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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 Email: cexappealsrajkot@gmail.com



सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील फाइल संख्या Appeal / File No.	मूल आदेश नं / O.I.O. No.	दिनांक / Date
	V2/131 to 133, 160 to 162/BVR/2017	33 to 38/Excise/Demand/2016-17	27.02.2017

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

BHV-EXCUS-000-APP-099-TO-104-2017-18

आदेश का दिनांक /
Date of Order: 30.01.2018 जारी करने की तारीख /
Date of issue: 31.01.2018

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

ग अपर आयुक्त/सदुक्त आयुक्त/उपसदुक्त सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क सेवाकर, राजकोट / जामनगर / गणधीधाम, द्वारा उपरोक्तित जारी मूल आदेश से सुविधा /
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 :-
I.M/s Madhu Silica P. Ltd. Plot No. 40, GIDC Chitra Bhavnagar 364 004, .

इस आदेश/अपील में स्थिति कोई व्यक्ति निम्नलिखित तरीके में उपरोक्त अपीलकर्ता / अपीलकर्ता 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 अपील न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अन्तर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अन्तर्गत निम्नलिखित जगह की जा सकती है। /
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मुल्यांकन से सम्बन्धित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जा सकती है। /
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बतलाए गए अपील के अलावा शेष सभी अपीलें सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (सिस्टाट) की पश्चिम क्षेत्रीय पीठ, बंधुमाली भवन असावा अहमदाबाद-380016 को की जा सकती है। /
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) अपील न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवली, 2001 के नियम 6 के अन्तर्गत निर्धारित किए गये फॉर्म EA-3 को धार प्रतियों में दर्ज किया जाता चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की सीमा अलावा की सीमा और लगान का जमाना, 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 अपील न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम में किसी भी सरकारी बैंक के बैंक द्वारा जारी रेकॉर्डेड बैंक ड्राफ्ट द्वारा किया जाता चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपील न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये का निर्धारित शुल्क जमा करना होगा। /
The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of duty 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) अपील न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अन्तर्गत सेवाकर नियमवली, 1994, के नियम 9(1) के तहत निर्धारित फॉर्म S.T.-5 में धार प्रतियों में की जा सकती है। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की सीमा अलावा की सीमा और लगान का जमाना, 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 अपील न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम में किसी भी सरकारी बैंक के बैंक द्वारा जारी रेकॉर्डेड बैंक ड्राफ्ट द्वारा किया जाता चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपील न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये का निर्धारित शुल्क जमा करना होगा। /
The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a 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/-.

