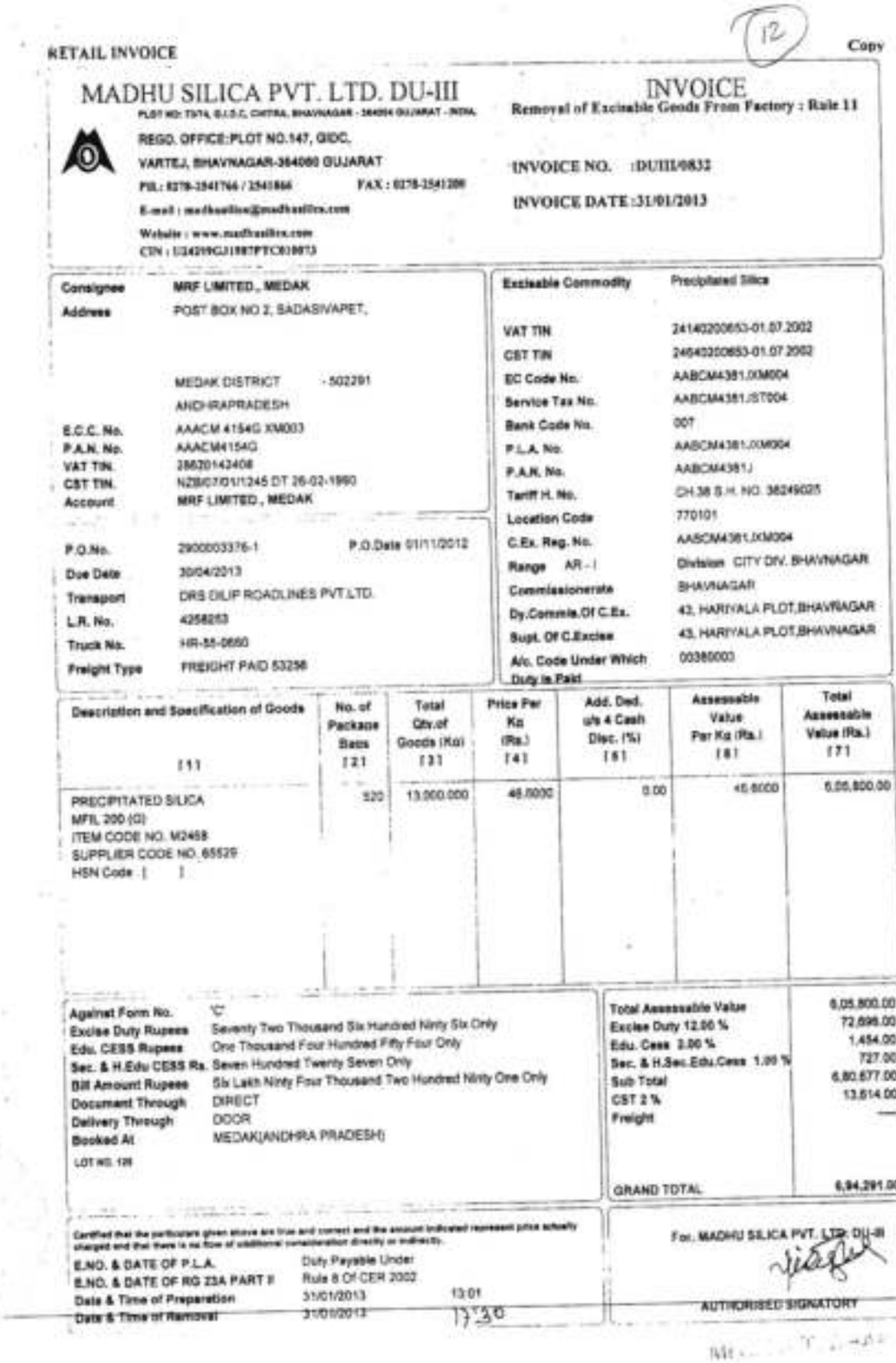
18. All disputes with regard to this order will be subject to the jurisdiction of a court in Chennai city.

