



::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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रजिस्टर्ड डाक ए. डी. द्वारा :-

क अपील / फाइल संख्या /  
Appeal / File No.  
V2/92/BVR/2017

मूल आदेश सं /  
O.I.O. No.  
BHV-EXCUS-000-JC-69-2016-17

दिनांक /  
Date  
10.02.2017

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

**BHV-EXCUS-000-APP-196-2017-18**

आदेश का दिनांक /  
Date of Order:

09.03.2018

जारी करने की तारीख /  
Date of issue:

15.03.2018

Passed by **Shri P. A. Vasave, Commissioner, CGST & Central Excise, Kutch(Gandhidham)**

अधिसूचना संख्या २६.१७/दिनांक (टी.एन) शु.उ.के-२०१७/१० २०१७ के साथ पढे बोर्डे ऑफिस आदेश सं . दिनां .टी.एस-२०१७/०७क १६ के अनुसरण में २०१७.११.श्री पी. ए. वसावे ,आयुक्त, केन्द्रीय वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, कच्छ (गांधीधाम), को वित्त अधिनियम १९९४ की धारा ८६ केन्द्रीय उत्पाद शुल्क के ३५की धारा १९४४ अधिनियम अंतर्गत दर्ज की गई अपील 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 P. A. Vasave, Commissioner, CGST & Central Excise, Kutch(Gandhidham), 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/ भावनगर। 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/ Bhavnagar :

घ **अपीलकर्ता & प्रतिवादी का नाम एवं पता / Name & Address of the Appellants & Respondent :-**

**M/s Unifrax India Limited, 99 Km. Stone , Ahmedabad- Surendranagar Highway, Lakhtar Dist : Surendranagar**

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके से 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 अपील के अलावा शेष सभी अपील सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, . द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- ३८००१६ को की जानी चाहिए ।/

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 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) 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 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 आरम्भ 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 की पुनरीक्षण आवेदन :

**Revision application to Government of India:**

इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामले में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम पैरतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, ससद 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 प्रसस्करण 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 इयूटी 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 समायाविधि 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 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, उपरोक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पेटी 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 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 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-1 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.

(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलाधी विभागीय वेबसाइट [www.cbec.gov.in](http://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](http://www.cbec.gov.in)



**:: ORDER-IN-APPEAL ::**

M/s. Unifrax India Pvt. Ltd. (formerly known as M/s. Unifrax India Ltd.), 99 K.M. Stone, Ahmedabad-Surendranagar Highway, Lakhtar-382775, Dist. Surendranagar (hereinafter referred to as 'the appellant') have filed this appeal against Order-In-Original No.BHV-EXCUS-000-JC-69-2016-17 dated 10.02.2017 (hereinafter referred to as the 'impugned order) passed by the Joint Commissioner, Central Excise & Service Tax, Bhavnagar (hereinafter referred to as 'the Adjudicating authority) confirming the demand / recovery of Central Excise duty of Rs.44,67,498/- under the provisions of Section 11A, interest under Section 11AB/11AA and penalty of Rs.44,67,498/- under Section 11AC of the Central Excise Act,1944.

2. Being aggrieved with the impugned order, the appellant filed the present appeal on the following grounds:

(i) The transit freight charges incurred for transportation of finished excisable goods from their factory to destination and collected from buyers of the excisable goods is excluded from Assessable Value / Place of Removal under Section 4 read with Rule 5 of the Central Excise Valuation Rules, 2000.

(ii) The appellant has relied on various case laws as per appeal memorandum.

3. Subsequently, in pursuance of 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, the instant appeal has been taken on hand for passing Order-In-Appeal.

4. Personal hearing in the case was fixed on 06.02.2018. The appellant vide their letter dated 20.01.2018 requested for speaking order with waiver of personal hearing. Therefore, the case has been taken for disposal on merit and documents available on record.

5. I find that in case of instant appeal, the impugned order was received by the appellant on 23.02.2017 and date of filing of appeal is 17.04.2017. Hence, the appeal have been filed within the stipulated time period and there is no delay in filing the appeal. The condition of pre-deposit also stand fulfilled.

6. I have gone through the grounds of appeal in the appeal memorandum, statement of facts and records available on file.

7. I find that the issue in this case is whether the freight charges collected after the delivery of goods should be included or not in the transaction value of the goods and whether the appellant's or that of the buyer's premises has to be treated as the "place of removal".
8. I have carefully gone through the record. I find that the during course of audit, it was noticed that the appellant has undergone contracts with their customers and was supplying the finished goods to their various customers on "FOR/Door Delivery" basis. The words "Door Delivery" figured on each of the invoices and on verification of invoices issued by the appellant, it was observed that the appellant have charged certain amounts towards freight from all the customers but they have not included the respective freight amounts in the assessable value for the purpose of discharging the Central Excise duty.
9. I find that the appellant have been issued Show Cause Notice dated 05.06.2014 alleging that the freight charges are required to be added in the assessable value of the goods as the selling of the goods is on FOR basis. The said SCN was adjudicated vide OIO No.BHV-EXCUS-000-ADC-042 dated 26.02.2015 dropped the entire proceedings proposed in the said SCN dated 05.06.2014 hold that freight charges are not required to be added in the assessable value of the goods as the place of removal is factory gate and price agreed by the buyer and seller is on FOR basis.
10. I find that being aggrieved by the above said OIO dated 26.02.2015, the department preferred appeal before Commissioner (Appeals-III), Rajkot, who in turn vide OIA No.BHV-EXCUS-000-APP-087-2016-17 dated 23.06.2016 remanded the matter to the original adjudicating authority to decide the case afresh and in denovo proceedings the adjudicating authority issued the impugned order, which has been appealed by the appellant.
11. I find that the adjudicating authority has in his findings made reference of Board's Circular No.988/12/2014-CX dated 20.10.2014 and further clarification issued vide Circular No.999/6/2015-CX dated 25.02.2015 to determine the 'Place of Removal' and to ascertain the real nature of sale and purchase, examined the related Purchase Orders and Invoices in the denovo proceedings.
12. I find that the adjudicating authority after said verification held that the terms of delivery mentioned in the invoices is "Door Delivery"; the freight mentioned in the invoices are on paid to be billed basis ; terms of payment is 100% against GRN(Receipt & Acceptance Material) and materials have not been supplied 'Ex-

