



::आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE,



द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan,
 रेस कोर्स रिंग रोड, / Race Course Ring Road,
 राजकोट / Rajkot - 360 001

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रजिस्टर्ड डाक ए. डी. द्वारा :-

क्र	अपील / काइल संख्या / Appeal / File No.	मूल आदेश नं / O.O. No.	दिनांक / Date
	V2/103/RAJ/2011	01/ADC/2011	06.01.2011
	V2/323/RAJ/2010	08/ADC/2010	29.03.2010

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

KCH-EXCUS-000-APP-123-TO-124-2017-18

आदेश का दिनांक /
Date of Order: **11.12.2017** जारी करने की तारीख /
Date of issue: **12.12.2017**

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

ग) अथ आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जामनगर / गांधीधाम द्वारा उपरोक्तित जात मूल आदेश से शक्ति।

Arising out of above mentioned O/O issued by Additional/Joins/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham

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

M/s. Sanghi Industries Limited (Cement Division),Grinding Unit, Sanghipuram, PO Motiber Taluka Abdasa, Kutch,

इस आदेश(अपील) से व्यभिक्त कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/
 Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित उपाय 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) विशेषण मूल्यव्यंजक से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जाती 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 पीठिबन्ध, , द्वितीय तल, बहमाली भवन असावा अहमदाबाद- 380016 को की जाती चाहिए। /

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bahamali Bhawan, Asawa 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 फिए गवे फॉर्म EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की राशि, व्याज की राशि 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/- रुपए, 5,000/- रुपए अथवा 10,000/- रुपए 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। उभयपक्ष अपील (स्टे ऑर्डर) के लिए आवेदन-पर के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

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

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमावली, 1994, के नियम 9(1) के तहत निर्धारित फॉर्म S.T.-5 में चार प्रतियों में की जा सकती एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रामाणिक होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की राशि, व्याज की राशि 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/- रुपए, 5,000/- रुपए अथवा 10,000/- रुपए 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। उभयपक्ष अपील (स्टे ऑर्डर) के लिए आवेदन-पर के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Asst. 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) क्विंट अपीलेशन, 1994 की धारा 86 की उप-धारा (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमावली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित फॉर्म S.T.-7 में की जा सकती एवं उसके साथ अनुसूक्त, केन्द्रीय उत्पाद शुल्क अध्याय अनुसूक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (अपने से एक प्रति प्रस्तुत होगी चाहिए) और अनुसूक्त द्वारा महासक अनुसूक्त अध्याय अनुसूक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, को अपील 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 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 अपील न्यायाधिकरण (सेस्टैट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अपीलेशन 1994 की धारा 35एफ के अंतर्गत, जो की वित्तीय अपीलेशन, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपील न्यायाधिकरण में अपील करते समय उत्पाद शुल्क/सेवाकर 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 क्राउड कपण 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) सेल्वेट जमा की गयी गलत राशि
(iii) सेल्वेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अपीलेशन 2014 के आरंभ से पूर्व किसी अपील न्यायाधिकरण के समक्ष विचारणीय स्थिति अर्थात् अपील को लागू 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 Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.
- (C) भारत सरकार को पुनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षण अधिकार निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अपीलेशन, 1994 की धारा 35EE के प्रथम पारुक्त के अंतर्गत अथवा अधिक, भारत सरकार, पुनरीक्षण आवेदन इकाई, क्विंट महासक, राजस्व विभाग, चौथी मंजिल, जेवान दीप भवन, संसद भवन, 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 मांग के किसी नुकसान के मामले में, जहां नुकसान किसी भाग को किसी कारखाने से अथवा गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक अथवा गृह से दूसरे अथवा गृह पारगमन के दौरान, या किसी अथवा गृह में या अथवा में मांग के प्रसंस्करण के दौरान, किसी कारखाने या किसी अथवा गृह में मांग 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 मांग के विनिर्माण में प्रयुक्त कच्चे मांग पर गयी गई केन्द्रीय उत्पाद शुल्क के छूट (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 किया बिना भारत के बाहर, नेपाल या भूटान को मांग 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 इमुटी क्रेडिट इस अपीलेशन एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो अनुसूक्त (अपील) के द्वारा क्विंट अपीलेशन (सं. 2), 1998 की धारा 109 के द्वारा क्विंट की गई तरीक अध्याय समायाधिकार 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 फॉर्म संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत शिक्तिष्ट है, इस आदेश के प्रेषण 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 अपीलेशन, 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 O.I.O 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 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 बड़े मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपरोक्त इन से किया जाना चाहिए। इस तथ्य के होने हुए भी की निष्ठा पढ़ी जाये से बचने के लिए यथास्थिति अपील न्यायाधिकरण को एक अपील या केन्द्रीय 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 Appellate Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scripitoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
(E) यथासंशोधित न्यायालय शुल्क अपीलेशन, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर लिखित 6.50 रुपये का न्यायालय शुल्क टिकट लगा होना चाहिए। / One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.
(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (सर्वे विधि) नियमावली, 1982 में शामिल एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की और भी ध्यान देना चाहिए। / Attention is also invited to the rules covering customs and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.
(G) उपरोक्त अपील न्यायाधिकरण को अपील दाखिल करने से संबंधित विवरण, विस्तृत और नवीनतम प्रावधानों के लिए, अपील न्यायाधिकरण 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

