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::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
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रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No. V2/181/BVR/2017	मूल आदेश सं / O.I.O. No. 100/AC/Stax/Div/2016-17	दिनांक / Date 17.03.2017
ख	अपील आदेश संख्या (Order-In-Appeal No.):		

BHV-EXCUS-000-APP-89-2017-18

आदेश का दिनांक / Date of Order:	10.01.2018	जारी करने की तारीख / Date of issue:	17.01.2018
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Passed by **Shri Gopi Nath, Additional Director General (Audit), Ahmedabad Zonal Unit, Ahmedabad.**

अधिसूचना संख्या २६/२०१७-के.उ.शु. (एन.टी.) दिनांक १७.१०.२०१७ के साथ पढ़े बोर्ड ऑफिस आदेश सं. ०५/२०१७-एस.टी. दिनांक १६.११.२०१७ के अनुसरण में, श्री गोपी नाथ, अपर महानिदेशक ऑडिट, अहमदाबाद जोनल यूनिट को वित्त अधिनियम १९९४ की धारा ८५, केन्द्रीय उत्पाद शुल्क अधिनियम १९५४ की धारा ३५ के अंतर्गत दर्ज की गई अपीलों के सन्दर्भ में आदेश पारित करने के उद्देश्य से अपील प्राधिकारी के रूप में नियुक्त किया गया है.

In pursuance to Board's Notification No. 26/2017-C.Ex.(NT) dated 17.10.2017 read with Board's Order No. 05/2017-ST dated 16.11.2017, Shri Gopi Nath, Additional Director General of Audit, Ahmedabad Zonal Unit, Ahmedabad has been appointed as Appellate Authority for the purpose of passing orders in respect of appeals filed under Section 35 of Central Excise Act, 1944 and Section 85 of the Finance Act, 1994.

- 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 Appellants & Respondent :-**
M/s Gujarat Maritime Board, Ship Breaking Yard, Alang Dist Bhavnagar

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, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असारवा 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, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां 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 नियमावली, 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, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां 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 fee 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/-.

- (ii) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमावली, 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 प्रतियों 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.

- (iii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टैट) 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, बशर्त 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

- बशर्त 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 नहीं होगा।

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

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

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

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

(C) **भारत सरकार को पुनरीक्षण आवेदन :**

Revision application to Government of India:

इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम पैराग्राफ के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

- (i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। /

In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse

- (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केंद्रीय 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 क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा संमायाविधि पर या बाद में पारित किए गए हैं। /

Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

- (v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केंद्रीय 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 केंद्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। /

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। /

जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए। /

The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पेढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण 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, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट लगा होना चाहिए। /

One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

- (F) सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। /

Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

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ORDER-IN-APPEAL

This order arises on account of an appeal filed by M/s. Gujarat Maritime Board, Ship Breaking Yard, Alang, Dist., Bhavnagar (herein after referred to as 'the appellant' for the sake of brevity) against an Order-In Original No. 100/AC//STAX/DIV/2016-17 Dated 17.03.2017 (herein after referred to as the 'impugned order' for sake of brevity) by the Assistant Commissioner, Service Tax Division, Bhavnagar (herein after referred to as the 'Adjudicating Authority' for sake of brevity).

2. Briefly stated the facts of the case are that -

(i) the appellant are holding Service Tax Registration No. AABCG6676LST017 for providing the Port Services and also availing Cenvat credit of service tax paid on inputs, capital goods and Input services under Cenvat Credit Rules,2004 (herein after referred to as "CCR,2004). During the course of audit conducted on 26.02.2014, covering the period from April,2012 to March,2013, it was observed that the appellant had taken cenvat credit of Rs.29,44,244/- during the period 2012-13 as detailed at Para-2 of the impugned order. However, on being asked by the Audit team, the appellant failed to produce the Invoices/Bills on the basis of which the said cenvat credit of Rs.29,44,244/- was taken and also on being pointed out the same, the appellant did not agree with the said objection. Thus, it appeared that the appellant had violated the provisions of Rule 9(1) of CCR,2004 in as much as they could not produce the Invoices/Bills on basis of which the said cenvat credit of Rs.29,44,244/- was taken and utilized and also the appellant failed to prove the admissibility of Cenvat credit taken and utilized as per Rule 9(6) of CCR,2004. The Range Superintendent also from time to time requested the appellant to produce all the invoices/substantiating documents on which the cenvat credit was taken and utilized but the appellant could not produce the same. These facts culminated into issuance of a Show Cause Notice dated 01.03.2016 to the appellant.

