



::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

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रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No. V2/51/GDM/2017	मूल आदेश सं / O.I.O. No. 11/DC/17	दिनांक / Date 21.03.2017
ख	अपील आदेश संख्या (Order-In-Appeal No.):		

KCH-EXCUS-000-APP-155-2017-18

आदेश का दिनांक / Date of Order:	23.01.2018	जारी करने की तारीख / Date of issue:	30.01.2018
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Passed by **Shri Lalit Prasad, Commissioner, Central Goods and Service Tax & Central Excise, Rajkot**

अधिसूचना संख्या २६/२०१७-के.उ.शु. (एन.टी.) दिनांक १७.१०.२०१७ के साथ पटे बोर्ड ऑफिस आदेश सं. ०५/२०१७-एस.टी. दिनांक १६.११.२०१७ के अनुसरण में, श्री ललित प्रसाद, आयुक्त, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क, राजकोट को विलत अधिनियम १९९४ की धारा ८५, केन्द्रीय उत्पाद शुल्क अधिनियम १९४४ की धारा ३५ के अंतर्गत दर्ज की गई अपीलों के सन्दर्भ में आदेश पारित करने के उद्देश्य से अपील प्राधिकारी के रूप में नियुक्त किया गया है।

In pursuance to Board's Notification No. 26/2017-C.Ex.(NT) dated 17.10.2017 read with Board's Order No. 05/2017-ST dated 16.11.2017, Shri Lalit Prasad, Commissioner, Central Goods and Service Tax & Central Excise, Rajkot 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 Kachhh Steel P. Ltd., At : Gunau, Ta : Lakhapat, Via : Nalia Dist : Kutch-370655

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। /

Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं विलत अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है। /

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

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

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीले सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को की जानी चाहिए। /

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

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

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

- (B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

- (i) 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.

- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टैट) के प्रति अपील 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 नियमवाली के नियम 6 के अंतर्गत देय रकम
- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा।/

For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores.

Under Central Excise and Service Tax, "Duty Demanded" shall include :

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules

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

(C) भारत सरकार को पुनरीक्षण आवेदन :

Revision application to Government of India:

इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

- (i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के 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 केंद्रीय 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 an excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

- (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

- (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (न. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए हैं। /

Credit of any duty allowed to be utilized towards payment of excise duty on 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 केंद्रीय 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 केंद्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। /

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-in-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।

जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए।

The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पंढी 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 filed 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 स्यमन 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-I in terms of the Court Fee Act, 1975, as amended.

- (F) सीमा शुल्क, केंद्रीय 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.

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:: ORDER-IN-APPEAL ::

Being aggrieved with the Order-in-Original No: 11/Deputy Commissioner/2017 dated 21.03.2017 (**hereinafter referred to as "impugned order"**), passed by the Deputy Commissioner of Central Excise, Bhuj (**hereinafter referred to as "Lower Authority"**), **M/s. Kachchh Steels Private Limited**, Gunav, Motiber, Abdasa (Kachchh) (**hereinafter referred to "the appellant"**), who are engaged in manufacturing of excisable goods falling under Chapter 72 of First Schedule to Central Excise Tariff Act, 1985 and also availing CENVAT credit of the Input, Capital goods and Input services under CENVAT Credit Rules, 2004, have filed present appeal.

2. During the course of audit of records of the appellants, apart from other things, it was noticed that appellant have availed CENVAT credit of Rs. 41,774/-, on 16-07-2007, being the Service Tax paid on invoice issued by M/s. Vagabond Holidays under Business promotion. However, in absence of such invoice the exact nature of the service and its relation to manufacture of final product could not be ascertained. Therefore, Show Cause Notice dated 05.08.2011 was issued proposing recovery of such wrongly availed CENVAT credit along with interest. Further, it was also proposed to impose penalty.

3.1 During the adjudication of the Show Cause Notice before Lower Authority, the appellant submitted the copy of the said invoice and stated that the same relates to "Business Promotion" for conducting conference of dealers in connection with promotion of final products. The Lower Authority in his findings have held that particulars mentioned in the invoice stands corroborated with the appellants submission since "includes" part of the definition of the "input services" given under Rule 2(l) of CENVAT Credit Rules, 2004, clearly covers the advertisement and sales promotion activity.

3.2 However, Lower Authority noticed that as mandated under Rule 9(2) of CENVAT Credit Rules, 2004, as it stood on the date of

availment of credit i.e. 16-09-2007, the relaxation was not available to absence of Service Tax registration number in the invoice. Hence, it was held that such credit was not available.