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:: ORDER IN APPEAL ::

M/s. Sanghi Industries Limited (Cement Division), Grinding Unit, Sanghipuram, P.O. Motiber Taluka-Abdasa, District-Kutch (*hereinafter referred to as "the Appellant"*) against Orders-In-Original as per Table mentioned below (*hereinafter referred to as "the impugned orders"*), both issued by the Additional Commissioner, Central Excise, Rajkot (*hereinafter referred to as "the adjudicating authority"*):

Sr No.	Appeal No.	OIO No.	Period	Amount Involved
1	V2/323/RAJ/2010	08/ ADC/ 2010 dated 29.03.2010	Jan, 2008 to Mar, 2008	20,81,912/-
2	V2/103/RAJ/2011	01/ ADC/ 2011 dated 06.01.2011	Apr, 2008 to Nov, 2008	6,60,580/-

2. Brief facts of the case are that the appellant is engaged in manufacture of Cement and holding Central Excise Registration No. AAEC5510QXM004. During the scrutiny of the returns filed by the appellant for the period from Jan, 2008 to Nov,2008 it was observed that the Appellant had availed Cenvat credit in respect of service tax paid for Port & Wharfage Service, Stevedoring Services, Supervision, Technical Testing & Analysis Services used beyond the place of removal and credit was not admissible to the Appellant as 'input service' credit under the Cenvat Credit Rule, 2004 (*hereinafter referred to as 'CCR, 2004'*). Therefore, Appellant was issued Show Cause Notices demanding the wrongly availed Cenvat Credit under Rule 14 of the CCR, 2004 read with Section 11A of the Central Excise Act, 1944 (*hereinafter referred to as "the Act"*), interest under Section 11AB of the Act and penalty under Rule 15 of the CCR,2004 read with Section 11AC of the Act. Adjudicating authority adjudicated the show cause notices vide impugned orders and confirmed the demand under rule 14 of the CCR,2004 read with Section 11A of the Act and also interest and penalty under Section 11AB and Rule 15 of CCR,2004 read with Section 11AC of the Act.

3. Being aggrieved with the impugned order, the appellant preferred the present appeal mainly on the following grounds:

(i) Appellant exports cement and their entire domestic sales are on FOR basis; that they appellant pay excise duty on the price and also bear the freight



upto the destination from where the goods are delivered to the customer; that they are availing various input services such as stevedoring, supervision, technical testing & analysis services in respect of cement exported from port; that the service tax so paid has been availed as cenvat credit on input service and utilized for discharging the excise liability on final products. The appellant availed port services such as stevedoring, supervisions, technical testing & analysis and used for the export of their goods and this fact is not denied or disputed by the department.

