

197



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

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No. V2/31/BVR/2017	मूल आदेश सं / O.I.O. No. 31/AC/Rural/RR/2016-17	दिनांक / Date 20-12-2016
---	---	---	--------------------------------

62-8705274

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

BHV-EXCUS-000-APP-255-2017-18

आदेश का दिनांक / Date of Order:	26.03.2018	जारी करने की तारीख / Date of issue:	05.04.2018
------------------------------------	------------	--	------------

Passed by **Dr. Balbir Singh, Additional Director General (Taxpayer Services), Ahmedabad Zonal Unit, Ahmedabad.**

अधिसूचना संख्या २६/२०१७-के.उ.शु. (एन.टी.) दिनांक १७.१०.२०१७ के साथ पढ़े बोर्डे ऑफिस आदेश सं. ०५/२०१७-एस.टी. दिनांक १६.११.२०१७ के अनुसरण में, डॉ. बलबीर सिंह, अपर महानिदेशक करदाता सेवाएँ, अहमदाबाद जोनल यूनिट को विल्ट अधिनियम १९९४ की धारा ८५, केन्द्रीय उत्पाद शुल्क अधिनियम १९४४ की धारा ३५ के 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, Dr. Balbir Singh, Additional Director General of Taxpayer Services, Ahmedabad Zonal Unit, Ahmedabad has been appointed as Appellate Authority for the purpose of passing orders in respect of appeals filed under Section 35 of Central Excise Act, 1944 and Section 85 of the Finance Act, 1994.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham :

घ **अपीलकर्ता & प्रतिवादी का नाम एवं पता / Name & Address of the Appellants & Respondent :-**
M/s Reliance Defence and Engg. Ltd., [earlier known as Pipavav Defence and Offshore Engg. Co. Ltd (EOU)], Pipavav Port, Post - Uchhaiya, Via - Rajula , Dist : Amreli,

इस आदेश(अपील) से व्यक्ति 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 विल्ट 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, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

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

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

- (B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर 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 fee 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 दर्जे 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.

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

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

- धारा 11 डी के अंतर्गत रकम
- सेनवेट जमा की ली गई गलत राशि
- सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्ते 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 :

- amount determined under Section 11 D;
- amount of erroneous Cenvat Credit taken;
- amount payable under Rule 6 of the Cenvat Credit Rules

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

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

Revision application to Government of India:

इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परतुक 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 भगतान 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 भगतान 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 (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 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 साध्य 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 भगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भगतान 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 भगतान, उपरोक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पेट्री 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-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 ओर भी ध्यान आकर्षित किया जाता है। /
Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.
- (G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते 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. Reliance Defence and Engineering Ltd., 100% EOU (Earlier known as M/s. Pipavav Defence and Offshore Engineering Company Ltd.)(hereinafter referred to as "the appellant"), having Central Excise Registration No. AABCP1491LXM001 are engaged in the manufacturing of ship at Pipavav Port. The appellant is an Export Oriented Unit established vide letter of permission F. NO. KASEZ/100% EOU/II/39/2005-06 dated 04/04/2006 issued by the Development Commissioner, Kandla Special Economic Zone, Gandhidham and engaged in manufacture and repairing of ships for the purpose of export, as permitted by the Development Commissioner, Kandla Special Economic Zone, Gandhidham. The appellant has been granted license for private bonded warehouse under Section 58 of the Customs Act, 1962, that the appellant is entitled to import duty free materials for the manufacture and repairing of ships meant for export claiming exemption provided in Notification No. 52/2003-Cus. dated 31.03.2003 subject to conditions mentioned in the notification.

2. Briefly stated, the facts are that the appellant had filed monthly return in the form ER-2 with the jurisdictional Superintendent of Central Excise Range Office, Mahuva in which particulars of Cenvat credit availed were mentioned. Accordingly, the appellant was asked by the Range Superintendent to provide the documents on the basis of which Cenvat credit was taken by them during the period from August, 2011 to October, 2011. On scrutiny of the invoices submitted by the appellant, it was found that the EOU unit had taken cenvat credit wrongly, in excess / double and on being pointed out by the Range Officer vide letter dated 31.07.2012, the appellant reversed total amount of 49,51,427/- as intimated vide letter dated 14.08.2012. However, they had not paid interest amount of Rs. 11,01,136/- on wrongly taken cenvat credit. The SCN dated 10.07.2013 therefore, *inter-alia* demanded interest amount of Rs. 11,01,136/- in terms of Section 11AB (now Section 11AA) of the Central Excise Act, 1944 read with rule 14 of the Cenvat Credit Rules, 2004 and Section 75 of the Finance Act, 1994 and further proposed penalty from the appellant under the provisions of rule 15 of the Cenvat Credit Rules, 2004.

