::आयुक्त (अपील्स) का कार्यालय, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), CENTRAL GST & EXCISE,
द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,
राजकोट / Rajkot – 360 001
Tele Fax No. 0281 – 2477952/2441142 Email: cexappealsrajkot@gmail.com

सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No	मूल आदेश स / O.I.O. No	दिनांक / Date
	V2/123/BVR/2016	**BHV-EXCUS-000-JC-27-2016-17**	**12.08.2016**

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

BHV-EXCUS-000-APP-050-2017-18

आदेश का दिनांक / Date of Order: **16.10.2017** जारी करने की तारीख / Date of issue: **23.10.2017**

कुमार संतोष, 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 / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित: /

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 Gujarat Sidhee Cement Limited., Siddheegram Off Veraval Kodinar Highway., Sutrapada Taluka., Dist: Gir-Somnath.,

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

(A) सीमा शुल्क ,केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम ,1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है ।/

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए ।/

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- ३८००१६ को की जानी चाहिए ।/
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए । इनमें से कम से कम एक प्रति के साथ, जहा उत्पाद शुल्क की माँग ,ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए में अधिक है तो क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहा संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहा सेवाकर की माँग ,ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहा संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of 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/-.

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(i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी । /
The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

(ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है

(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की ली गई गलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नही होगे।/

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

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

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

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

(C) **भारत सरकार को पुनरीक्षण आवेदन :**
Revision application to Government of India:

इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलो में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

(i) यदि माल के किसी नुकसान के मामले में, जहा नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में।/
In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse

(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /
In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (न. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायावधि पर या बाद में पारित किए गए 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 प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए । उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। /
The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए ।
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए ।
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

(D) यदि इस आदेश में कई मूल आदेशो का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय नयाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है । /
In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, 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 filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। /
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act,1975, as amended.

(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमो की ओर भी ध्यान आकर्षित किया जाता है। /
Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते 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 ::

M/s. Gujarat Siddhee Cement Ltd., Siddheegram, Off: Veraval-Kodinar Highway, Taluka: Sutrapada, District: Somnath (Gir) (hereinafter referred to as **'the appellant'**) has filed the present appeal against the Order-In-Original No. BHV-EXCUS-000-JC-27-2016-17 dated 12.08.2016 (hereinafter referred to as **'the impugned order'**), passed by the Joint Commissioner, Central Excise, Ahmedabad-II (hereinafter referred to as **"the lower adjudicating authority"**).

2. The brief facts of the case are that the scrutiny of ER-1 returns for the months of April, 2013 to September, 2013 revealed that appellant had availed Cenvat Credit of Service Tax paid on outward transportation of finished goods, which was not in consonance with the provisions of Rule 2(l) of the Cenvat Credit Rules, 2004. Rule 9(6) of the Cenvat Credit Rules, 2004 casts burden of proof regarding admissibility of Cenvat credit upon the manufacturer of provider of output service taking such credit. CBEC Circular No. 97/8/2007-ST dated 23.08.2017 had prescribed condition for availment of Cenvat credit on input service and place of removal needed determination taking into account the facts of individual cases and the applicable provisions.

3. Show Cause Notice F. No. V/15-06/Dem/HQ/2014-15 dated 21.04.2014 was issued by the Joint Commissioner, Central Excise & Service Tax, Bhavnagar wherein he proposed to demand and recover the wrongly availed Cenvat credit of Rs. 6,32,557/- alongwith interest under Rule 14 of the Cenvat Credit Rules, 2004 (hereinafter referred to as "the Rules") read with Section 11A(1) of the Central Excise Act, 1944 (hereinafter referred to as "the Act"). It was also proposed to impose penalty upon the appellant under Rule 15(1) of the Rules.

4. The above Show Cause Notice was adjudicated by the lower adjudicating authority wherein he confirmed the demand of Cenvat credit of Rs. 6,32,557/- in terms of Section 11A(10) of the Act under Rule 14(1)(ii) of the Rules read with Section 11A(1) of the Act. The lower adjudicating authority also imposed penalty of Rs. 63,255/- under Rule 15(1) of the Rules read with Section 11AC(1)(a) of the Act. The lower adjudicating authority also stated that in terms of Section 11AC(1)(b), the penalty imposed shall be reduced to 25%, if paid within 30 days from the date of communication

of impugned order. The lower adjudicating authority also ordered to recover interest under Rule 14 of the Rules read with Section 11AA of the Act.