(ii) Definition of inputs services has to be dealt with phrases contained therein i.e. "means-clause", "in or in relation to", "used by manufacturer" and "inclusive - clause". They relied on the Hon'ble High Court and Hon'ble Supreme Court's judgments reported as 1996 (86) ELT 613 in the case of M/s. Union Carbide India Ltd, 1991 (55) HLT 444(SC) in the Case of M/s. Rajasthan State Chemicals workers and 2003 (1580 ELT 3 (SC) in the case of M/s. Ahmedabad Electricity Co Ltd.

(iii) First part of the definition is very wide and provides that nay services used by the manufacturer whether directly or indirectly in relation to manufacture of the final products is an input services; that that all taxable services which are so integrally connected with the process of manufacture and clearance of the final product without which such manufacturer clearance of the final product would be impossible or commercially inexpedient, will qualify as "input service". Second part could be dissected as (i) services used in relation to setting up, modernization, renovation or repair of a factory, premises of providers of output service or an office relation to such factory or premises (ii) advertisement or sales promotion (iii) market research (iv) storage upto the place of removal (v) procurement of input (vi) activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security (vii) inwards transportation of inputs or capital goods and outward transportation up to the place of removal. Appellant place reliance on Hon'ble Supreme Court decision reported as 1971 (3) SSC 550 in the Case of M/s. Taj Mahal Hotel to say that inclusive clause always expand the scope of means clause.

(iv) Any services received which are commercially required for the benefit or carrying on the business of the manufacture is covered by the expression "activities relating to business". Such services are qualified under the definition of 'input services' on the basis either because they are covered under "means



clause" of the definition or qualified under the inclusive clause of the definition of input services. Services in disputes are clearly connected with export and hence are covered under the expression 'activities relating to business and hence they have rightly availed the credit. Cenvat Credit is available to them even if input services are not received in the factory and in terms of Rule 3(1) of the Cenvat Credit Rules, 2004; that definition of input services is qua the manufacture and not qua the factory.

(v) Port is the place of removal under Section 4(3) (c) of the Act in respect of the goods exported, since the property in goods is transferred to the foreign buyer only at the port and not at the factory gate; that they are exporting final products and Section 4 (3) (c) is applicable in respect of goods cleared for home consumption and not in respect of export. Section 4 (3) (c) (iii) covers a depot, premises of consignment agent or another place or premises from where excisable goods are to be sold after their clearance from the factory. The said section recognizes that there could be a place of removal from where the goods are sold after clearance from factory gate and in case of exports the said place of removal would be "port of export". They relied Hon'ble CESTAT's decision in the case of M/s. Kuntal Granites Ltd reported as 2007 (215) ELT 515, M/s. Rolex Rings PI Td reported as 2008 (230) ELT 569 (Tri-Ahmd) and in the case of M/s. Colour Synth Ind P Ltd reported as 2009 (14) STR 309 (Tri- Ahd).

(vi) The matter pertains to interpretation of Cenvat Credit Rules, 2004 and therefore no penalty can be imposed as has been held by the Hon'ble CESTAT in various case laws. The relied upon case laws reported as 2005(184)ELT 61 (Tri-Chennai) in the case of M/s. Lakshmi Machine Works ,2004 (174) ELT 448 (Tri-Mum) in the case of M/s. Century Rayons and 2005(184) ELT 217 (Tri-Del) in the case of M/s. Sarup Tanneries Ltd. They also quoted Order NO.A/ 300/ WZB/ AHD/ 08 dated 18.02.08.

4. Personal hearing in the matter was attended by Mrs. Priyanka Kalwani, Principal Associate, who re-iterated the ground of appeal and submitted that CBEC vide Circular Dated 28.02.2015 has clarified that for export, port is place of removal; that in many cases CESTAT has allowed credit of Service tax paid on Port Services which include stevedoring charges, supervisions charges and also Technical Testing and Analysis.



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FINDINGS

5. I have carefully gone through the facts of the case, impugned order and written as well as oral submissions made by the appellant. The issue to be decided in the present appeal is as to whether appellant is eligible to avail Cenvat Credit of service tax paid on various services availed by them beyond factory gate or not.