(ii) The Adjudicating Authority under the impugned order confirmed the demand of wrongly availed and utilized cenvat credit of Rs.29,44,244/- and to be recovered from the appellant under Section 73(1) of the Finance Act,1994 and ordered for interest under Section 75 of the Finance Act,1994 and imposed penalty of Rs. 29,44,244/- under Section 78 of the Finance Act,1994 and a penalty of Rs.10,000/- under Section 77(1)(c) of the Finance Act,1994.

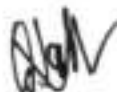


3. Being aggrieved, the appellant had filed present appeal and later also filed the written submission dated 18.12.2017 on the grounds interalia mentioned as under:-

(i) The appellant contended that they had made various submission and oral arguments as well as produced the copies of the invoices raised by the service providers and the copies of GAR Challans on the basis of which the cenvat credit in question was availed by them, before the Adjudicating Authority. However, the Adjudicating Authority had clearly overlooked the same and mechanically confirmed the demand under the impugned order. Therefore, the impugned order is non speaking order which has been passed in gross violation of principles of equality, fair play and natural justice and hence, the same is liable to be set aside on this ground itself. Reliance is placed on various decisions of the higher judicial forum by the appellant in support of their contention.

(ii) The impugned SCN alleges violation of Rule 9(1) and Rule 9(6) of the CCR,2004. Further, in the impugned order (Para-8.2.5), the Adjudicating Authority has given findings that the appellant could not produce the invoices/challans at the material time and hence, denied the cenvat credit in question. However, the appellant contended that at the time of hearing and with the copy of reply to SCN, they filed all copies of the invoices and GAR-7 challans for verification. However, the same has been ignored by the Adjudicating Authority. Thus, the appellant contended that they have fully complied with all provisions of Rule-9 ibid. Further, as per Audit Report, the audit was conducted only for one day i.e. 26.02.2014 and hence, inspite of the invoices/challans available, the audit officers could not verify the same. The appellant had produced with the appeal memorandum a Box file said to contain copies of Invoices and summary of the invoices; that the appellant had availed the cenvat credit on the basis of invoices issued by the service providers. Appellant further, contended that in all other cases, they had availed cenvat credit on the basis of GAR-7 challans wherein the service tax is paid under reverse charge mechanism (RCM).

(iii) The Adjudicating Authority has travelled beyond the scope of SCN in as much as when it was held that from copies of the invoices, it cannot be ascertained that whether the appellant have paid to the service providers for the services etc.; that SCN was issued only on the grounds that they could not produce the invoices at the time of Audit. The Adjudicating Authority has travelled beyond the scope of SCN for sake of denying the credit that all the invoices were not produced by the appellant at the time of audit and in respect of reverse mechanism, the challans dates are not mentioned in ST-3 returns; that the copies of the ledger of the service providers were never asked for and they had provided CIN details (which also includes the date on which the challan was deposited for payment in the bank.) of all the challans through which the service tax was paid. Further, the SCN never alleged of non-submission of invoice wise co-relation with the invoices and ST-3 returns.



(iv) The Adjudicating Authority has erred in observing that the entries in ST-3 Returns and details provided by the appellant are not matching and also the challans date details provided in the ST-3 returns are not provided; that they had provided the details of all challans including dates thereof in Part- 'H' of the ST-3 Returns; that the payment details as designed in ST-3 Form never ask for date of any specific challan; Further, the ST-3 returns do not ask for invoice wise details and hence, this observation of the Adjudicating Authority is bad in law.

(v) As they had paid service tax under RCM through Challans, they can avail credit on the basis of GAR-7 challans. However, the SCN alleges that they availed cenvat without valid invoice in their possession and the Adjudicating Authority has not given any findings on this submission of the appellant.

(vi) The input services of which credit taken are all eligible services for availing cenvat credit.

(vii) Entire demand is time barred in as much as the SCN baldly alleged suppression, misstatement as well as entire details of cenvat credit were always shown in ST-3 returns filed and the unit was subjected to audit from time to time by the department. Further, non disclosure of facts which is not required to be disclosed, does not amount to misstatement. Reliance is placed on various decisions of the higher judicial forum by the appellant in support of their contention.

(viii) No penalty can be imposed under Section 77 & 78 ibid and similarly no interest is chargeable. Further, Section 80 of the Finance Act, 1994 also applicable in the present case. Reliance is placed on various decisions of the higher judicial forum by the appellant in support of their contention

4. Personal hearing was held on 18.12.2017, wherein Shri H.P.Singh Virk, Chartered Accountant, appeared on behalf of the appellant and reiterated the submissions of the appeal memorandum and also submitted the additional submission dated 18.12.2017 for taking into consideration while deciding the appeal.