5.1 Being aggrieved with the impugned order, appellant preferred the present appeal, inter-alia on the following grounds:

(i) The impugned order confirming disallowance of Cenvat credit with interest and penalty suffers from the vie of non appreciation of facts of the case as well as provisions of Finance Act, 1994 and rules thereof.

(ii) The lower adjudicating authority has failed to adhere to the ratio laid down by the jurisdictional High Court and various Tribunal decisions in the case of Parth Poly Woven Sacks Limited - 2012 (25) STR 4 (Guj) reconfirmed vide CCE Vs Ellora Time Ltd- 2014 (34) STR 801 (Guj). The Hon'ble Chhatisgarh High Court in the case of Lafarge - 2014 (307) ELT 7 (Chattisgarh) has clearly held that if under the terms of contract, the sale price takes place at destination then that place may be place of removal and Service Tax paid on GTA service for transporting the goods upto destination might be available for taking credit.

(iii) The lower adjudicating authority misconceived the facts of the present case that outward transportation service rendered by the customers/buyers of the appellant is from the place of removal and not beyond the place of removal. They have clearly submitted the evidence before lower adjudicating authority that outward transportation service rendered to the buyers of the appellant is upto the place of removal and not beyond the place of removal and yet the order has been passed as if the said service was rendered after clearance of the goods from the place of removal. That in their case, the invoices are on FOR basis and freight constituted integral part of the value of the goods and risk and ownership of the goods was with the appellant till delivery of the goods to the buyers at his place in acceptable condition whereby appellant had complied with the conditions set out in Board's Circular dated 23.08.2007. They rely on the provisions of 'place of removal' and stated that the sale was by way of transfer of possession of goods to the buyer which has taken place in buyer's premises/place as per the contract. They have discharged the Central Excise duty on the element of freight for outward transportation of final products to the buyer's place. The ownership and risk to the good

remained with them till delivery of the goods to the buyer at his premises and therefore, the place of removal in their case is the place/premises of the buyer and accordingly they has taken the Cenvat credit only on the services rendered up to the place of removal of final product and not beyond that as wrongly held by the lower adjudicating authority.

(iv) The appellant stated that the impugned order is based on a wrong understanding of the provisions and hence is liable to be set aside as the lower adjudicating authority has relied on the decision of Kolkatta High Court in the case of CCE Koklatta VI vs Vesuvious India Ltd - 2014-34-STR-26-CAL, without understanding that the said judgment supports their case. If the definition provided in Section 2(l)(ii) is read a whole, it would appear that outward transportation charges or taxes paid in regard thereto is claimable with regard to transportation. By the amendment made with effect from 1st April, 2008 substituting the word "from" by the word "upto" all that has been done is to clarify the issue. Neither the services rendered to the customer for the purpose of delivering the goods at the destination was covered by the definition of input service prior to 1st April, 2008, nor is the same covered after 1st April, 2008. That the amendment effected from 01.04.2008 does not affect their case in any way as the outward transportation service used by them for transportation of finished goods is only up to the place of removal and not beyond that. They rely on the following judgment:

a. Ambuja Cement Ltd Vs UOI - 2009 (14) STR 3 (P&H)
b. Lafarge India Ltd Vs Commissioner - 2017 (307) 7 (Chhattisgarh)
c. Ultratech Cement Ltd Vs Commissioner - 2014 (307) ELT 3 (Chhattisgarh)
d. Ultratech Cement Ltd Vs CCE Rohtak - 2015 (37) STR 364 (Tri.-Del.)
e. New Allenberry Works Vs CCE - 2015 (37) STR 303
f. Haryana Sheet Glass Ltd Vs CCE, Rohtak - 2015 (39) STR 392 (P&H)

That the lower adjudicating authority failed to appreciate the ratio of decision of Supreme Court in the case of Ambika Industries Vs CCE - 2007 (213) ELT 323 (S.C.), Gujarat High Court - Astik Dyestuff P Ltd - 2014 (34)

STR 814 (Guj) and CCE Vs Kashmir Conductors 1997 (96) ELT 257 (LB). The lower authorities are bound by the decision of jurisdictional High Court. No penalty case be imposed as there was no willful suppression or misstatement of facts with intent to evade any duty.