6. I find that the eligibility of Cenvat credit in dispute are in respect of services of Port & Wharfage Service, Stevedoring Services, Supervision, Technical Testing & Analysis Services and lower adjudicating authority has denied the credit on the ground that the services are used beyond the place of removal in violation of Cenvat Credit Rules, 2004. Appellant's contention is that since these services are used for export of goods, place of removal is Port and hence these services are duly covered under the definition of "input services". Therefore, the bone of contention is what is the "place of removal" in the case where goods has been exported. Appellant has submitted that goods are sold on FOR basis. I find from the sample copy of Shipping Bills that column of "nature of contract" shows as "FOB". Copy of the Shipping Bill is reproduced below as samples:-

SANGHI INDUSTRIES LIMITED PRESIDENT HOUSE 10, RAJENDRA CIRCLE NEW DELHI - 110028 (INDIA)		EXPORT TRADE CONTRACT (ETC) NUMBER 2156095 DTD: 19.02.08 1500435 DTD: 30.02.08 0830000099 DTD: 05.02.08 0830000295 DTD: 05.02.08 0830000439 DTD: 30.02.08 0830000440 DTD: 01.02.08 0830000441 DTD: 01.02.08 0830000503 DTD: 30.02.08 0830001100 DTD: 21.12.08 0830001979 DTD: 29.03.08 0830001904 DTD: 30.03.07		REC NO: 0901004782 BIN NO: AAECSY18ZF100 STATE OF ORIGIN OF GOODS Gujarat, India	
RAMODH FOODSTUFF TRADING CO. LLC BOX - 81000 JEBEL PORT, DUBAI - UAE AL JEMADHIN FOODSTUFF TRADING CO. LLC JEBEL ALI PORT, DUBAI - UAE		EXPORT TRADE CONTRACT (ETC) NUMBER 2156095 DTD: 19.02.08 1500435 DTD: 30.02.08 0830000099 DTD: 05.02.08 0830000295 DTD: 05.02.08 0830000439 DTD: 30.02.08 0830000440 DTD: 01.02.08 0830000441 DTD: 01.02.08 0830000503 DTD: 30.02.08 0830001100 DTD: 21.12.08 0830001979 DTD: 29.03.08 0830001904 DTD: 30.03.07		REC NO: 0901004782 BIN NO: AAECSY18ZF100 STATE OF ORIGIN OF GOODS Gujarat, India	
Place of Revision by Pre-Carrier No. 3007000022		Place of Revision by Pre-Carrier No. 3007000022		REC NO: 0901004782 BIN NO: AAECSY18ZF100 STATE OF ORIGIN OF GOODS Gujarat, India	
Port of Loading SANGHI ANCHORAGE, INDIA		Nature of Contract: CIF () CFR () FOB () Others (specify):		REC NO: 0901004782 BIN NO: AAECSY18ZF100 STATE OF ORIGIN OF GOODS Gujarat, India	
Country of Destination ISAQ		Exchange Rate US\$ 14 of IN 100 IN = 88.48 US\$		Currency of Invoice IN 0000 IN	
No. & kind of Pkg. Container No.		Statistical Code & Description of goods and Exem. Subcode Code Where applicable		Quantity Value FOB IN Value IN IN	
08301000 243 35 10 ORDINARY PORTLAND CEMENT CONFORMING TO BS5 12/1996 PACKED IN 50KG PP BAGS PP BAGS AS PER SEIN NO. A-1050 CONTRACT SIL/ST/25/2007/OPC DTD. 25.02.2008 G.R.NO. AZ 66863 DTD 26.02.08 Manufacturer's Name & Address M/s SANGHI INDUSTRIES LIMITED SANGHIPURAM, P.O. NOTTBER TALABDASA DIST. KUTCH / INDIA		17,500.00 net		200 1,01,300 IN 20,121,300	
1% EMPTY 50 KG PP BAGS FREE OF CHARGE FOR REFILLING PURPOSE AT DESTINATION PORT		1% EMPTY 50 KG PP BAGS FREE OF CHARGE FOR REFILLING PURPOSE AT DESTINATION PORT		1% EMPTY 50 KG PP BAGS FREE OF CHARGE FOR REFILLING PURPOSE AT DESTINATION PORT	
Value in words RUPEES THREE CRORE NINETY SEVEN LACS THIRTY SEVEN THOUSAND TWO HUNDRED FIFTY ONLY		Amount Full export value less value not admissible. The value which exporter exports to customs on the date of Certificate USD 68.00 1,01,300 IN		Value IN IN USD 68.00 1,01,300 IN	