3.3 The Lower Authority further reasoned that if he took the date of invoice i.e. 04-10-2006, then as per Rule 9(2) of CENVAT Credit Rules, 2004, as it stood at relevant time, the CENVAT credit was admissible even if the invoice did not bear the Service Tax registration number. However, it is admissible only if the same is used in the manufacture of final product. Therefore, Lower Authority held that even though "sales promotion" activity is a valid input service, the CENVAT credit was not admissible as the said services did not went into manufacture of final product.

3.4 Accordingly, the demand of irregularly availed CENVAT credit of Rs. 41,774/- was confirmed by Lower Authority along with interest. Further, equal penalty was also imposed upon appellant under Rule 15 of CENVAT Credit Rules, 2004 read with Section 11AC of Central Excise Act, 1944.

4. Being aggrieved with the impugned order, the appellant preferred an appeal before Commissioner (A), by depositing an amount of Rs. 3,313/-, being 7.5% of the demand confirmed, vide Challan dated 21.04.2017, on the grounds that:

- (i) The services received by them, on which they have availed CENVAT credit is in order since the definition specifically mentioned in the inclusive clause "sales promotion" as one of the eligible services for credit;
- (ii) The CENVAT credit was availed in 16-07-2007, which was shown in the return filed for the month of July, 2007 and the Show Cause Notice was issued on 05-08-2011 i.e. after a period of 4 years;

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- (iii) That the Show Cause Notice issued belatedly without invoking extended period is not sustainable in eyes of law and cited various case law;
- (iv) That no penalty can be imposed as necessary ingredients for invoking extended period are not present;
- (v) That no interest is payable since demand itself does not survive.

5. The Central Board of Excise and Customs vide Notification No: 26/2017-Cx(NT) dated 17.10.2017 read with Order No: 05/2017-Service Tax dated 16.11.2017, has appointed undersigned as appellate authority under Section 35 of Central Excise Act, 1944 for the purpose of passing orders in this appeal.

6. Accordingly, personal hearing in the matter was held on 17-01-2018, which was attended by Shri R. Subramanya, Advocate of M/s. Subramanya Law Company, Ahmedabad. During the hearing Ld. Advocate reiterated their written submissions and placed reliance on the case law of Sarita Handa Exports (P) Limited, reported at 2016(44) STR 654. He requested to allow their appeal. Nobody was represented by the department despite being asked to do so vide letter dated 29.12.2017.

Discussions and finding:

7. I have carefully gone through the appeal memorandum and the submissions made by the Ld. Advocate during personal hearing. I find that as the appellant has deposited mandatory 7.5% of the duty, thus I find that there is compliance to requirement of Section 35F(i) of Central Excise Act, 1944. I also find that vide letter dated 30.05.2017 Lower Authority was asked to submit parawise comments on the points raised by the appellants, but till date the same has not been received.



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8. I find that in the entire proceedings it is not disputed that the invoice on which CENVAT is being sought is dated 04-10-2006. It is also not disputed that the said CENVAT was availed by the Noticee on 16-07-2007. Thus, following points are arising for decision in these appellate proceedings:

- (i) whether appellants are entitled to the disputed CENVAT credit?
- (ii) If no, whether the same is liable to be recovered along with interest?
- (iii) Whether, in the facts and circumstances of the matter, penalty is liable to be imposed upon appellants?

9.1 I find from the findings of the Lower Authority that he has correctly held that the CENVAT credit of Service Tax on services received for dealers tour by the appellant is a valid input services since it is related to sales promotion of their final product. Thus, prime requirement of Rule 2(l) of CENVAT Credit Rules, 2004 stands satisfied.

9.2 I further find that the CENVAT credit was availed on 16-07-2007, therefore the provisions in vogue on that day shall be applicable. Though the CENVAT credit appears to be admissible, however, the invoice on which CENVAT is availed should be proper. In this case, it should contain the details prescribed under Rule 4A of Service Tax Rules, 1994 viz.

- (i) the name, address and the registration number of such person;
- (ii) the name and address of the person receiving taxable service;
- (iii) description, classification and value of taxable service provided or to be provided; and
- (iv) the service tax payable thereon.

9.3 Upon perusal of invoice in question, I find that it does not contain the registration number of the person providing such service. I find that Rule 9(2) of CENVAT Credit Rules, 2004, as it stood during relevant time, provides that if the invoice does not contain all the particulars **but contains the details of** duty or service tax payable, description of the goods or taxable service, assessable value, Central Excise or **Service Tax registration number of the person issuing the invoice**, as the case may be, and the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, is satisfied that the goods or services covered by the said document have been received and accounted for in the books of the account of the receiver, he may allow the CENVAT credit.

