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



द्वितीय तल, जी एस टी भवन / 2<sup>nd</sup> Floor, GST Bhavan,

रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

Tele Fax No. 0281 - 2477952/2441142

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रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No. V2/42/GDM/2017	मूल आदेश सं / O.I.O. No. 04/DC/17	दिनांक / Date 22.02.2017
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ख अपील आदेश संख्या (Order-In-Appeal No.):

**KCH-EXCUS-000-APP-195-2017-18**

आदेश का दिनांक / Date of Order:	27.02.2018	जारी करने की तारीख / Date of issue:	05.03.2018
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Passed by **Shri Lalit Prasad, Commissioner, Central Goods and Service Tax & Central Excise, Rajkot**

अधिसूचना संख्या २६.१७ दिनांक (टी.एन) शु.उ.के-२०१७/१० २०१७ के साथ पढे बोर्ड ऑफिस आदेश सं . १६ दिनांक टी.एस-२०१७/०५११ के अनुसरण में २०१७ श्री ललित प्रसाद ,आयुक्त , केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क ,राजकोट को वित्त अधिनियम १९९४ की धारा ८५की १९४४ केन्द्रीय उत्पाद शुल्क अधिनियम , के अंतर्गत दर्ज ३५ धाराकी 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 Sanghi Industries Ltd. (Cement Division- Grinding Unit), Sanghipuram, PO : Motiber, Taluka Abdasa, Dist : Kutch**

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 वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है।/  
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

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

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असारवा अहमदाबाद- 3८००१६ को की जानी चाहिए।/  
Appeals other than as mentioned in para- 1(a) above to the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

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

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

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

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

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

- (i) धारा 11 डी के अंतर्गत रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली 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 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 याचिका निम्नलिखित मामलों में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, 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 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 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 ड्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा संन्यायविधि 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 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, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पंजी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क 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-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 संबंधित मामलों को सम्मिलित करने वाले नियमों की और भी ध्यान आकर्षित किया जाता है। /

Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

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

For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website [www.cbec.gov.in](http://www.cbec.gov.in)

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


Being aggrieved with the Order-in-Original No. 4/Dy Commr/2017 (**hereinafter referred to "as impugned order"**) passed by the Assistant Commissioner of Central Excise, Bhuj (**hereinafter referred to "as Lower Adjudicating Authority"**), **M/s. Sanghi Industries Limited, Cement Division, Grinding Unit**, Sanghipuram, Motiber, Taluka: Abdasa, Dist: Kutch has filed present appeal.

**2.1** The facts leading to present appeal are that during the course of audit of the records maintained by the appellants by the department, it was observed that the appellant had availed CENVAT credit of Rs. 19,14,094/- on the following invoices issued by M/s. Fun Holiday Instant Reservations Private Limited, as detailed below:

Sl. No.	Period during which CENVAT credit availed	Nature of service, as described in the invoice by the service provider.	Amount (Rs.)
1	Dec-12 to Dec-13	Guests visit to Bangkok, Goa, etc	6,42,610/-
2	Jan-14 to Jan-15	Guest/dealer trip to Bangkok/Italy/Lonawala/Kerela & Other places.	9,04,335/-
3	Feb-15 to July-15	Guest/dealer's trip to Bangkok / Lonawala and other places.	3,67,149/-
Total ----->			19,14,094/-

**2.2** Since the above mentioned services did not fall within the ambit of "input services" as defined under Rule 2(l) of the CENVAT Credit Rules, 2004, therefore it appeared that the appellant has wrongly availed CENVAT credit of Service Tax paid thereon. Further, it was alleged that the fact of availment of CENVAT credit was not brought to the notice of the department and fact was known only at the time of audit, therefore, Show Cause Notice dated 26.02.2016 was issued to the appellant wherein it was proposed to recover the above irregularly availed CENVAT credit under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11A(4) of the Central Excise Act, 1944 and also imposition of penalties on appellants were proposed.


**3.1** The said Show Cause Notice was adjudicated by the Lower Adjudicating Authority vide his impugned order wherein he has held that demand is not time barred since it was brought first time in Final Audit Report No: H-211/2014-15, covering the period from December, 2012 to December, 2013.