19. As per Standard Weights and Measures Act, 1976 under noted details must be mentioned in all packaged commodities.

1. Name and Address of the manufacturer.
2. Name of the commodity.
3. Quantity, Size of the commodity.
4. Month and year of manufacture / Packaging.
5. Selling price of the commodity by printing / affixing.

20. In case of any inconsistency between these terms and conditions and the terms appearing in the purchase order, then the purchase order terms shall have precedence over these terms and conditions.

8.1 Further, the scanned image of Invoice No. DUIII/0832 dated 31.01.2013 issued by the appellant to the said buyer is also re-produced as under:-



RETAIL INVOICE (12) Copy

MADHU SILICA PVT. LTD. DU-III

PLOT NO: 7374, G.I.D.C, CHITRA, BHAVNAGAR - 364004 GUJARAT - INDIA.

REGD. OFFICE:PLOT NO.147, GIDC,
VARTEJ, BHAVNAGAR-364060 GUJARAT
PH.: 0278-2541766 / 2541866 FAX : 0278-2541288
E-mail : madhusilica@madhusilica.com
Website : www.madhusilica.com
CIN : U24219GJ1987PTC010873

INVOICE
Removal of Excisable Goods From Factory : Rule 11

INVOICE NO. :DUIII/0832
INVOICE DATE :31/01/2013

Consignee	MRF LIMITED., MEDAK
Address	POST BOX NO 2, SADASIVAPET, MEDAK DISTRICT - 502291 ANDHRAPRADESH
E.C.C. No.	AAACM 4154G XM003
P.A.N. No.	AAACM4154G
VAT TIN.	28620142408
CST TIN.	NZB/C7/01/1245 DT 26-02-1990
Account	MRF LIMITED., MEDAK
P.O.No.	2900003376-1 P.O.Date 01/11/2012
Due Date	30/04/2013
Transport	DRS DILIP ROADLINES PVT.LTD.
L.R. No.	4258253
Truck No.	HR-55-0660
Freight Type	FREIGHT PAID 53256

Excisable Commodity	Precipitated Silica
VAT TIN	24140200653-01.07.2002
CST TIN	24640200653-01.07.2002
EC Code No.	AABCM4381JXM004
Service Tax No.	AABCM4381JST004
Bank Code No.	007
P.L.A. No.	AABCM4381JXM004
P.A.R. No.	AABCM4381J
Tariff H. No.	CH.38 S.H. NO. 38249025
Location Code	770101
C.Ex. Reg. No.	AABCM4381JXM004
Range AR - I	Division CITY DIV. BHAVNAGAR
Commissionerate	BHAVNAGAR
Dy.Comms.Of C.Ex.	43, HARIYALA PLOT,BHAVNAGAR
Supt. Of C.Excise	43, HARIYALA PLOT,BHAVNAGAR
A/c. Code Under Which Duty is Paid	00380003

Description and Specification of Goods [1]	No. of Package Bags [2]	Total Qty.of Goods (Kg) [3]	Price Per Kg (Rs.) [4]	Add. Ded. u/s 4 Cash Disc. (%) [5]	Assessable Value Per Kg (Rs.) [6]	Total Assessable Value (Rs.) [7]
PRECIPITATED SILICA MFIL 200 (G) ITEM CODE NO. M2468 SUPPLIER CODE NO. 65529 HSN Code [ ]	520	13,000.000	46.0000	0.00	46.6000	6,05,800.00

Against Form No.	'C'
Excise Duty Rupees	Seventy Two Thousand Six Hundred Ninty Six Only
Edu. CESS Rupees	One Thousand Four Hundred Fifty Four Only
Sec. & H.Edu CESS Rs.	Seven Hundred Twenty Seven Only
Bill Amount Rupees	Six Lakh Ninty Four Thousand Two Hundred Ninty One Only
Document Through	DIRECT
Delivery Through	DOOR
Booked At	MEDAK(ANDHRA PRADESH)
LOT NO. 126	

Total Assessable Value	6,05,800.00
Excise Duty 12.00 %	72,696.00
Edu. Cess 2.00 %	1,454.00
Sec. & H.Sec.Edu.Cess 1.00 %	727.00
Sub Total	6,80,677.00
CST 2 %	13,614.00
Freight	—
GRAND TOTAL	6,94,291.00

Certified that the particulars given above are true and correct and the amount indicated represent price actually charged and that there is no flow of additional consideration directly or indirectly.

