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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 / 2<sup>nd</sup> Floor, GST Bhavan,

रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

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सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क अपील / फाइल संख्या /  
Appeal / File No.  
V2/139/BVR/2017

मूल आदेश सं /  
O.I.O. No.  
AC/JND/21/2017

दिनांक /  
Date  
17.03.2017

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

**BHV-EXCUS-000-APP-090-2017-18**

आदेश का दिनांक /  
Date of Order: 09.01.2018

जारी करने की तारीख /  
Date of issue: 23.01.2018

23.01.2018

Passed by **Shri Suresh Nandanwar, Commissioner, Central Goods Service Tax (Audit), 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 सुरेश नंदनवार, आयुक्त, केन्द्रीय वस्तु एवं सेवा कर (लेखा परीक्षा), अहमदाबाद को वित्त अधिनियम १९९४ की धारा ८५, केन्द्रीय उत्पाद शुल्क अधिनियम १९४४ 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 Suresh Nandanwar, Commissioner, Central Goods Service Tax (Audit), 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 Saurashtra Cement Limited, Near Railway Station, Ranavav - 360 560 Dist : Porbandar**

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 असावा अहमदाबाद- 380016 को की जानी चाहिए: /

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> 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 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, 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 fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

(i)

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, 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.

SM

(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 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, 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 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 क्रेडिट 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 समायाविधि पर या बाद में पारित किए गए हैं। /

Credit of any duty allowed to be utilized towards payment of excise duty on fina. 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 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, 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-1 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 नियमों की और 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.

**ORDER IN APPEAL**

The present appeal has been filed by Saurashtra Cement Limited, Nr. Railway Station, Ranavav, P.O. Ranavav, Dist. Porbandar, Gujarat - 360560, (hereinafter referred to as "Appellant") holding Central Excise Registration No. AAHFS5211JXM001, against OIO No.AC/JND/21/2017 dated 17.03.2017 (herein after referred to as "impugned order") passed by Assistant Commissioner, Central Excise, Junagadh Division, Bhavanagar Commissionerate (hereinafter referred to as "Adjudicating Authority") before the Commissioner (Appeal), Rajkot.

2 Subsequently, the Board Vide Order No. 05/2017-Service Tax issued vide F.No. 137/13/2017-ST dated 16.11.2017 by the Under Secretary (Service Tax), CBEC, New Delhi\_ has transferred the said Appeal Petition to the Commissioner, Central Tax Audit, Ahmedabad for passing Order-in-Appeal.

3. Briefly, the facts of the case are that during the test check of the records of the appellant for the period 2007-08 to 2011-12 by CERA Party-V, it was observed that appellant has purchased PET Coke from RIL (100%EOU) by paying Central Excise duty as per Notification No. 23/2003-Central Excise and has availed and utilized total Cenvat credit of Rs. 5,93,40,978/- for the period March 2008 to December 2008. On scrutiny of the relevant documents, it was observed that appellant has availed and utilized excess Cenvat credit amounting to Rs. 20,66,580/-.

4. Pursuant to the same, a Show Cause Notice No.V/15-38/Dem/HQ/2013-14 dated 04.09.2013 (hereinafter referred to as "SCN") was issued to the Appellant demanding an amount of Rs. 20,66,580/- under Sec. 11A(1) Central Excise Act 1944 and r/w Sec. 11AC and Sec. 11-AA ibid.

5. The SCN was adjudicated by the Adjudicating Authority vide above referred impugned OIO. It is observed by Adjudicating Authority that as per sample invoices of produced by Appellant, they have availed Cenvat Credit of CVD worked out under Sec. 3 of CEA 1944 plus Edu. Cess (2%) & S&HS Edu. Cess (1%) on CVD plus actual Edu. Cess (2%) & S&HS Edu. Cess (1%) paid by the manufacturer on the CENVAT worked out under Sec. 3(1) of CEA 1944 leading to double benefit. Adjudicating Authority has recalculated the Demand as he has found error in calculation of eligible amount of Credit on both the side and accordingly, the actual amount of Cenvat credit available to the appellant is as under:



Total Assessable Value of the Inputs	Total Cenvat Credit Availed & Utilised	Total Cenvat Credit available as per Rule 3(7)(a) of CCR 2004 plus Cesses	Differential duty already paid/reversed	Excess Credit (2-3-4)
1	2	3	4	5
38,74,98,615/-	5,93,43,349/-	5,66,57,983/-	6,98,503/-	19,86,863/-

Further, Adjudicating Authority has considered the liability for the period March 2008 to July 2008 as time barred and as out of purview of the provisions of Sec. 11A of CEA 1944. Accordingly, the actual Demand is further re-calculated for the period August 2008 to December 2008 where the differential amount leading to excess Cenvat Credit is worked out as under:

Total Assessable Value of the Inputs	Total Cenvat Credit Availed & Utilised	Total Cenvat Credit available as per Rule 3(7)(a) of CCR 2004 plus Cesses	Differential duty already paid / reversed	Excess Credit (2-3-4)
1	2	3	4	5
17,71,36,434/-	2,71,27,502/-	2,58,99,946/-	3,19,377/-	9,08,179/-

Adjudicating Authority has confirmed the re-calculated Demand of Rs. 9,08,179/- as the amount availed in excess under Rule 14 of CCR 2004 r/w Sec. 11A of CEA 1944 along with interest and imposed a penalty of equivalent amount of Rs. 9,08,179/- under rule 15(2) of CCR r/w Sec. 11 AC of CEA 1944.

6. Being aggrieved with the impugned order, Appellant has preferred the present appeal, on the following grounds:

a) In the impugned order, Adjudicating Authority has not discussed the ratio of the case law submitted namely Jai Corp Limited Vs COCE & ST (2015(317) ELT 489 (Tri-Ahmd) and passed the OIO without appreciating the ratio in the case decided by the jurisdictional bench of CESTAT, which is squarely binding on the Adjudicating Authority.

b) With reference to the entitlement of Cenvat Credit, attention is invited to Rule 3 of CCR 2004 where credit is admissible in respect of duty of excise specified in the First Schedule to Excise tariff Act, leviable under Excise Act; and also the Education Cess on excisable goods leviable under Sec. 91 r/w Sec. 93 of Finance Act, 2004 and the Secondary and Higher Secondary Education Cess on excisable goods leviable under Sec. 136 r/w Sec. 138 of Finance Act, 2007. It may be appreciated that since the levy itself is an excise duty on excisable goods and not on imported goods, the entire amount of Education Cess and Secondary & Higher Secondary Education Cess paid is also on excisable goods and therefore, are entitled to take the full credit of the entire amount of Education Cess and Secondary & Higher Secondary Education Cess. Merely because the measure of Excise duty is equal to Customs duty on like goods produced or manufactured outside India if imported into India, AC cannot treat the levy as Basic Customs Duty and Additional duty of Customs and bifurcate the Cess in question between Basic Customs duty and CVD and seek to deny the credit in respect of the Cess attributable to Basic Customs duty in the measure of Excise duty and therefore, the impugned OIO is contrary to the provisions of CEA and CCR.

c) Appellant have relied upon the decisions of CESTAT in the case of Laser Shaving (I) P. Ltd. Vs. CCE Hyderabad 2016 (344) ELT 479 (Tri.-Hyd.) and in the case of citation No. 2015 (326) ELT 167 (Tri. Delhi) CCE Vs. Khanna Paper Mills to support their case on merits.