**3.2** On the admissibility of the CENVAT credit, the Lower Adjudicating Authority has held that Travel Agent Services are not covered under exclusion clause of Rule 2(l) of the CENVAT Credit Rules, 2004 since there is no nexus between the process of manufacture and/or removal of goods and the events were guest of appellant visits Bangkok. etc. ; that the tour of such dealers does not publicize the final product of the appellant through advertisement nor does it cause any promotion to sale of such product in as much it has been admitted by the appellant that such tour is a pre-defined incentive to dealers corresponding to the quantum of sales undertaken by them; that when sales precedes tour, it cannot be the case that "sales" get promotion through such "subsequent tour".

**3.3** Therefore, Lower Adjudicating Authority vide his impugned order confirmed the demand of wrongly availed CENVAT credit of Rs. 19,14,094/- under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11A(4) of the Central Excise Act, 1944 along with interest and also imposed equivalent penalty on the appellant under Rule 15(2) *ibid* read with Section 11AC *ibid*.

**4.1** Being aggrieved with the impugned order, the appellant have preferred present appeal on the grounds that services received by them are in relation to manufacture and clearance of final products and hence it is covered under "means" part of definition of "input services"; that while relying the definition of Rule 2(l) of the CENVAT Credit Rules, 2004 the appellant stated that the definition of 'input service' is broadly in three parts. First is the means part, second is the inclusive part and third part covers exclusions; that first of the definition which is commonly called 'means' portion would cover every service used directly or indirectly, in or in relation to manufacture of final products and clearance of final products up to the place of removal; that no 'guests' have travelled abroad, but only their dealers who have engaged for sale of their final products had travelled; that the 'travel agent service' has been used for travel and stay of their dealers on vacation trips sponsored by them; that trips are a measure of sales incentive which is essential to motivate the sales; that hence the service is used in relation to manufacture of the final products and covered under the "means" part of the definition; that they placed reliance on the case laws of **Rajasthan State Chemical Works - 1999 (55) ELT 444 (SC), Ahmedabad**




**Electricity Co. Ltd - 2003 (158) ELT 3 (SC), Doypack Systems (P) Ltd - 1988 (36) ELT 201 SC, J. K. Cotton & Wvg. Mills Ltd. - 1997 (91) ELT 34 SC, Union Carbide India Ltd - 1996 (86) ELT 613**

**4.2** The appellant further contended that second leg of the definition which is commonly called 'includes' portion could be dissected as:

- (a) services used in relation to, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises,
- (b) advertisement or sales promotion,
- (c) market research
- (d) storage up to the place of removal,
- (e) procurement of inputs,
- (f) accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security,
- (g) inward transportation of inputs or capital goods and outward transportation up to the place of removal.

and further stated that the services which are even remotely connected with manufacturing activity are covered in the second part of the definition of 'input services' and the categories which are enumerated in the inclusive part of the definition need not have any nexus with the manufacture and clearance of the product from the factory and are specifically included for making them eligible input service; that the inclusive part of the definition will stand on its own and the variety of activities such as modernization, renovation or repairs of a factory, advertisement, market research, accounting, auditing, etc. which have no direct nexus with manufacture or clearance would still be input services as said services are specifically included in to the includes part of the definition; that they placed reliance on the case law of **Essar Oil Ltd. - 2016 (41) STR 389 (Guj.) & Uttam Toyota - 2011 (22) STR 425 (Tri.-Del).**

**4.3** As regards to the holding of the Lower Adjudicating Authority that Dealers' neither publicizes the final product of the assessee through advertisement, nor does it cause any promotion to the sale of the final product the appellant contended that trips sponsored by




them for their dealers is a form of sales incentive which would indirectly result in higher sales of their final products as the dealers would get motivated to achieve higher sale targets; that the 'travel agent service' is used in relation to manufacturing activity only as the said services are used in connection with providing incentives to their dealers for meeting / exceeding their targets.