- (i) विल अपीलियम, 1994 की धारा 86 की उप-धारा (2) एवं (2A) के अंतर्गत दंड की राशि अपील, सेवाकर विधायक, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित फॉर्म S.T.-7 में की जा सकती है एवं उसके साथ अनुमान, केन्द्रीय उत्पाद शुल्क अध्याय अनुसूची (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पठित आदेश की प्रतियाँ संलग्न की (जहाँ से एक प्रति प्रामाणिक होनी चाहिए) और अनुसूची द्वारा सहायक आदकन अध्याय अनुसूची, केन्द्रीय उत्पाद शुल्क सेवाकर की अपीलियम न्यायधिकरण को आवेदन देने 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 Form ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलियम प्राधिकरण (सेक्टर) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अपीलियम 1944 की धारा 35एक के अंतर्गत, जो की विलियम अपीलियम, 1994 की धारा 83 के अंतर्गत सेवाकर की भी लागू की गई है, इस आदेश के प्रति अपीलियम प्राधिकरण में अपील करने 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 इस क्रॉस चार्ज पर से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मूल विल ग्राह शुल्क" में निम्न शामिल है -
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेक्टर जमा की गई राशि राशि
(iii) सेक्टर जमा विधायक के नियम 6 के अंतर्गत देय रकम
- बशर्ते कि इस धारा के प्राधान्य विधायक (स. 2) अपीलियम 2014 के अंतर्गत से पूर्व किसी अपीलियम प्राधिकरण के द्वारा विधायक प्रथम अपील एवं अपील को जमा नहीं होगी।
For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall 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 Central Credit taken,
(iii) amount payable under Rule 6 of the Central Credit Rules
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.
- (C) **भारत सरकार को पुनरीक्षण आवेदन :**
Revision application to Government of India:
इस आदेश की पुनरीक्षण प्राधिकार निम्नलिखित मामले में, केन्द्रीय उत्पाद शुल्क अपीलियम, 1994 की धारा 35EE के प्रथम पारुक्त के अंतर्गत अथवा भारत सरकार, पुनरीक्षण आवेदन इकाई, विल अकाउंट, टाक्स विभाग, पीपी अडिब, जीवन टॉप अवन, सेंट गार्, 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 से या भंडारण में माल के प्रसंकरण 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) माल के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भी गई केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो माल 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 an 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 माल के बाहर, नेपाल या भूटान ले माल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
- (iv) अनुसूचित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इच्छा की जाती है इस अपीलियम एवं इसके विभिन्न प्राधान्य के तहत माल की गई है और ऐसे आदेश जो अनुसूची (अपील) के तहत विल अपीलियम (स. 2), 1998 की धारा 109 के द्वारा निर्यात की गई लागू अथवा न्यायधिकरण पर या बाद में पठित किया गयी है। / Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
- (v) उपरोक्त आदेश की दो प्रतियां फॉर्म संख्या EA-8 में की जो केन्द्रीय उत्पाद शुल्क (अपील) विधायक, 2001, के नियम 9 के अंतर्गत निर्दिष्ट है, इस आदेश के संशोधन के 3 महीने के अंतर्गत की जानी चाहिए। उपरोक्त आदेशों के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अपीलियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साथ-साथ के लिए 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। / जहां संलग्न रकम एक लाख रुपये या उससे कम है तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000/- का भुगतान किया जाए। / The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved is Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपरोक्त इन से किया जाना चाहिए। इस तरह के होने हुए भी की निर्यात पट्टी करते से बचने के लिए यथास्थिति अपीलियम प्राधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाना है। / In cases, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
- (E) यथासंशोधित न्यायिक शुल्क अपीलियम, 1975, के अनुसूची के अनुसार मूल आदेश एवं संशोधन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायिक 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, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलियम न्यायधिकरण (कार्य विधि) विधायक, 1982 में वर्णित एवं अन्य संबंधित मामलों को शामिल करने वाली विधायक की और भी ध्यान अर्पित किया जाना 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 अपीलियम प्राधिकरणों को अपील दायित्व करने से संबंधित व्यापक, विस्तृत और नवीनतम प्राधान्य के लिए, अपीलियम विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। / 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. Madhu Silica Pvt. Ltd., Plot No. 40, GIDC Chitra, Bhavnagar (hereinafter referred to as "Appellant") filed appeals against Orders-In-Original No. 33 to 38/Excise/Demand/2016-17 dated 27.02.2017 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central Excise, City Division, Bhavnagar (hereinafter referred to as "the lower adjudicating authority"). Since the issue involved is common in nature and connected with each other, the same are taken up together for disposal.

2. The brief facts of the case are that on scrutiny of information on availment and utilization of Cenvat credit of Service Tax paid on outward transportation of goods revealed that the appellant availed Cenvat credit of Service Tax paid on outward transportation used for transportation of finished goods beyond the place of removal as under:-

Sr. No.	Show Cause Notice No.	SCN date	Amount Rs.	Period Involved
1.	V/15-81/Demand-Madhu Silica/2011-12	25.01.2012	4,40,029/-	April-11 to Sep-11
2.	V/15-06/Demand-Madhu Silica/2012-13	21.09.2012	2,70,246/-	Oct -11 to Mar - 12
3.	V/15-112/Dem/HQ/2014-15	29.05.2015	16,61,761/-	May -12 to July-14
4.	V/15-14/Demand-Madhu Silica-DU-II/2014-15	26.08.2015	2,98,288/-	Aug - 14 to Dec -14
5.	AR-1/Show Cause Notice-08/MSPL-40-GIDC/Superintendent/2015-16	08.09.2015	27,111/-	Jan - 15 to Apr - 15
6.	V/15-34/Demand-Madhu Silica Du-I/2014-15	15.03.2013	1,66,718/-	May - 15 to Jan -16

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

3. Being aggrieved with the impugned orders, the appellant preferred the present appeals on the grounds that judgment dated 28.11.2013 of the Hon'ble High Court of Kolkatta in the case of CCE Vs. Vesuvius India Ltd. reported as 2014 (34) STR 26 (Kol) discussed by the lower adjudicating authority in the