d) Adjudicating Authority failed to appreciate the SCN proposing Demand is dated 04/09/2013 and the demand confirmed pertains to the period August 2008 to December 2008 is barred by limitation under rule 14 of CCR 2004 r/w Sec. 11A of CEA 1944 as the extended period cannot be invoked in the present case as all the transactions are recorded in the books of account and were also audited by the staff of the Department and in fact the same matter appears as Revenue para 1 of the Final Audit Report No. 322/2008/09 dated 27/04/2009 wherein the Audit officers had examined the availment of same credit pertaining to March 2008 to December 2008 and pointed out excess credit of Rs. 6,98,503/- which was reversed by the Appellant on 30<sup>th</sup> March 2009 with paid interest of Rs. 64,960/- through PLA on 30.03.2009. It is clear from this that as far as back as March 2009, Departmental Officers has inspected, perused the documents relating to availment of the Credit in question and therefore, the an allegation could not have been made out in the SCN the Appellant willfully suppressed the facts of availment of Cenvat Credit with a

clear intention to utilise the said Credit for paying duty on their manufactured goods and thus evade payment of duty. It has been mentioned in the annexure to SCN that the reversal was made as per IAD objection and yet the allegation of willful suppression has been made without any basis or materials. Therefore, Adjudicating authority failed to appreciate the facts and circumstances of the case and erred in holding that extended period of demand is invokable and wrongly confirmed the Demand. On this ground alone the impugned order is liable to be set aside.

e) The Adjudicating Authority has also erred in imposing penalty under Rule 15(2) of CCR r/w Sec. 11 AC of CEA when the ingredients for imposition of such a penalty are absent. Therefore, the impugned order is not tenable on merits as well as limitation and liable to be set aside.

7. In view of the above submission, the Appellant requested to allow appeal and set aside the OIO denying the eligible Cenvat Credit and imposition of penalty.

8. On the request to be heard in person an opportunity was granted on 26/12/2017, wherein Shri Saurabh Dixit, Advocate, appeared on behalf of the Appellant and reiterated the written submission filed by them and submitted copy of following case laws in their favour:

- a) Polypack Industries Vs. CCE Belgaum 2015 (327) ELT 568 (Tri. Bang.)
- b) Jai Corp Limited Vs COCE & ST (2015(317) ELT 489 (Tri-Ahmd)
- c) CCE Vs. Khanna Paper Mills 2015 (326) ELT 167 (Tri. Delhi)

9. I have carefully gone through the facts of the case and the submission put forth by the Appellant in their written submission as well as oral submission of their representative during personal hearing. The issue under consideration is that


i) whether Cenvat Credit of duty worked out under Sec. 3 of CEA 1944 plus Education Cess@2% and Secondary and Higher Secondary Education Cess@ 1% on duty (CVD - equivalent to Central Excise duty payable on like goods in manufactured in India) plus Education Cess @2% and Secondary and Higher Secondary Education Cess @ 1% on paid on aggregate Central Excise duty is admissible or not; and



ii) whether the demand confirmed by the impugned order is time barred by limitation under Rule 14 of CCR 2004 r/w Sec. 11A of CEA 1944.

10. I observe that Adjudication Authority has considered the liability for the period March 2008 to July 2008 as time barred and confirmed the Demand for the remaining period of August 2008 to December 2008 in the impugned order. I also observe that the impugned order is devoid of any justification for invoking extended period i.e. beyond one year from relevant date. Looking to the fact that the Department was aware of the exact issue as early as February 2009 i.e. during Internal Audit and wherein an audit objection on the same set of records/information was raised, the sustainability of the allegation of willful suppression on the part of the Appellant is not maintainable. Therefore, the present appeal is allowed and the impugned order is set aside squarely on the issue of the matter being time barred and hence, out of purview of the provisions of Rule 14 of CCR 2004 r/w Sec. 11A of CEA 1944. As the case is squarely covered under time bar issue therefore, I do not decide on merit.

11. The appeal filed by the Appellant is disposed of in above terms.

  
3.1.18  
(Suresh Nandanwar)  
Commissioner  
Central Tax Audit,  
Ahmedabad.

To,  
M/s.Saurashtra Cement Limited,  
Nr. Railway Station, Ranavav,  
P.O. Ranavav,  
Dist. Porbandar, Gujarat - 360 560.

Copy to :

- 1) The Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Bhavnagar
- 3) The Deputy/Assistant Commissioner, CGST, Division - Junagadh.
- 4) The Superintendent, CGST, Porbandar.
- 5) Guard File