5. I have gone through the appeal memorandum, written and oral submission made during personal hearing. I proceed to decide the case on merits since the appellant has made payment of mandatory deposit of Rs.2,21,000/- (7.5% of Rs.29,44,244/- vide Challan CIN No.00053472004201701768 dated 20.04.2017 and thus, complied with the requirement of fulfillment of mandatory pre deposit in pursuance to the amended provisions of Section 35F of the Central Excise Act, 1944 made applicable to Service Tax matter in terms of the Section 83 of the Finance Act, 1994 effective from 06.08.2014.

6. The issue to be decided in the present case is whether or not the appellant had wrongly availed the cenvat credit of Rs.29,44,244/- without the Invoices/Bills and thus, violated the provisions of Rule 9(1) of CCR, 2004 and also had failed to prove the



admissibility of Cenvat credit taken and utilized as per Rule 9(6) of CCR,2004. I find that period involved in the present case is from April,2012 to March,2013 and services on which credit availed and utilized are Telephone Services, Legal Consultancy Services, Security Services and Repairs & Maintenance Services. I also find that the services viz. Legal Consultancy Services, Security Services and Repairs & Maintenance Services are covered under Reverse Charge Mechanism and hence, as a recipient, the appellant is liable to pay service tax on the same through GAR-7 challans. I further, find that the month-wise cenvat credit taken are detailed at para-2 of the impugned order which is interalia mentioned as under for ease of reference.

Sr.No.	Month in which Cenvat credit take	Amount of total credit taken (in Rs.)
1	April-2012	Rs.66,533/-
2.	January,2013	Rs. 4,01,858/-
3.	February,2013	Rs. 1,64,951/-
4.	March,2013	Rs.23,10,902/-
	TOTAL	Rs.29,44,244/-

7. I find that the appellant in the present case, has very vehemently contended as interalia mentioned at Para-3 above. It is the contention of the appellant that they had produced before the Adjudicating Authority, the copies of the invoices raised by the service providers and the copies of GAR Challans on the basis of which the cenvat credit in question was availed by them; however, the Adjudicating Authority had clearly overlooked the same and mechanically confirmed the demand under the impugned order and hence, the impugned order is non speaking order which has been passed in gross violation of principles of equality, fair play and natural justice. I find that the Adjudicating Authority at Para-8.2.5 of the impugned order has held that "In view of this, I find that the Noticee had failed to comply with the provisions of Rule 9(1) of the Cenvat Credit Rules as the Noticee had availed the Cenvat Credit, on input services, amounting to Rs.29,44,244/- for the period from April,2012- March,2013 but could not produce any evidence like Invoices/Bills at the material time on the basis of which the said Cenvat Credit had been availed and utilized". Further, it is also observed by the Adjudicating Authority that inspite of being called for all the invoices/substantiating documents with regards to the Cenvat credit in question by the Range Superintendent vide letters issued from time to time, the appellant did not produce any such documents till the issuance of SCN. Further, the Adjudicating Authority also observed that appellant vide their submission dated 13.01.2017

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furnished the invoices/documents on which the appellant has claimed to have taken the Cenvat credit, which were scrutinized to decide whether the cenvat credit availed is justified and also cross verified through Range office and finally it was observed by the Adjudicating Authority that the appellant did not submit any Ledger account or Debit/Credit account which would have ascertained that the appellant had discharged the service tax liabilities and hence, finally held that in absence of Ledger and Debit/Credit account, cenvat credit availed and utilized on those invoices is found to be wrongly availed and not legally admissible. Adjudicating Authority also observed that all the invoices submitted vide submission dated 13.01.2017, rest of the invoices other than mentioned in Table-A at page -14 of the impugned order, are pertaining to the Reverse Charge mechanism and the appellant have also claimed that for these invoices they have discharged the service tax liability under Reverse Charge Mechanism, thereby availed the cenvat credit. From, these observations and findings of the Adjudicating Authority, it appears that the appellant had made available all the invoices based on which credit taken and utilized but however, the appellant did not submit any Ledger account or Debit /Credit account which would have ascertained that the appellant had discharged the service tax liabilities. Further, the Adjudicating Authority had observed that the challan dates are not provided for any challan in the challan details section of ST-3 returns and thus, in absence of the same, the department can not ascertain the correctness of amount mentioned in ST-3 returns. Finally I find that the Adjudicating Authority held that due to unmatched values in ST-3 returns and invoices relied upon by the appellant and in absence of other verifiable documents, cenvat credit thus, availed and utilized is not legally admissible.