factory' as claimed by the noticee; there is no advance payment or payment at the time of delivery of goods has been made by the buyer in any of the purchase order ; therefore payment of goods by the buyer is made only after the goods are received by them and accepted by them for further process; the actual ownership of the goods was transferred only when the buyers have accepted the goods and paid amount alongwith freight charges; further in all the purchase orders supplied by the appellant, the terms of payment is after receipt of goods, thus, the actual sale of goods is at the buyers premises and not at the factory gate of the appellant.

13. I find that the adjudicating authority also made reference of the judgment of Supreme Court on which the appellant relied heavily and held that intent of apex court is clear that the benefit can only extended when the factory is the place of removal ; that charges of outward freight and insurance are to be included only when such charges are incurred before the 'place of removal'; thus if such charges are incurred after 'place of removal' of manufactured goods, then in that case, such charges are to be excluded from 'Transaction Value'. Considering the above discussion, the adjudicating authority confirmed the central excise duty demand alongwith interest and imposed penalty upon the appellant.

14.1 Now, I take up the legal position on the issue. I find that the Board has issued Circular No.988/12/2014-CX dated 20.10.2014 and further clarification vide Circular No.999/6/2015-CX dated 25.02.2015 which clarified 'place of removal' as follows:

*"It is reiterated that the place of removal needs to be ascertained in terms 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 consideration 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".*

14.2 I find that the above circular refers to Section 23 of the Sale of Goods Act, 1930 and clarifies that the transfer of property in goods from the seller to the buyer would be the relevant factor to determine the "place of removal". Accordingly the 'place of removal' is the 'place of sale' and 'place of sale' is the time at which the title of the property in the goods is to pass to the buyer.



14.3 I find that as observed by the audit as well as verification made during denovo proceeding by the adjudicating authority the words "Door Delivery" figured on each of the invoices shows that the ownership of goods was lying with the appellant till delivery of goods at the doorstep of the buyers and in such cases the 'place of removal' will be the buyer's premises.

14.4 I find that the appellant have relied upon the judgment of Hon'ble Supreme Court related to case law of M/s. Ispat Industries Ltd. V/s CCE Nagpur [2015 (324) ELT 670 (SC)]. I find that the apex court held that while dealing with place of removal in relation to Section 4 in para 17 had observed as :

*"23. It is clear, therefore, that on and after 14-5-2003, the position as it obtained from 28-9-1996 to 1-7-2000 has not been reinstated. Rule 5 as substituted in 2003 also confirms the position that the cost of transportation from the place of removal to the place of delivery is to be excluded, save and except in a case where the factory is not the place of removal"*

*In view of above observation, I find that in the instant case, the factory gate is not the place of removal and therefore I am of the considered view that the cost of transportation is includible in the assessable value. To buttress my view point attention is also drawn to the decision of Hon'ble Supreme Court in the Civil Appeal No.5541 of 2004 in the case of CCE Aurangabad V/s M/s. Roofit Industries [2015 (319) ELT 221 (SC)], wherein the apex court has allowed the departmental appeal restoring the order passed by the adjudicating authority.*

14.5 I further find that the appellant have relied upon the decision of Commissioner (Appeals-I), CCE & ST, Vadodara in the case of M/s. Hystuff Steels Pvt. Ltd. I find that the issue in this case is the appellant has delivered the goods to their buyer without any purchase order on Ex-site basis using his own trucks and was recovering the transportation costs from the buyers on the invoices, which is different from the present issue and hence not squarely applicable.


15. In view of the foregoing, I find that the adjudicating authority has appropriately held that contract of sale fixed price in FOR destination forms, terms of delivery mentioned in the invoices is "Door Delivery", the freight mentioned in the invoices are on paid to be billed basis, terms of payment is 100% against GRN (Receipt & Acceptance Material) and materials have not been supplied 'Ex-factory' as claimed by the appellant. Since the price of the goods are not ex-works and the disputed freight is separately payable by the buyer which is collected on the invoice, the plea by the appellant that the freight



incurred by them are not includible in the assessable value as per Section 4 read with Rule 5 of the Central Excise Valuation Rules, 2000 cannot be accepted.

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

17. The appeal filed by the appellant stands disposed off in above terms.

  
(P. A. Vasave)  
Commissioner (Appeals)/  
Commissioner  
CGST & Central Excise,  
Kutch (Gandhidham)

F. No. V.2/92/BVR/2017

Date: 09.03.2018

**By Regd. Post A.D. / Speed Post**

To,

M/s. Unifrax India Pvt. Ltd.  
(formerly known as M/s. Unifrax India Ltd.),  
99 K.M. Stone,  
Ahmedabad-Surendranagar Highway,  
Lakhtar-382775, Dist. Surendranagar.

**Copy to:**

1. The Chief Commissioner, CGST & C.Ex., Ahmedabad Zone, Ahmedabad.
2. The Commissioner, CGST & C.Ex., Bhavnagar.
3. The Additional Commissioner, CGST & C.Ex.(System), Bhavnagar
4. Joint Commissioner CGST & C.Ex., Bhavnagar.
5. Guard file.