3. The SCN was adjudicated vide OIO No. 31/AC/Rural/BVR/RR/2016-17 dated 20.12.2016 by the Assistant Commissioner, Central Excise, Rural Division, Bhavnagar wherein the adjudicating authority ordered to recover interest of Rs. 11,01,136/- in terms of Section 11AB (now Section 11AA) of the Central Excise Act, 1944 read with Rule 14 of the Cenvat Credit Rules, 2004 and Section 75 of the Finance Act, 1994 and imposed penalty of Rs. 49,51,427/- under the provisions of Rule 15 of the Cenvat Credit Rules, 2004.

4. Feeling aggrieved, the appellant filed Appeal mainly on the following grounds.

- that the order passed by the adjudicating authority is without considering the relevant provisions of Rule 14 and 15 of the Cenvat Credit Rules, 2004.
- that the adjudication authority has confirmed the demand of interest without any justification and has failed to understand difference between the words 'avail' and 'taken' while making erroneous interpretation of Rule 14.
- that they had merely availed i.e. made book entry in the relevant register and therefore, it is erroneous to interpret or allege that they had taken or utilized wrongly availed cenvat credit.
- that Rule 14 of the Cenvat Credit Rules, 2004 has been substituted with effect from 17.03.2012 vide Notification No. 18/2012-CE (NT); that the mistake of wrong availment of cenvat credit was pointed out by the department only on 10.07.2013 and it had reversed the same on 14.08.2013, i.e. the date when

amended provisions were in force; that the words "taken or utilized" were substituted as the words "taken and utilized" vide Notification No. 18/2012-CE (NT) with a view to remove ambiguity arising out of the old Rule 14.

- that it has been held by different higher appellate forum that if any amendment is made in provision of law by 'substitution' with a view of bring clarity or to avoid confusion that may be prevailing in earlier provision, then such amendment by substitution in the law has retrospective effect and it has to be read and construed as if altered/substituted words were written into Act or Rules from its inception.
- that when order of recovery of interest on unutilized cenvat credit itself is erroneous, question of imposing penalty under Rule 15 of the Cenvat Credit Rules, 2004 does not arise
- that neither notice nor impugned order elucidate as to under which sub rule of Rule 15 penalty of Rs. 49,51,427/- has been imposed upon appellant.
- that under the provision of Rule 15(1), penalty can be imposed when assessee takes or utilizes cenvat credit wrongly on any input or capital goods or input service and they had not 'taken' or 'utilized' cenvat credit wrongly. Provisions of Rule 15(1) reveals that there is a provision that in such a case, all such goods shall be liable to confiscation and the person concerned shall be liable to a penalty not exceeding the duty or service tax on such goods or services or rupees two thousand whichever is greater. However, in the instant case, no goods are identified as liable to confiscation in the impugned notice. Therefore, in any case, amount of penalty under Rule 15(1) cannot exceed Rs. 2000/-.
- Further, the appellant in support of certain grounds of appeal, they have relied upon the various case laws also.

5. The appeal was filed before the Commissioner (Appeals), Rajkot. The undersigned has been nominated as Commissioner (Appeals) / Appellate Authority as regards to the case of appellant vide Board's Order No. 05/2017-Service Tax dated 16.11.2017 issued by the Under Secretary (Service Tax), G.O.I, M.O.F, Deptt of Revenue, CBEC, Service Tax Wing on the basis of **Board's Circular No. 208/6/2017-Service Tax dated 17.10.2017.**

6. Personal hearing was held on 09.03.2018. The consultant of the Appellant Shri P. D. Rachchh appeared for PH before me and reiterated earlier submissions. He further requested to decide the case in their favour in view of many cited judgments of various High Courts, especially 2012 (279) ELT 209 (Kar)-CCE, LTU, Bangalore v/s. Bill Forge Pvt. Ltd. and 2014 (310) ELT-509 (Mad.)-CCE, Madurai v/s. Strategic Engg. (P) Ltd.

7. I have carefully gone through the facts of case, the grounds mentioned in the appeal and the submissions made by the appellant. The question to be decided in the appeal is whether the interest of Rs. 11,01,136/- is liable to be recovered on the wrongly taken cenvat credit of Rs. 49,51,427/- in terms of Section 11AB (now Section 11AA) of the Central Excise Act, 1944 read with rule 14 of the Cenvat Credit Rules, 2004 and Section 75 of the Finance Act, 1994 and penalty of Rs. 49,51,427/- can be imposed under the provisions of Rule 15 of the Cenvat Credit Rules, 2004 or otherwise.



8. I have observed that the appellant had taken cenvat credit of Rs. 49,51,427/- wrongly, which was reversed by them on being pointed out by the range officer. The said cenvat credit was availed by the appellant prior to 2012. Rule 14 of Cenvat Credit Rules, 2004 at the relevant time reads as under :

RULE 14. Recovery of CENVAT credit wrongly taken or erroneously refunded— Where the CENVAT credit has been taken or utilized wrongly or has been erroneously refunded, the same along with interest shall be recovered from the manufacturer or the provider of the output service and the provisions of sections 11A and 11AB of the Excise Act or sections 73 and 75 of the Finance Act, shall apply mutatis mutandis for effecting such recoveries."