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

"4. Heard learned AR. The main issue involved in the present appeal, as framed by the first appellate authority in Para 5(i) of Order-in-Appeal dated 31-11-2009/8-12-2009, is whether during the period January 2005 to September 2006 the Cenvat credit of Service Tax on the freight charges of outward transportation from the place of removal is admissible to the respondent or not. First appellate authority has allowed the credit in view of CESTAT Larger Bench judgment in the case of ABB Limited & Others (supra), which was subsequently confirmed by Karnataka High Court in Commissioner of Central Excise & Service Tax, Bangalore v. M/s. ABB Limited, Vadodara [2011-TIOL-395-HC-KAR-ST = 2011 (23) S.T.R. 97 (Kar.)]. Deliberating on this issue, jurisdictional High Court of Gujarat in the case of Commissioner of Central Excise and Customs v. M/s. Parth Poly Wooven Pvt. Limited & Others, vide order dated 6-4-2011 in Tax Appeal Nos. 419, 321, 325, 450, 452, 457, 458, 460, 513, 595, 597, 527, 781, 783, 1326, 1704 & 10780 of 2010 held that Cenvat credit admissibility with respect to outward freight from the place of removal is covered within the definition of Rule 2(l) of the Cenvat Credit Rules, 2004. Relevant paras 21, 22 and 23 are reproduced below :-

"21. We must, however, for our curiosity reconcile the expression "from the place of removal" occurring in the earlier part of the definition with words "up to the place of removal" used in inclusive part of the definition. Counsel for the assessee submitted that when a manufacturer transports his finished products from the factory without clearance to any other place, such as godown, warehouse etc. from where it would be ultimately removed, such service is covered in the expression "outward transportation up to the place of removal" since such place other than factory gate would be the place of removal. We do appreciate that this could be one of the areas of the application of the expression 'outward transportation up to the place of removal'. We are unable to see whether this could be the sole reason for using such expression by the Legislature.

22. Be that as it may, we are of the opinion that the outward transport service used by the manufacturers for transportation of finished goods from the place of removal up to the premises of the purchaser is covered within the definition of "input service" provided in Rule 2(l) of the Cenvat Credit Rules, 2004.

23. We answer the question accordingly in favour of the assessee and against the Revenue."

3.1 The Appellant relied upon the decision of the Hon'ble High Court of Karnataka in the case of CCE & ST Vs. Ultra Tech Cement Ltd. reported as 2016 (44) STR 227 (Kar) stating that decision of higher judicial fora cited by them before the lower adjudicating authority have been discarded without proper hearing / appreciation; that the lower adjudicating authority has also not considered the decision of the Commissioner(Appeals), Central Excise, Rajkot given vide Order-in-Appeal No. BHV-EXCUS-000-APP-045-2015-16 dated 26.11.2015 and Order-in-Appeal No. BHV-EXCUS-000-APP-047-2015-16 dated 26.11.2015.

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

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

4. Shri R. R. Dave, Consultant, on behalf of the Appellant, reiterated the grounds of Appeal during personal hearing and submitted that they had not sold the goods ex-factory but on FOR basis; that when delivery of the goods are at the buyers premises then Cenvat credit of Service Tax paid on Goods Transport Agency service of manufacture of goods from factory gate to the premises of the buyers is admissible as has been held by the Hon'ble Gujarat High Court in the case of M/s. Philips Carbon Black Ltd. reported as 2016 (44) STR 235 (Guj) and M/s. Parth Poly Wooven Pvt. Ltd. reported as 2012(25) STR 4 (Guj); that the appellant have borne the cost of freight and not separately recovered from the buyers; that they have taken insurance in their favour to reduce cost of their damage because of sale on FOR basis; that the Service Tax has been paid by them and hence they are entitled to get Cenvat credit in terms of Rule 2(l) of the Rules; that the impugned orders need to be set aside and appeals allowed.

FINDINGS:-

5. 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 appeals is as to whether the impugned orders in the facts of the case, disallowing Cenvat credit of Service Tax paid on outward transportation charges are proper or otherwise.

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

"(l) *Input service* means any service,-

- (i) *used by a provider of taxable service for providing an output service; or*
- (ii) *used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,*

and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal;".

[Emphasis supplied]

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6.1 The definition of input service says "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. 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 includes outward transportation upto the place of removal. As per Section 4(3)(c) of Central Excise Act, 1944, "place of removal" means a factory or any other place or premises of production or manufacture of excisable goods; a warehouse or any other place of premises wherein the excisable goods have been permitted to be stored without payment of duty or a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold.