000035

Government or Private SANGHI INDUSTRIES LIMITED, B. PRESIDENT HOUSE, CIRCLE, E. AHMEDABAD - 380 006 (INDIA)		Invoice No. & Date CM-01307-28 Date 12.01.08 AH4/ AB4A No. & Date	Original SH No. & Date F-15/07-08 12-01-2008
TRADING FZCO OFFICE NO : 183, PORT, DUBAI - UAE AL FAMAHA TRADING CO. LLC. 4370 DUBAI		Q / Cert. No. & Date 8007000015	Import-Export Code No. and BEN IEC NO. 0901004782 BIN NO. AAEC5510QFT001
Place of Receipt by Pre-Carrier SVA		Export Trade Control (ETC) Certificate No. 2156099 DTD. 15.01.08 1500435 DTD. 15.01.08 0830000099 DTD. 08.02.08 0830000295 DTD. 05.03.08 0830000439 DTD. 30.12.07 0830000440 DTD. 01.01.08 0830000441 DTD. 01.01.08 0830000503 DTD. 30.03.08 0830001100 DTD. 22.12.05	State of Origin of Goods GUJARAT, INDIA U Export under Deferred Credit (-) Letter of Credit (-) Advance Credit (-) (Other) <input checked="" type="checkbox"/>
Retention No. NOOR		STATION NO. A 1050 (ORDINARY PORTLAND CEMENT)	Type of Shipment : Freight only (-) Commission Export (-) <input checked="" type="checkbox"/> Other (-)
Port of Loading SANGHI ANCHORAGE, INDIA		Nature of Contract : CIF () / CFR () / FOB () <input checked="" type="checkbox"/> Others (Specify)	ETC Approval No. & Date
Country of Destination IRAQ		Exchange Rate US \$ of CA US\$ 1.00 = 28.30 INR	Currency of Invoice US DOLLAR
No. & Kind of Plugs, Container Nos. Statistical Code & Description of goods and Exim Scheme Code Where Applicable EXIM CODE. 3323 29 10 ORDINARY PORTLAND CEMENT CONFORMING TO BSS : 12/1996 PACKED IN 50 KG PP BAGS CONTRACT SIL/GT/27/2007/OPC DTD. 18/12/2007 G.R.NO. AZ 665796 DTD. 12.01.08 Manufacturer's Name & Address M/s SANGHI INDUSTRIES LIMITED SANGHIPURAM, P.O. MOTIBER TAL. ABDASA DIST. KUTCH / INDIA		Quantity 8,750.00 MT	Value F.O.B. FOB USD 525,000 Rs. 20,632,500
1% EMPTY 50 KG PP BAGS FREE OF CHARGE FOR REFILLING PURPOSE AT DESTINATION PORT			
In words RUPEES TWO CRORE SIX LACS THIRTY TWO THOUSAND FIVE HUNDRED ONLY			
Net Value Currency Amount US\$ 60.00 \$525,000.00		Full export value OR where not ascertainable. The value which exporter expects to receive on the sale of goods US DOLLAR	

6.1. I find that in case of exports, goods are sold to foreign buyer and property in goods passes from the appellant at the port when goods are handed over to shipping line or to a carrier who is accepted and authorized by the foreign buyer to receive the goods for further transmission to the destination. Thus, title of goods gets transferred from the exporter/Appellant at the Port only. I find that CBEC has time and again clarified the issue and in the latest Circular No. 999/6/2015-CX, dated 28-2-2015 (F.No. 267/13/2015-CX. 8) it is clarified 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. It is also clarified that the place where sale takes place or



CC0034

when the property in goods passes from the seller to the buyer is the relevant consideration to determine the place of removal. Text of the Circular is reproduced below for ease of reference:-

" Attention is invited to Circular No. 988/12/2014-CX, dated 20-10-2014 issued from F. No. 267/49/2013-CX.8 [2014 (309) E.L.T. (T3)] on the above subject wherein it was clarified 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 and that payment of transport, payment of insurance etc are not the relevant considerations to ascertain the place of removal. The place where sale takes place or when the property in goods passes from the seller to the buyer is the relevant consideration to determine the place of removal.