7.1 From above at para-7, it transpires that on one side the Adjudicating Authority had observed and held that the appellant had failed to comply with the provisions of Rule 9(1) of the Cenvat Credit Rules in as much as the appellant could not produce any evidence like Invoices/Bills at the material time on the basis of which the said Cenvat Credit had been availed and utilized and on other hand, it was observed and held by the Adjudicating Authority that though the appellant had made available all the invoices based on which credit taken and utilized but however, since the appellant did not submit any Ledger account or Debit/Credit account so as to ascertain the discharge of service tax liabilities as well as the non mentioning of dates of challans in ST-3 returns and due to unmatched values in ST-3 returns and invoices relied upon by the appellant and in absence of other verifiable documents, cenvat credit thus, availed and utilized is not legally admissible. However, I feel that not making available any Ledger account or Debit/Credit account by the appellant and not mentioning the dates of challans in the ST-3 returns, which as per the appellant's contention can be



ascertained from the CIN Numbers of the challans, are not the proper grounds for denial of the Cenvat credit in question. I find that no efforts appears to have been taken by the Adjudicating Authority to get the same clarified from the appellant when it is observed by the Adjudicating Authority at para 8.2.5 of the impugned order that "However, the Noticee has submitted various invoices/documents to this office vide their submission dated 13.01.2017".

7.2 I further find that the appellant with the appeal memorandum at Annexures-2 & 3 thereto, claimed to have furnished the copies of all the invoices wherein cenvat credit taken as well as summary of sheet of the credit availed for the month of April, 2012 January,2013, February,2013 and March,2013, in support of their contention. They also furnished the copies of relevant ST-3 returns. For ease of reference, copy of the summary of sheet of the credit availed for the month of February,2013 is scanned and the scanned copy is reproduced as under.

GUJARAT MARITIME BOARD - SHIP RECYCLING YARD ALANG

Summary sheet of the Cenvat credit availed for the month of February-2013

Page No.	Amount
1	164181
2	770
Total	164951

PORT OFFICER
SHIP RECYCLING YARD
ALANG

Gujarat Maritime Board - Ship Recycling Yard Alang (37)

STATEMENT SHOWING THE DEDUCTION OF REVERS SERVICE TAX FOR THE MONTH OF FEBRUARY-2013

SR. NO.	AV. NO. DT.	T.V. NO. DT.	NAME OF ADDRESS	HEAD	Bill Amount	75% Taxable Amount	100% Taxable Amount	Total Taxable Amount	Tax Amount	Remarks	
1	380/24/2/2013	58-2712/2013	Gujarat Industrial Security Force Society	Ahmedabad	SECURITY EXP.	778221	583665	0	583665	72132	✓
2	381/24/2/2013	5711/2/2013	Gujarat Industrial Security Force Society	Ahmedabad	SECURITY EXP.	92080	74475	0	74475	92049	✓
TOTAL					377101	322832	0	322832	164181		

PORT OFFICER
Ship Recycling Yard
ALANG

PORT OFFICER
SHIP RECYCLING YARD
ALANG

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Gujarat Maritime Board - Ship Recycling Yard Alang (38)

STATEMENT SHOWING THE DEDUCTION OF SERVICE TAX FOR THE MONTH OF FEBRUARY-2013

SR. NO.	AV. NO. DT.	T.V. NO. DT.	NAME OF PARTY	ADDRESS	HEAD	SERVICE TAX NO.	DATE OF INVOICE	AMOUNT OF BILL	AMOUNT OF SERVICE TAX	PERCENTAGE
1	382/24/2/2013	5712/2/2013	WATER VENTURES LTD.	Ahmedabad	P & M	AA028247202	02/2013	570	70	12.28%
2	383/24/2/2013	5712/2/2013	WATER VENTURES LTD.	Ahmedabad	TELEPHONE EXP.	AA028247202	02/2013	540	65	12.22%
3	384/24/2/2013	5712/2/2013	WATER VENTURES LTD.	Ahmedabad	TELEPHONE EXP.	AA028247202	02/2013	420	50	12.22%
4	385/24/2/2013	5712/2/2013	WATER VENTURES LTD.	Ahmedabad	TELEPHONE EXP.	AA028247202	02/2013	370	45	12.16%
5	386/24/2/2013	5712/2/2013	WATER VENTURES LTD.	Ahmedabad	TELEPHONE EXP.	AA028247202	02/2013	330	40	12.12%
6	387/24/2/2013	5712/2/2013	WATER VENTURES LTD.	Ahmedabad	TELEPHONE EXP.	AA028247202	02/2013	340	41	12.06%
TOTAL								190		