7. I find that Central Board of Excise and Customs vide Circular No. 97/8/2007-ST dated 23.08.2007 has clarified the issue regarding admissibility of Cenvat credit in respect of Service Tax paid on goods transport by road. The relevant text reads as under:

"(c) **ISSUE:** Up to what stage a manufacturer/consignor can take credit on the service tax paid on goods transport by road?

COMMENTS: This issue has been examined in great detail by the CESTAT in the case of *M/s Gujarat Ambuja Cements Ltd. vs CCE, Ludhiana [2007 (006) STR 0249 Tri-D]*. In this case, CESTAT has made the following observations:-

"the post sale transport of manufactured goods is not an input for the manufacturer/consignor. The two clauses in the definition of 'input services' take care to circumscribe input credit by stating that service used in relation to the clearance from the place of removal and service used for outward transportation upto the place of removal are to be treated as input service. The first clause does not mention transport service in particular. The second clause restricts transport service credit upto the place of removal. When these two clauses are read together, it becomes clear that transport service credit cannot go beyond transport upto the place of removal. The two clauses, the one dealing with general provision and other dealing with a specific item, are not to be read disjunctively so as to bring about conflict to defeat the laws' scheme. The purpose of interpretation is to find harmony and reconciliation among the various provisions".

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

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

"place of removal" means-

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

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

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

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

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

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

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

"17. Now we are to consider the facts of the present case as to find out when did the transfer of possession of the goods to the buyer occur or when did the property in the goods pass from the seller to the buyer. Is it at the factory gate as claimed by the appellant or is it at the place of the buyer as alleged by the Revenue? In this connection it is necessary to refer to certain provisions of the Sale of Goods Act, 1930. Section 19 of the Sale of Goods Act provides that where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred. Intention of the parties are to be ascertained with reference to the terms of the contract, the conduct of the parties and the circumstances of the case. Unless a different intention appears; the rules contained in Sections 20 to 24 are provisions for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer. Section 23 provides that where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be expressed or implied and may be given either before or after the appropriation is made. Sub-section (2) of Section 23 further provides that where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purposes of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract."

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

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

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


"19. Property passes when intended to pass.—

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

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

8. In view of the above provisions of Sale of Goods Act, 1930, it is clear that the title of the goods passes from the seller to the buyer at such time as the parties to the contract intend to be transferred. The intention of the parties is to be ascertained with reference to the terms of the contract, the conduct of the parties and the circumstances of the case. In the present case, the appellant has produced representative sample copy invoices issued to some buyers, corresponding purchase orders placed by the buyers, insurance policy, etc. to substantiate their claim that the transactions were on F.O.R. basis and that they satisfy the conditions stipulated under the provisions of the Act, Rules framed thereunder and instructions issued in this regards. The scanned image of sample Purchase Order No. 2900005474 dated 01.04.2014 placed by the buyer M/s. MRF Limited, Chennai is re-produced as under:-