2. In this regard, a demand has been raised by the trade that it may be clarified that in the case of exports, for purposes of CENVAT credit of input services, the place of removal is the port or the airport from where the goods are finally exported.

3. The matter has been examined. It is seen that section 23 of the Sale of Goods Act, 1930 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 purpose 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, and therefore, in view of the provisions of the Section 23 (1) of the Sale of Goods Act, 1930, the property in the goods would thereupon pass to the buyer. Similarly, section 39 of the Sale of Goods Act, 1930 provides that where, in pursuance of a contract of sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not for the purpose of transmission to the buyer, or delivery of the goods to a wharfinger for safe custody, is prima facie deemed to be a delivery of the goods to the buyer.

4. In most of the cases, therefore, it would appear that handing over of the goods to the carrier/transporter for further delivery of the goods to the buyer, with the seller not reserving the right of disposal of the goods, would lead to passing on of the property in goods from the seller to the buyer and it is the factory gate or the warehouse or the depot of the manufacturer which would be the place of removal since it is here that the goods are handed over to the transporter for the purpose of transmission to the buyer. It is in this backdrop that the eligibility to Cenvat Credit on related input services has to be determined.

5. Clearance of goods for exports....

6. In the case of clearance of goods for export by manufacturer exporter, shipping bill is filed by the manufacturer exporter and goods are handed over to the shipping line. After Let Export Order is issued, it is the responsibility of the shipping line to ship the goods to the foreign buyer with the exporter having no control over the goods. In such a situation, transfer of property can be said to have taken place at the port where the shipping bill is filed by the manufacturer exporter and place of removal would be this Port/ICD/CFS.



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Needless to say, eligibility to CENVAT Credit shall be determined accordingly.

7.
8.

(Emphasis supplied)

6.2 I find that issue has been very categorically addressed by Para 4 & 6 of the above CBEC circular that place of removal would be the port from where goods are exported as transfer of property can be said to have taken place at the port where shipping bill is filed and goods are handed over to the transporter for the purpose of transmission to the buyer. I find that in the case on hand, input services are used before the property of goods transferred from the appellant as discussed hereinabove and as clarified by the CBEC. I am, therefore, of considered view that the appellant is eligible for credit of service tax paid on services in dispute. I find that the admissibility of input services used in relation to export of goods also draws ample force in view of various decisions of the Hon'ble CESTAT.

7. I find that Hon'ble CESTAT in the case of M/s. Rolex Rings P LTd, reported as 2008(230) ELT 569 (Tri-Ahmd) held as under:-

"4. After considering the submissions made by both the sides and the reasonings adopted by Commissioner (Appeals), I find that the CHA and Surveyors' services are utilized at the time of the export of the goods. The respondents continue to remain the owner of the goods in question till the same are exported. As such, it can be reasonable concluded that the place of removal in case of exported goods is the port area. The above interpretation is also supported by Para 8.2 of the Board's circular No. 91/8/2007-S.T. dt. 23-8-2007 laying down that where sale takes place at the destination point and the ownership of the goods remain with the seller till the delivery of the goods, the place of removal would get extended to the destination point and the credit of the service tax paid on the transportation up to such place of sale would be admissible. Inasmuch as in the present case also, the ownership of the goods remain with the seller till the port area, it can be safely held that all the services availed by the exporter till the port area are required to be considered as input service inasmuch as the same are clearly related to the business activities. Activities relating to business are covered by the definition of input service and admittedly CHA and Surveyors' services are relating to the export business. As such, I agree with the reasonings adopted by Commissioner (Appeals) that the credit of duty paid on such services is admissible to the respondents."