9.4 In the instant case I find that there is no Service Tax registration number of the service provider in the invoice. Therefore, I find that requirement prescribed under Rule 9(2) of CENVAT Credit Rules, 2004 are not completely fulfilled. Even otherwise, the appellant could have adduced their claim by producing some evidences in the form of Service Tax registration of the service provider, the details & breakup of the Service Tax returns filed by the service provider for the period in which the appellant made the payment and copies of the ledgers from the appellants books of account confirming the fact that same has been duly accounted for. However, no such additional details have been produced neither before Lower Adjudicating Authority nor before me. I find that my views are supported by the decision of Tribunal in the case of **Integra Software Services Private Limited** reported at **2017 (48) STR 137 (Tri. Chennai)**, **HCL Technologies Limited** reported at **2015 (40) STR 1124 (Tri. Del)**, **Shree Chaltan Vibhag Khand Udhayog Sahakari Mandli Limited** reported at **2014 (34) STR 65 (Tri. Ahmd)**, **Ahmednagar Merchants Co-op Bank Limited - 2009 (15) STR 729 (Tri. Mumbai)**, Thus, I find that the Invoice No. VH/SV/06-07/1005 dated 04-10-2006 of M/s. Vagabond Holiday is not a valid document for availment of CENVAT credit and hence I hold that the CENVAT credit availed thereon is irregularly availed.

10.1 Now the point arises that whether the said irregularly availed CENVAT credit can be recovered from the appellant or otherwise. I find that appellant has argued that disputed credit was availed by them in the July, 2007 and the Show Cause Notice has been issued in August, 2011. Thus, there is a gap of 4 years. **I find that Lower Authority in his findings para 7.2.3 has held that format of ER-1 return has been so designed that it discloses only statistical data of CENVAT credit i.e. its opening balance, availment, utilization and its closing balance. However, it has been further noted that the statement showing details regarding name of the service provider/invoice number and amount of Service Tax involved in the invoice / details of CENVAT credit taken as input service are not submitted by the appellant.** Thus, I find that revenue was not having the information of the credit availed, as input services and it came to notice only during the course of audit since the appellant were working under self assessment regime Further, Rule 9(6) of CENVAT Credit Rules, 2004 specifically casts an obligation on the appellant to ensure that whatever credit is availed by them is admissible to them. So by mere filing of ER-1 returns the appellant cannot say that extended period is not invocable.

10.2 Without prejudice to above, I find that the issue of irregular availment of CENVAT credit first time came to the knowledge of the department during the audit for the period from August, 2006 to July, 2009 but the Show Cause Notice and impugned order is silent regarding the date of audit. However, if it is presumed that the audit was conducted on a day before the date of issue of Show Cause Notice dated 05.08.2011, then the Show Cause Notice should clearly bring out the ulterior move of the appellant for resorting to fraud or collusion or any willful mis-statement or suppression of facts, or contravention of any of the provisions of the Central Excise Act, 1944 or of the rules made thereunder with intent to evade payment of duty. I find that Show Cause Notice is totally silent on this aspect. Not a single word has been spelt out in the entire Show Cause Notice about it. I also find that in the charging section of the Show Cause Notice, wherein the appellants were


directed to show cause under Section 11A of the Central Excise Act, 1944 and there is no invocation of the proviso to Section 11A ibid. Thus, I find that the Show Cause Notice suffers from non-curable defects and it cannot help in recovery of the irregularly taken CENVAT credit, availed prior to 06-08-2010. Since the demand of irregularly availed CENVAT credit does not sustain the question of interest and penalty does not arise.

11. Accordingly, the appeal filed by the appellants is allowed and the impugned order is set aside. Appeal disposed accordingly.

F. N. V.2/51/GDM/2017

Place: Rajkot.

Dated: .01.2018


(LALIT PRASAD)
COMMISSIONER, CGST & CEX, RAJKOT/
COMMISSIONER (APPEALS-III),
CGST & CEX, RAJKOT

By Speed Post

To,
M/s. Kachchh Steels Private Limited,
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Ta: Lakhpat,
Via: Nalia,
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- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
- 2) The Commissioner, GST & Central Excise, Kutch.
- 3) The Commissioner, GST & Central Excise, Rajkot.
- 4) The Assistant Commissioner, GST & Central Excise, Division-Bhuj.
- 5) The Superintendent, GST & Central Excise, A.R. I, Bhuj.
- 6) Guard File.