Relevant portion of Section 11AB of the Central Excise Act, 1944 (now converted in Section 11AA):

"Interest on delayed payment of duty –(1) Where any duty of excise has not been levied or paid or has been short-levied or short paid or erroneously refunded, the person who is liable to pay the duty as determined under sub-section (2), or has paid the duty under sub-section (2B) of Section 11A, shall, in addition to the duty be liable to pay interest at such rate of Section 11A till the date of payment of such duty;

9. A plain reading of the above indicates that Rule 14 specifically provides that the manufacturer or the provider of the output service becomes **liable to pay interest** along with the duty where cenvat credit has been taken or utilized wrongly or has been erroneously refunded.

10. The Hon'ble Supreme Court of India in the case of Union of India V/s. Ind-Swift Laboratories Ltd. reported at 2011 (265) E.L.T. 3 (SC) has taken a similar view in the matter.

Union of India V/s. Ind-Swift Laboratories Ltd. :

Interest-Cenvat/Modvat- Interest on irregular credit whether arises from date of availing such credit or date of utilization-Rule 14 of Cenvat credit Rules, 2004 of Cenvat Credit Rules, 2004 specifically providing for interest when cenvat credit taken or utilized wrongly or erroneously refunded, hence, interest on irregular credit arises from date of taking such credit. Rule 14 ibid clear and unambiguous-No reason to read the word "or" appearing in Rule 14 ibid between expressions 'taken' or 'utilised wrongly' or has been 'erroneously refunded' as "and" by way of reading it down- credit recoverable with interest on happening of any of the three specified circumstances – High Court erroneously held that interest cannot be claimed from date of wrong availment-Attempt by High Court to read down provision by substituting "or" by "and" to give relief to assessee, erroneous.

11. With regard to appellant's argument that they had merely availed i.e. made a book entry in the relevant register and therefore, it is erroneous to interpret or allege that they had taken or utilized the cenvat credit, the same does not appear to be correct as Cenvat Credit is not physical element. **For Cenvat Credit, the only method to take credit is to take its entry in Books of Account or Cenvat Credit Account. Thus, considering meaning of "taken", entry in books is sufficient and its utilization is not necessary.** Thus, it can be said that Rule 14 itself is competent for levy of interest, however, for recovery Section 11AB is used with work mutatis mutandis i.e. Section 11AB is used with necessary change for recovery under Rule 14 of Cenvat Credit Rules, 2004. Further, the said issue has been clarified by the Board vide circular No. 942/03/2011-CX dated 14.03.2011.

12. With regard to the appellant's contention for rate of interest for the cenvat credit payable for the period prior to 01.04.2011 @ 13%, I find that applicable rate of interest for Central Excise/Cenvat Credit payable during the period prior to 01.04.2011 was 13% as provided under Notification No. 66/2003-CE (NT) dated 12.09.2003. The said rate of interest was increased to 18% vide Notification No. 6/2011-CE (NT) dated 01.03.2011. Hence, I find that it cannot be made applicable to the amount payable prior to 01.04.2011 but paid after 01.04.2011 on the ground that law prevailing at the time when

duty/cenvat credit became payable is relevant not the law effective on the date of payment.

13. In view of the above, I find appellant liable for interest. Therefore, I order to recover interest @13% for the cenvat credit payable prior to 01.04.2011 and @ 18% for the period after 01.04.2011 till the date of reversal.

14. With regard to imposition of penalty under provisions of Rules 15 of Cenvat Credit Rules, 2004, I find that the Show Cause Notice has been issued for recovery of interest and not for amount of cenvat credit wrongly taken which was subsequently reversed. So, it can be seen that neither duty has been demanded in Show Cause Notice, nor duty has been confirmed in order portion of Order in Original. Thus, in absence of valid demand notice or its confirmation, imposition of penalty is not justified.

15. Accordingly, I set aside the penalty imposed upon the appellant under the impugned order.

16. Accordingly, the appeal filed by the appellant in the instant case stands disposed off in the above terms.



(Dr. Balbir Singh)

Additional Director General (DGTS),

AZD Ahmedabad

Date: /03/2018

F.No. V2/31/BVR/2017

BY RPAD.

To,

M/s. Reliance Defence & Engineering Ltd.,
(Earlier known as M/s. Pipavav Defence & Offshore
Engineering Co. Ltd.),
Pipavav Port, Post, Uchhaiya,
Dist.-Amreli-365 560.

Copy to :

1. The Chief Commissioner, CGST & Central Excise, Ahmedabad Zone.
2. The Commissioner, CGST & Central Excise, Bhavnagar/ Commissioner (Appeals), Rajkot.
3. The Jurisdictional Divisional Assistant Commissioner, Bhavnagar.
4. The Jt/Addl Commissioner, Systems, CGST, Rajkot
5. Guard File.