**4.4** The appellants stated that the services have been used for official purposes and not for personal use and it is a valid input service and placed reliance on the case laws of **Essar Oil - 2016 (41) STR 389 (Guj)**, **Graphite India Ltd- 2015 (39) S.T.R. 320 (Tri-Bang)**, **General Manager, BSNL - 2015 (39) S.T.R 278 (Tri-Del)**, **Innovasynth Technologies Ltd. - 2015 (38) STR 1232 (Tri-Mumbai)**, **Vidyut Metallics Pvt. Ltd. - 2016 (42) STR 321 (Tri.-Mumbai)**, **Indswift Laboratories Ltd. - 2015 (38) STR 522 (Tri-Del)**, **Goodluck Steel Tubes Ltd.- 2013 (32) STR 123 (Tri-Del)**, **Jindal Pipes Ltd. - 2013 (31) STR 588 (Tri-Del)**, **Emcon Technologies India Pvt. Ltd.- 2013 (31) STR 441 (Tri-Bang)**, **Cadmach Machinery Co. (P) Ltd - 2013 (31) STR 33 (Tri-Ahmd)** and **Doshion Ltd.- 2013 (30) STR 240 (Tri-Ahmd)**.

**4.5** The appellants further submitted that the Lower Adjudicating Authority has distinguished the above case laws on the ground that the period in the above cases is pre 01.04.2011; that impugned services are in relation to manufacture of final products, or are covered in 'includes' portion; that therefore the decisions are rendered on the basis of the definition of 'input service' which remains the same even after amendment post 01.04.2011 period.

**4.6** The appellants on the points of limitation submitted that the show cause notice dated 26.02.2016 proposes to deny credit availed during the period December 2012 till July 2015; that the onus is on the Department to prove that they have willfully suppressed facts with an intent to evade payment of duty; that the department has failed to prove that they have acted with any mala fide intent; that there is nothing on record to show the existence of fraud, collusion or suppression of materials facts or information and placed reliance on the case laws of **Pahwa Chemicals 2005 (189) E.L.T. 257 (S.C.)**; that they have been audited by the service tax authorities time and again and thus all the activities carried out by them were within the knowledge of the service



tax authorities and placed reliance on the case law of **Pragathi Concrete Products Pvt. Ltd -2015 (322) ELT 819 (SC)**, **Rajkumar Forge Ltd - 2010 (262) ELT 155 (Bom)**, **Batliboi & Co. Ltd. - 2000 (117) ELT 460 (Tri.-Bom)**, **Sipani Fibres Ltd. - 2007 (212) ELT 374 (Tri.-Bang)**; that since the matter relates to interpretation of the law therefore extended period cannot be invoked and placed reliance on the case laws of **Ispat Industries Ltd. - 2006 (199) ELT 509 (Tri.-Mum)**, **NIRC Ltd. - 2007 (209) ELT 22 (Tri.-Del.)** & **Chemicals & Fibres of India Ltd. - 1988 (33) ELT 551 (Tri.)**


**4.7** The appellant on the point of interest and penalty submitted that charging of interest is not proper and legal since the denial of CENVAT credit itself is not sustainable and that they have also not contravened any of the provisions of the Rules therefore no penalty is imposable.

**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 06.02.2018 which was attended by Ms. Priyanka Kalwani, Advocate of M/s. Lakshmikumaran & Shridharan, Ahmedabad on behalf of the appellant, during which she made submissions in support of their arguments against impugned order and Show Cause Notice and also submitted copies of the case laws to corroborate their arguments.

**Discussion and findings:**

**7.** I have gone through the entire case records and the submissions made orally, in writing as well as through email. I also find that the appellant has already reversed an amount of Rs. 1,43,557/-, being 7.5% of the demand confirmed, in their CENVAT credit register on 22.04.2017, which stand certified by the Range Superintendent. Thus, I find that there is sufficient compliance to requirement of Section 35F(i) of Central Excise Act, 1944, according, I proceed to decide the appeal on merits.





8. I find that main issue to be decided in the present appeal is whether appellants are entitled for CENVAT credit of Service Tax paid on the services of Tour Operator Services received by them for conducting trips of their Guest / Dealers or otherwise.