C-PUR-PO-01

 MRF Limited New no: 114 (Old no: 124) Greaves Road, Chennai 600 005 Phone: 91-44-28297777 Fax: 91-44-28294089	SCHEDULING AGREEMENT -2900005474 AMENDMENT																																	
	Order Date: 01.04.2014 MRF SALES TAX REG.NO CST TIN EDC	Version: 2 3205022604 3205022604 AAACM41542RM006																																
Please execute this order to the terms & conditions herein and overleaf. Materials should conform to our latest specifications already issued to you. Test Reports should accompany all consignments. The copy of same should also be sent to our Corporate Technical dept. Original invoices for payment should be sent to the concerned unit of despatch marking PLANT ACCOUNTS MANAGER. For all Ex Works despatches transport should be made only through MRF approved carriers. Despatches should be made in line with our delivery schedules only. Despatch particulars to be sent by email to purchase dept at Chennai and to the concerned unit. Wherever Excise duty has been charged, Duplicate for Transporter copy should accompany the consignment mentioning in the way bill that the same is enclosed. Our Purchase order and Material code must appear on all invoices and correspondences etc.																																		
TO MADHU SILICA PVT LTD PLOT NO 53, 55, 56, 5B G I O C ESTATE CHITRA BHAVNAGAR 364004 GUJARAT	Supplier Code : 100106	Invoice To/Ship to Address Page 1 of 2 MRF LIMITED - KOTTAYAM P B NO.2, VADAVATHOOR POST KOTTAYAM Kottayam 686010 KERALA																																
Payment Term: Bank Transfer 90 days on despatch Currency: INR	IncoTerms: FOR MRF LTD Validity from: 01.04.2014 to 31.03.2015																																	
<table border="1"> <thead> <tr> <th>Sl. No</th> <th>Item Code</th> <th>Item Description</th> <th>U.O.M</th> <th>Rate</th> <th>PerUnit</th> <th>Quantity</th> <th>Total Price</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>M2466</td> <td>POWDER SILICA ED :12.00 % BED+2.00 % CESS+1.00 % Hr. Edn.CESS (extra) CST 2.00 % extra Price changed from INR 52.96 / 1 KG to INR 54.46 / 1 KG with effect from 01.10.2014</td> <td>KG</td> <td>54.46</td> <td>1</td> <td>30,000</td> <td>1,633,800.00</td> </tr> <tr> <td>2</td> <td>M2468</td> <td>PRECIPITATED SILICA ED :12.00 % BED+2.00 % CESS+1.00 % Hr. Edn.CESS (extra) CST 2.00 % extra Price changed from INR 52.96 / 1 KG to INR 54.46 / 1 KG with effect from 01.10.2014</td> <td>KG</td> <td>54.46</td> <td>1</td> <td>1,500,000</td> <td>81,690,000.00</td> </tr> <tr> <td colspan="3"> Amend: Order Value </td> <td>INR</td> <td></td> <td></td> <td></td> <td>83,323,800.00</td> </tr> </tbody> </table>			Sl. No	Item Code	Item Description	U.O.M	Rate	PerUnit	Quantity	Total Price	1	M2466	POWDER SILICA ED :12.00 % BED+2.00 % CESS+1.00 % Hr. Edn.CESS (extra) CST 2.00 % extra Price changed from INR 52.96 / 1 KG to INR 54.46 / 1 KG with effect from 01.10.2014	KG	54.46	1	30,000	1,633,800.00	2	M2468	PRECIPITATED SILICA ED :12.00 % BED+2.00 % CESS+1.00 % Hr. Edn.CESS (extra) CST 2.00 % extra Price changed from INR 52.96 / 1 KG to INR 54.46 / 1 KG with effect from 01.10.2014	KG	54.46	1	1,500,000	81,690,000.00	Amend: Order Value			INR				83,323,800.00
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Shipping Instructions :																																		
Verified by		For MRF Limited AUTHORISED SIGNATORY																																

Regd. Office: MRF LTD, 114 Greaves Road, Chennai-600 006. Tel: 28292777, Fax: 91 44 28294089, www.mrfyres.com.
 CIN : L25111TN1950PLC004306

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GENERAL TERMS AND CONDITIONS OF PURCHASE

CASH DISCOUNT

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

PRICE AND PAYMENT

2. No change may be made in terms, conditions, specifications or prices appearing on the order without the written permission of the buyer. Rates quoted shall be inclusive of packing and delivery charges, unless specified otherwise.
3. All payments will be made by cheque. Terms of payment shall be stated in this order and delay in payment caused by the failure of the seller to comply with the terms and conditions, shall be excused on the grounds of such failure.

INVOICE

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

INSPECTION

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

INTEREST ON ADVANCE FOR DELAYED DELIVERY

7. In the case of advance payment made against the order, if the delivery is delayed beyond the agreed date, interest @ 10% p.a. will be charged on the advance amount for the delay period.

CANCELLATION OR DEFERMENT OF DELIVERY

8. Rejected goods should be taken back by the supplier within 7 days of intimation. Buyer is not responsible for storage of rejected goods and if the seller delays taking delivery within the said period of 7 days, the buyer shall be entitled to storage charges but shall not be liable for any deterioration of the goods.
9. The order may be cancelled by the buyer at any time in the event of the seller being in default of any terms and conditions on the order and henceforth, and in case of such cancellations, the seller shall not be entitled to any costs of damages. In case of delay in delivery, we will have the option to cancel the order.
10. The buyer reserves the right to cancel or amend the order or any parts thereof by reason of change in process of manufacture or any reasons beyond the control of the buyer.
11. In the event of buyer's normal course of manufacture being interrupted, restricted, hindered or delayed by any cause whatsoever beyond control of the buyer or by any exceptional cause whatsoever, the buyer is at liberty to defer the date or dates of delivery. If the delivery is deferred as mentioned above, the price applicable shall be the contract price or the ruling market price, whichever is lower.