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7.1 The Hon'ble CESTAT in the case of M/s. Leela Scottish Lace Pvt Ltd reported as 2010 (19) STR 69 (Tri-Bang) has held as under:-

"3. I have carefully considered the facts of the case and the rival submissions. As per the clarification issued by the CBEC vide Circular No. 91/8/2007, dated 23-8-2007, "place of removal" appearing in the Cenvat Credit Rules covers the place at which the ownership of finished goods are transferred. In the instant case, the export goods are sold on FOB basis. The said service is availed prior to export of the goods. In view of the clarification of the Board, the appellants are entitled to credit of service tax paid under CHA services in respect of the excisable goods at the port area. I find that this was the ratio of the decision of the Tribunal in the case of *CCE, Rajkot v. Rolex Rings Pvt. Ltd.* reported in 2008 (230) E.L.T. 569 (Tribunal-Ahmd.). I also find that in Final Order No. 1003/2009 dated 1-5-2009, a Division Bench of this Tribunal held that tax paid on services relating to business activities of a manufacturer was entitled to benefit of cenvat credit. The said order dealt with the services availed by the assessee in respect of the goods cleared on payment of duty and stored in its godown. In passing the said order, the Tribunal had followed the ratio of a decision of the Larger Bench of the Tribunal in *CCE, Mumbai v. GTC Industries Ltd.* reported in 2008 (12) S.T.R. 468 (Tribunal-LB). Following these decisions of the Tribunal, I hold that the appellants are entitled to refund of service tax paid on CHA services used as input in the export of final products. The appeal is allowed."

7.2 In another case of M/s. Matrix Clothing Pvt Ltd reported as 2016 (44) STR 618 (Tri- Chan), Hon'ble CESTAT has held as under:-

"12. I find that it is alleged against the appellant that they are not entitled to Cenvat credit to the input service credit namely CHA and Courier Service as they are availed beyond the place of removal of the goods. I find that this Tribunal time and again held that any service availed by exporter up to the place of port of export, the exporter is entitled to avail Cenvat credit in the light of the decision of *Premier Conveyors P. Ltd. (supra)*. In that circumstances, I hold that the appellant is entitled to avail Cenvat credit on input service credit namely CHA and Courier Services which have been availed by the appellant in the course of their business to export of goods, further, I find that in the case of *ABB Ltd. (supra)*, it was held by the Hon'ble High Court of Karnataka that for the period prior to 1-4-2008, the assessee entitled to avail Cenvat credit on the service tax paid on the services beyond the place of the removal of goods."

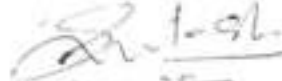
8. In light of the above case laws and clarifications issued by CBEC, it is evident that "place of removal" would be the port from where goods have been exported and hence cenvat credit of service tax paid on services utilized for export of such goods is admissible to the manufacturer exporter. I, therefore, hold that the appellant is eligible to avail CENVAT credit of service tax paid against the said

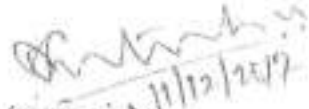


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services. Once CENVAT credit is held admissible, payment of interest and imposition of penalty cannot survive. Accordingly, I set aside the impugned orders and allow the appeals.

9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
९. The appeals filed by the appellant stands disposed off in above terms.

सत्यापित,

स्मितेश हवारेलिया
अधीक्षक (अपील्स)


(कुमार संतोष)
आयुक्त (अपील्स)

By RPAD

To

M/s. Sanghi Industries Ltd, Cement Divisions, (Grinding Unit), Sanghipuram, P.O. Motiber Tal: Abdasa Dist:- Kutchh	मेसर्स सांघी इंडस्ट्रीज लिमिटेड सीमेंट डिविजन (ग्राइंडिंग यूनिट) सांघीपुरम पोस्ट
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Copy to:

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone Ahmedabad.
- 2) The Commissioner, GST & Central Excise, Gandhidham (Kutch) Commissionerate, Gandhidham.
- 3) The Additional Commissioner, GST & Central Excise, Gandhidham(Kutch) Commissionerate, Gandhidham.
- 4) The Assistant Commissioner, GST & Central Excise Division, Gandhidham.
- 5) Guard File.

6) V2/323/RAJ/2010