5.2 The appellant vide their letter dated 28.08.2017, submitted additional written submission stating that

(i) They rely on the grounds of appeal and the reply to Show Cause Notice and the documents annexed thereto

(ii) That the agreement between them and Okhai Roadways has not been factored in the impugned order.

(iii) The agreement was for hiring of vehicles for transportation of cement/ clinker and it is not a case of GTA service rendered by Okhai Roadways. They submitted the copy of agreement.

(iv) The consideration is also fixed for period of month and per vehicle and the facts clearly established that the question of applying GTA service in this case cannot arise at all.

(v) They rely on the decision in the case of Birla Ready Mix Vs CCE, Noid as reported at 2013 (30) STR 99 (Tri.-Del.), Ultratech Cement Ltd Vs CCE - 2017 (3) TMI 1155 - Cestat Muimbai, South Eastern Coalfields Ltd Vs CCE Raipur - 2017 (47) STR 93 (Tri.-Del.)

(vi) They had clearly established that the credit on account of the tax is eligible as credit and they rely on their earlier submission given at the time of Show Cause Notice, Order-In-Original and they also relied on the CA certificate given by them which was rejected. They relied on the decision wherein the higher appellate forum has relied upon the CA certificate and in some cases the matter was remanded back to adjudicating authority to decide the matter on the basis of CA certificate.

(vii) The impugned order is not a speaking order and has not dealt with all the points raised in the reply to Show Cause Notice.

(viii) They have submitted copies of few invoices where the service provider has discharged the Service Tax liability. They also submitted copy of contract.

(ix) They cleared the final products from the factory on payment of excise duty and transport the goods to depot/dump/go-down as well as to their Bombay branch/depot by sea freight from where the goods were sold on commercial invoice where the delivery or transfer

of possession of the final products takes place at such dump/depot/go-down/Mumbai branch. In case of transportation of goods by sea freight such transportation is not post sale but transportation by way of transfer of finished products to their depot in Mumbai. The title, ownership and risk of damage/loss remain with them when the goods are transported to their Bombay depot. Duty paid on final sale price includes sea freight for transportation of goods up to Bombay Depot.

6. The appellant vide their letter GSCL:CEX:2017-18 dated 26.09.2017 has stated that the matter may be decided on the basis of grounds in the appeal and additional submissions filed on 31.08.2017. They have further stated that they waive the representations at the P.H. and the appeal may be decided after considering grounds of appeal and the points raised in the additional submissions and the case laws relied upon by them.

FINDINGS:

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

8. 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 output 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, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal;".

8.1 From above, it is evident 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.

I also find that CBEC 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.".

9.1 The above circular was modified vide CBEC Cir. 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.".***

9.2 The harmonious reading of the above two Circulars issued by CBEC clarify that the availability of Cenvat credit in respect of service tax paid on outward transportation charges depends if the claimant establish 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 say 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.**

10. I find that the appellant at the time of reply to Show Cause Notice has categorically submitted that the services involved were not GTA service but hiring of trucks under 'supply of tangible goods service' for use in clearance of the final products up to the place of removal. In support they have submitted few copies of invoices and copy of contract. On going through the copy of contract No. GSCL:S'GRAM:DIST:2013-14 dated 01.09.2013 which they have

submitted as 'contract' with M/s. Okhai Roadways, Main Road, Adityana-360 545, I find that the said contract is dated 01.09.2013 for the period from 01.09.2013 to 31.03.2014, whereas the period involved in the case on hand is April, 2013 to September, 2013. Thus, I am of the view that this is not sufficient evidence in support of contentions/arguments of the appellant. On going through Bill No. 36, 37 both dated 24.08.2012 and Bill No. 81 dated 30.03.2013 and Bill No. 86 dated 31.03.2013, issued by M/s. Okhai Roadways to the appellant, the first two Bill do not contain any service tax category but indicates as 'paid on your behalf for transportation of cement (Labour, Tekai, Toll Tax July_2012)'. Therefore, the same covers the transportation of the goods besides other charges. In the last two bills, the service category of "Cargo Handling Services" has been mentioned covering period of February, 2013 and March, 2013. However, all these four bills are of no help to the appellant as the same are having different period than the period covered in the case on hand. Therefore, I am of the considered view that the appellant has not submitted relevant documents to substantiate their claim. It is pertinent to mention here that the appellant is a limited company and should have been careful while submitting each and every document to support their claim.