E.NO. & DATE OF P.L.A.	Duty Payable Under
E.NO. & DATE OF RG 23A PART II	Rule 8 Of CER 2002
Date & Time of Preparation	31/01/2013 13:01
Date & Time of Removal	31/01/2013 13:30

For, MADHU SILICA PVT. LTD. DU-III

AUTHORISED SIGNATORY

8.2 From the above, it is seen that the Purchase Order placed by the buyer specifically mentions the factory address of the buyer as place of delivery and further specifies that liability of losses/damages to the goods during the transit, would be on appellant. These facts bear testimony from the clauses 5, 6 & 14 of General Terms and Condition of Purchaser which state that,

"5. All goods are subject to approval of the buyer's final inspection

regarding quantity and specification.

***6.** Any goods or work done which fail to pass such inspection will be liable to rejection at supplier's risk and must be replaced or be redone by the supplier forthwith or as may otherwise be agree without further charges*

14. All material are to be delivered full in the place specifically mentioned in the purchase order free of delivery and unloading charges."

[Emphasis supplied]

8.3 Invoices also very clearly state that the Freight has been borne by supplier and Delivery has to be made at door of purchaser. I also find that the outward transportation charges were an integral part of the price of the goods and the appellant has not received any consideration over and above the invoice price. Thus, I find that the sale of goods is getting completed and the ownership of goods is getting transferred at the doorstep of the buyer in terms of Section 19 of the Sale of Goods Act, 1930. I find that the appellant has produced sufficient documentary evidence to show that (i) sale of goods had taken place at the destination point; (ii) the ownership of goods and the property in the goods remained with the appellant till the delivery of the goods in acceptable condition to the purchaser at his door step; (iii) the appellant bore the risk of loss of or damage to the goods during transit till the destination; (iv) the freight charges were an integral part of the price of goods; and (v) the sale and the transfer of property in goods occurred at the destination place. Accordingly, I find that in view of the facts and circumstances of the case, the place of removal would be place of delivery at buyer's premises and the appellant is eligible to avail Cenvat Credit of service tax paid on outward transportation charges. I also reply the decision of Hon'ble High Court of Karnataka in the case of Madras Cements Limited - 2015 (40) STR 645 (Kar.) wherein it has been held as under:-

"8. Having heard learned counsel for the parties and considering the facts and circumstances of this case, we are of the considered view that as long as the sale *of the goods is finalized at the destination, which is at the doorstep of the buyer, the change in definition of 'input service' which came into effect from 1-4-2008 would not make any difference. A perusal of invoices makes it clear that the goods were to be delivered and sale completed at the address of the buyer and no additional charge was levied by the assessee for such delivery. From these facts it is clear that the sale was completed only when the goods were received by the buyer. The Circular dated 20-10-2014 issued by the Central Board of Excise and Customs also, in*

paragraph-6 makes it clear that 'payment of transport, inclusion of transport charges in value, payment of insurance or who bears the risk are not the relevant considerations to ascertain the place of removal.'