MISCELLANEOUS

12. The seller in accepting this order agrees to comply with all the state laws applicable to the manufacture and sale of the products specified herein.
13. The buyer assumes no obligations in relation to goods delivered in excess of those specifically ordered.
14. All materials are to be delivered full in the place specifically mentioned in the purchase order free of delivery and unloading charges.
15. BRF Ltd. is not responsible for any order placed by unauthorized persons.
16. Time shall be the essence of this contract.
17. All orders placed by the buyer are strictly confidential. The seller must not publish or cause to be published by any means whatsoever any details concerning the goods the subject of this order without the previous consent in writing of the buyer.
18. All disputes with regard to this order will be subject to the jurisdiction of a court in Chennai city.
19. As per Standard Weights and Measures Act, 1976 under noted details must be mentioned in all packaged commodities:
 1. Name and Address of the manufacturer.
 2. Name of the commodity.
 3. Quantity, Size of the commodity.
 4. Month and year of manufacture / Packaging.
 5. Selling price of the commodity by printing / affixing.
20. In case of any inconsistency between these terms and conditions and the terms appearing in the purchase order, then the purchase order terms shall have precedence over these terms and conditions.

[Handwritten signature]

8.1 The scanned image of Invoice No. MSPL/0729 dated 09.10.2014 issued by the appellant to the said buyer is re-produced as under:-

Copy

RETAIL INVOICE

MADHU SILICA PVT. LTD.
H.G.D. CENTRAL BHAVNAGAR-382004 GUJARAT - INDIA

**REGD. OFFICE-PLOT NO.147, GIDC,
VATEJ, BHAVNAGAR-364060 GUJARAT**
PH: 0278-2541766/2541856 FAX: 0278-2541388
E-mail: madhusilica@madhusilica.com
Website: www.madhusilica.com
CIN: U24999GJ1997PTC000073

INVOICE
Removal of Excisable Goods From Factory : Rule 11

INVOICE NO. MSPL/0729
INVOICE DATE:09/10/2014

Consignee Address	MRF LIMITED., KOTTAYAM VADAVATHOOR P.O. KOTTAYAM	Excisable Commodity	Precipitated Silica
	KOTTAYAM - 686010 KERALA	VAT TIN	24140200653-01.07.2002
E.C.C. No.	AAACM 4154G XM006	CST TIN	24840200653-01.07.2002
P.A.N. No.	AAACM4154G	EC Code No.	AABCM4381JXM001
VAT TIN.	32050228094V DT 01 04 2005	Service Tax No.	AABCM4381JST004
CST TIN.	32050228094C DT 01 04 2005	Bank Code No.	007
Account	MRF LIMITED., KOTTAYAM.	P.L.A. No.	95RAJ94-95
		P.A.N. No.	AABCM4381J
P.O.No.	39005474	Tariff H. No.	CH 38 S.H. NO. 36249025
Due Date	06/01/2015	Location Code	770101
Transport	CHETAK ROADWAYS	C.Ex. Reg. No.	AABCM4381JXM001
L.R. No.	3807	Range	AR 1
Truck No.	GJ-8VW-4825	Commissionerate	BHAVNAGAR
Freight Type	FREIGHT PAID 97000	Dy. Commis Of C.Ex.	43 HARIYALA PLOT, BHAVNAGAR
		Supt. Of C.Exclse	43 HARIYALA PLOT, BHAVNAGAR
		Alc. Code Under Which Duty is Paid	00380020

Description and Specification of Goods	No. of Package Bags	Total Qty. of Goods (Kil)	Price Per Kg (Rs.)	Add. Ded. cts 4 Cash Disc. (%)	Assessable Value Per Kg (Rs.)	Total Assessable Value (Rs.)
	(1)	(2)	(3)	(4)	(5)	(7)
PRECIPITATED SILICA MPL 200 (Q) ITEM CODE NO: V2468 SUPPLIER CODE NO: 65529 HSN Code : []	520	13,000.000	54.4600	0.00	54.4600	7,07,980.00