10.1 The appellant has heavily relied upon CA certificate produced by them and relied upon catena of decision holding that CA certificate cannot be overlooked, without submitting any invoices issued by them / purchase order of buyers. I find that in the said certificate it has been certified that the appellant has availed cenvat credit of Service Tax amounting to Rs. 6,32,557/- on input services namely a) hiring of trucks for the purpose of transportation of their final products up to depot/ dump/godown/ premises of buyers and b) railway freight for transportation of their final products to their depot/branch at Mumbai, covering the period April, 2013 to September, 2013. I find that the said CA certificate certifies the entire clearances made by the appellant during the disputed period without certifying which documents have been examined by him and how has he arrived at his conclusions. Therefore, this CA certificate cannot be relied upon. Sales invoices supported by buyers' purchase orders are relevant documents to establish ownership over sold goods and conditions of sale which appellant failed to produce. I find that the appellant has failed to determine "place of removal" and nature of sale as envisaged in terms of the provisions of the Central Excise Act, 1944 and in terms of the provisions of the Sale of Goods Act, 1930 and therefore, their plea not tenable.

10.2 I also find that the arguments made before the lower adjudicating authority and in appeal are contradictory. The appellant before lower adjudicating authority has argued that the service involved is 'supply of tangible goods' and not 'GTA service' whereas written submission made in appeal is missing the argument of 'supply of tangible goods'. I find that the appellant is not clear as to which service they have availed and utilized. The appellant submitted that the invoices were on FOR basis and freight constituted integral part of the value of the goods and the risk of ownership of the goods was with them till delivery of the goods to the buyers at his place in acceptable condition but failed to submit any evidence in this regard. I find that the appellant is trying to get benefit on mere arguments without any evidential/ substantial documents.

10.3 I find that the appellant has not produced copy of invoices or copy of purchase orders of buyers to prove that (i) the price of the final product is inclusive of transportation charges (ii) invoices issued by the appellant mentioned the conditions that the sale of goods are at destination (iii) they are responsible for delivery of the goods to the premises of the buyers. In absence of documents it is evident that the appellant has not taken the responsibility of the goods till delivery of the goods at the doorstep of the buyers in terms of provisions of Sale of Goods Act, 1930. In absence of any evidences contrary to the findings of the lower adjudicating authority, I concur with his findings. Therefore, the appellant's claims that their sales were on F.O.R. basis and the property in goods transferred at the doorstep of the buyer have not been established by them. On contrary, the appellant has cleared the goods at the factory gate and thereupon the property in goods passes from the appellant to the buyer at factory gate only. Thus, I find that the sale of goods is completed and the ownership of goods is transferred at the factory gate of the appellant in terms of Section 23 of the Sale of Goods Act, 1930. Therefore, I uphold the impugned order that the appellant is not eligible for availment of Cenvat credit of service tax paid on outward transportation charges, which has been availed beyond place of removal.

10.4 With regards to reliance of the appellant on various decisions, I find that these are of no help to them in as much as the appellant has failed to produce any documentary evidences in support of their claim and heavily relied on mere arguments.

11. In view of the above, I uphold the impugned order and reject the appeal filed by the appellant.

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

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

16/10/2017

(कुमार संतोष)
आयुक्त (अपील्स)

By R.P.A.D.
To,

M/s. Gujarat Siddhee Cement Ltd., Siddheegram, Off: Veraval-Kodinar Highway, Taluka: Sutrapada, District: Somnath (Gir)	मे. गुजरात सिद्धि सीमेंट लिमिटेड, सिद्धिग्राम, वेरावल-कोडिनार हाइवे, तहसील: सूत्रापाड़ा, जिल्ला: सोमनाथ (गीर).

Copy to:

1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
2) The Commissioner, GST & Central Excise, Bhavnagar.
3) The Assistant Commissioner, GST & Central Excise, Division - Junagadh.
4) The Superintendent, GST & Central Excise, Range-II, Veraval.
5) Guard File.