9. As per the said Circular, the place of removal has to be ascertained in terms of Central Excise Act, 1944 read with the provisions of the Sale of Goods Act, 1930 which has been dealt with in detail in the said Circular. According to the provisions of the Sale of Goods Act, 1930, the intention of the parties as to the time when the property in goods has to pass to the buyer is of material consideration. The record clearly shows that the intention of the parties was that the sale would be complete only after goods are delivered by the seller at the address of the buyer. The assessing officer as well as the appellate authority have held that the assessee would not be entitled to the benefit merely because no documentary evidence has been adduced to establish the fact of insurance coverage by the assessee. In our view, who pays for insurance or bears the risk of goods in transit would not be a material consideration. The same has also been made clear by the Central Board of Excise and Customs, Department of Revenue, Ministry of Finance, in its Circular dated 20-10-2014."

[Emphasis supplied]

8.4 I also rely upon judgment of the Hon'ble Gujarat High Court in the case of Parth Poly Wooven Pvt Ltd. reported as 2012(25)STR4(GUJ), which has held that Cenvat credit of Service tax paid on outward transportation would be admissible to the assessee. Para 18 of the judgment is reproduced as under :-

"18. Bearing in mind the above judicial pronouncements, if we revert back to the definition of the term 'input service', as already noticed, it is coined in the phraseology of "means and includes". Portion of the definition which goes with the expression means, is any service used by the manufacturer whether directly or indirectly in or in relation to the manufacture of final products and clearance of final products from the place of removal. This definition itself is wide in its expression and includes large number of services used by the manufacturer. Such service may have been used either directly or even indirectly. To qualify for input service, such service should have been used for the manufacture of the final products or in relation to manufacture of final product or even in clearance of the final product from the place of removal. The expression 'in relation to manufacture' is wider than 'for the purpose of manufacture'. The words 'and clearance of the final products from the place of removal' are also significant. Means part of the definition has not limited the services only upto the place of removal, but covers services used by the manufacturer for the clearance of the final products even from the place of removal. It can thus be seen that main body of the definition of term 'input service' is wide and expansive and covers variety of services utilized by the manufacturer. By no stretch of imagination can it be stated that outward transportation service would

not be a service used by the manufacturer for clearance of final products from the place of removal."

[Emphasis supplied]

8.5 I further rely on judgment of the Hon'ble Gujarat High court in the case of Philips Carbon Black reported as 2016(44) STR 235(GUJ) wherein Para 2 & 3 have held as under :-

> *"2. The issue pertains to Cenvat credit on outward goods transportation agency service availed by the assessee for transportation of manufactured goods. This issue is covered by the judgment of Division Bench of this Court in case of Commissioner of Central Excise & Customs v. Parth Poly Wooven Pvt. Ltd. reported in 2012 (25) S.T.R. 4, in which the following observations have been made :*
>
> > *21. We must, however, for our curiosity reconcile the expression "from the place of removal" occurring in the earlier part of the definition with words 'up to the place of removal' used in inclusive part of the definition. Counsel for the assessees submitted that when a manufacturer transports his finished products from the factory without clearance to any other place, such as godown, warehouse etc. from where it would be ultimately removed, such service is covered in the expression 'outward transportation up to the place of removal' since such place other than factory gate would be the place of removal. We do appreciate that this could be one of the areas of the application of the expression 'outward transportation up to the place of removal'. We are unable to see whether this could be the sole reason for using such expression by the Legislature.*
> >
> > *22. Be that as it may, we are of the opinion that the outward transport service used by the manufacturer for transportation of finished goods from the place of removal up to the premises of the purchaser is covered within the definition of "input service" provided in Rule 2(l) of the Cenvat Credit Rules, 2004.*
>
> *3. This Tax Appeal is, therefore, dismissed."*
>
> [Emphasis supplied]

8.6 In view of above, I hold that Cenvat credit of Service Tax paid on Transportation of final products by road from the factory gate to the buyer's premises is admissible in the present cases/appeals

9. Once the Cenvat credit is held to be admissible, the question of recovery of interest and imposition of penalty do not arise in these cases.

10. In view of the above, I set aside the impugned orders and allow all five appeals filed by the appellant.

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

11. The appeals filed by the appellant stand disposed off in above terms.

(कुमार संतोष)
आयुक्त (अपील्स)