PORT OFFICER
Ship Recycling Yard
ALANG

PORT OFFICER
SHIP RECYCLING YARD
ALANG

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From, the above, it transpires that total credit availed during the month of February, 2013 is Rs. 1,64,951/- and out of the same centvat credit of Rs. 1,64,181/- in respect of two invoices pertain to RCM which is claimed to be paid under challan GAR-7 and the rest of Rs.770/- pertain to six invoices based on which credit taken. I find that for centvat credit of Rs. 1,64,181/- under RCM, the appellant had furnished the photocopies of the Bill dated 29.12.2012 and 10.01.2013 of Gujarat Industrial Security Force Society, New Mental Campus, Meghaninagar, Ahmedabad for the amount of Rs.7,78,121/- and Rs.9,92,980/- on which service tax on abated value, comes to Rs. 72,132/- and 92,049/- respectively(total Rs.1,64,181/-) which is claimed to be paid through GAR-7 challan. I find that the appellant had also submitted the photocopies of the relevant ST-3 return with the appeal memorandum. From the said ST-3 returns, I

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find that Cenvat Credit taken and utilized is shown as Rs. 1,60,147/- Cenvat + Rs. 3,203/- Education Cess + Rs. 1,601/- SHEC at col. Nos. 13.1, 13.2 and 13.3 respectively of the said ST-3 returns, totally Rs.1,64,181/- during the month of February,2013. Further, at Part-H of the said ST-3 return, the details of Challans have been shown and at sr. no.27 thereto, one challan No. (CIN) 00053472802201300461 for Rs. 1,64,181/- have been shown for the month of February,2013. Thus, prima facie, the said challan appears to be pertaining to the said above cenvat credit taken and utilized during the month of February,2013. However, the copies of the challans are not made available with the appeal memorandum.

7.3 From the discussion herein above, there is a prima facie case in favour of the appellant. Further, the original invoices are not made available with the appeal memorandum and the copies of the GAR-7 challans based on which cenvat credit taken and utilized in the matter of RCM, are also not produced before me. Also, the co-relation of the cenvat credit taken and utilized which had been confirmed under the impugned order is also required to be carried out that with the details in the ST-3 returns filed for the relevant period.

7.4 From above discussion, I feel it appropriate that this issue/contention of the appellant needs to be re-examined so as to ascertain whether or not the said amount of cenvat credit of Rs.29,44,244/- confirmed under the impugned order, had been taken and utilised in violation of Rule 9(1) & 9(6) of the Cenvat Credit Rules,2004.Thus, keeping all other issues open, the matter needs to be remanded back to Adjudicating Authority for deciding afresh in light of my above observation after giving an opportunity of hearing to the appellant. The appellant is also directed to put all the evidences before the Adjudicating Authority that may be asked for by the Adjudicating Authority when the matter is heard in remand proceedings in order to enable the Adjudicating Authority to decide the case a fresh. These findings of mine are supported by the decision of the Hon'ble High Court of Gujarat in the Tax Appeal No.276/2014 in the case of Commissioner, Service Tax, Ahmedabad V/s Associated Hotels Ltd, reported at 2015(37) STR 723(Guj.) and also by the decision of the Hon'ble CESTAT, WZB Mumbai in case of Commissioner of Central Excise, Pune-I Vs. Sai Advantium Ltd and reported in 2012 (27) STR 46 (Tri.- Mumbai).



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8. Accordingly, the impugned order is set aside and remanded back for fresh decision and the appeal filed by the appellant is disposed off in above terms.


(Gopi Nath)
Commissioner (Appeals)/
Additional Director General (Audit)

To,

M/s. Gujarat Maritime Board,
Ship Breaking Yard,
Alang, Dist. Bhavnagar

Copy To:-

1. The Chief Commissioner, CGST, Ahmedabad Zone, Ahmedabad.
2. The Commissioner, CGST, Bhavnagar
3. The Commissioner, CGST, Appeals, Rajkot
4. The Assistant Commissioner, CGST Division, Rajkot (Adjudicating Authority).
5. The Assistant Commissioner, Systems, CGST, Rajkot
6. Guard File.
7. P.A. File.