Against Form No.	C	Total Assessable Value	7,07,980.00
Excise Duty Rupees	Eighty Four Thousand Nine Hundred Fifty Eight Only	Excise Duty 12.00 %	84,958.00
Edu. CESS Rupees	One Thousand Six Hundred Ninety Nine Only	Edu. Cess 2.00 %	1,699.00
Sec. & H.Edu CESS Rs.	Eight Hundred Fifty Only	Sec. & H.Sec.Edu.Cess 1.00 %	850.00
Bill Amount Rupees	Eight Lakh Eleven Thousand Three Hundred Nirty Seven Only	Sub Total	7,95,487.00
Document Through	DIRECT	CST 2 %	15,910.00
Delivery Through	DOOR	Freight	—
Booked At	KOTTAYAM	GRAND TOTAL	8,11,397.00
LOT NO:12189			

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

E.NO. & DATE OF P.L.A.	Duty Payable Under		For, MADHU SILICA PVT. LTD.
E.NO. & DATE OF RIG 23A PART II	Rule 8 OF CER 2002		<i>[Signature]</i>
Date & Time of Preparation	09/10/2014	18:32	AUTHORISED SIGNATORY
Date & Time of Removal	09/10/2014	21:35	

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

General Terms and Condition of Purchaser which state that,

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

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

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

[Emphasis supplied]

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

"8. Having heard learned counsel for the parties and considering the facts and circumstances of this case, we are of the considered view that as long as the sale of the goods is finalized at the destination, which is at the doorstep of the buyer, the change in definition of 'input service' which came into effect from 1-4-2008 would not make any difference. A perusal of invoices makes it clear that the goods were to be delivered and sale completed at the address of the

buyer and no additional charge was levied by the assessee for such delivery. From these facts it is clear that the sale was completed only when the goods were received by the buyer. The Circular dated 20-10-2014 issued by the Central Board of Excise and Customs also, in paragraph-6 makes it clear that 'payment of transport, inclusion of transport charges in value, payment of insurance or who bears the risk are not the relevant considerations to ascertain the place of removal.'

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

[Emphasis supplied]

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

"18. Bearing in mind the above judicial pronouncements, if we revert back to the definition of the term 'input service', as already noticed, it is coined in the phraseology of 'means and includes'. Portion of the definition which goes with the expression means, is any service used by the manufacturer whether directly or indirectly in or in relation to the manufacture of final products and clearance of final products from the place of removal. This definition itself is wide in its expression and includes large number of services used by the manufacturer. Such service may have been used either directly or even indirectly. To qualify for input service, such service should have been used for the manufacture of the final products or in relation to manufacture of final product or even in clearance of the final product from the place of removal. The expression 'in relation to manufacture' is wider than 'for the purpose of manufacture'. The words 'and clearance of the final products from the place of removal' are also significant. Means part of the definition has not limited the services only upto the place of removal, but covers services used by the manufacturer for the

clearance of the final products even from the place of removal. It can thus be seen that main body of the definition of term 'input service' is wide and expansive and covers variety of services utilized by the manufacturer. By no stretch of imagination can it be stated that outward transportation service would not be a service used by the manufacturer for clearance of final products from the place of removal."

[Emphasis supplied]

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

"2. The issue pertains to Cenvat credit on outward goods transportation agency service availed by the assessee for transportation of manufactured goods. This issue is covered by the judgment of Division Bench of this Court in case of Commissioner of Central Excise & Customs v. Parth Poly Wooven Pvt. Ltd. reported in 2012 (25) S.T.R. 4, in which the following observations have been made :

21. We must, however, for our curiosity reconcile the expression "from the place of removal" occurring in the earlier part of the definition with words 'up to the place of removal' used in inclusive part of the definition. Counsel for the assessee submitted that when a manufacturer transports his finished products from the factory without clearance to any other place, such as godown, warehouse etc. from where it would be ultimately removed, such service is covered in the expression 'outward transportation up to the place of removal' since such place other than factory gate would be the place of removal. We do appreciate that this could be one of the areas of the application of the expression 'outward transportation up to the place of removal'. We are unable to see whether this could be the sole reason for using such expression by the Legislature.

22. Be that as it may, we are of the opinion that the outward transport service used by the manufacturer for transportation of finished goods from the place of removal up to the premises of the purchaser is covered within the definition of "input service" provided in Rule 2(i) of the Cenvat Credit Rules, 2004.

3. This Tax Appeal is, therefore, dismissed."

[Emphasis supplied]

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

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

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

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

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

(कुमार संतोष)
आयुक्त (अपील्स)