9.1 I find that Lower Adjudicating Authority in his impugned order has held that since the tour operator services have no nexus between the process of manufacturing and/or removal of finished goods therefore it does not fall within "means" part of the definition of "input service". It has been further held that it does not fall even in "include" part of the definition of "input service" because such tour neither publicizes the final product of the appellant through advertisement nor it cause promotion of sale of the final products.

9.2 I find that the disputed CENVAT credit has been availed by the appellant during the period from December, 2012 to July, 2015 and the definition of "input services", as it stood during the relevant period, reads as under:

- (I) **"input service" means any service, -**
- (i) *used by a provider of output service for providing an output service; or*
  - (ii) ***used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal, and includes services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal; but excludes***
- (A) *service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for -*
- (a) *construction or execution of works contract of a building or a civil structure or a part thereof; or*
  - (b) *laying of foundation or making of structures for support of capital goods,*
- except for the provision of one or more of the specified services; or;*
- (B) *services provided by way of renting of a motor vehicle, in so far as they relate to a motor vehicle which is not a capital goods; or*

**10**

- (BA) *service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods, except when used by -*
- (a) *a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or*
- (b) *an insurance company in respect of a motor vehicle insured or reinsured by such person; or*
- (C) *such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee*

**9.3** Thus, upon perusal of the above definition of the input services, I find it covers services relating to advertisement or sales promotion. I also find that Lower Adjudicating Authority is also in agreement. However, he is of view that dealer tour services cannot be equated with services in relation to advertisement and sales promotion activity. Therefore, on this ground the CENVAT has been denied.

**9.4** I find that appellant has contended that they had sponsored vacation trips for their dealers, which is type of sales incentive to motivate the sales force. I find that dealers are primarily engaged in sales promotion of the goods manufactured by them. Thus, I find that a vacation trip of dealers sponsored by appellant is in relation to sales promotion activity. Thus it falls within four squares of valid "input services".

**10.1** I find that the appellant has relied upon various case laws however the Lower Adjudicating Authority has held that they are not applicable since they have been issued with reference to definition of "input services", as it stood prior to 01.04.2011. I find that the earlier definition reads as under:

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

*and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, **advertisement or sales promotion**, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and*



*security, inward transportation of inputs or capital goods and outward transportation upto the place of removal...*

**10.2** I find that earlier definition of "input services" also covered "advertisement and sales promotion" services. Thus, there is no change in the old and new definition, as far as services of advertisement and sales promotion are concerned.

**10.3** I find that the tour operator services received by the appellant are in relation to sales promotion of their final product. Thus the services are in relation to manufacture and clearance of final product. Thus, I find that appellant has correctly placed reliance on the case law of **Essar Oil Limited - 2016 (41) S.T.R. 389 (Guj)**, **Jindal Pipes Limited - 2013 (31) STR 588 (Tri)**, **Doshion Limited - 2013 (30) STR 240 (Tri. Ahmd)**, **EXL Service.com India Private Limited - 2016 (43) STR 294 (Tri. All.)**, **Vidyut Metallics Private Limited - 2016 (42) STR 321 (Tri.)** and **Steadman Pharmaceuticals (P) Limited**. Thus, I hold that CENVAT credit of tour operator services for dealer's trip is admissible.

**11.** However, I find from the description of the services appearing in invoices, as per Show Cause Notice, that some are related to "Guest". The appellant has on record placed a copy of Invoice No. 7 dated 22.05.2013 of M/s. Fun Holidays Instant Reservations Private Limited for dealers trip to Lonavala which includes the CENVAT credit of Rs. 1,34,214/- except this no other supporting documents have been produced from which it can be conclusively held that the persons who have been taken on the trip by the appellants are dealers. Thus, in absence of all documents it is not possible for me to decide the exact quantum of CENVAT credit admissible.

**12.** Therefore, to meet the ends of justice I find that it is necessary to remand back the matter to Lower Adjudicating Authority with direction to the appellant to produce the documents to the satisfaction of the Lower Adjudicating Authority in respect of bifurcation of the amount of Service Tax pertaining to expenses incurred by them on Guests and on Dealers, for determining the quantum of eligible CENVAT credit within one month, from the date of receipt of this order. Upon receipt of the documents, the Lower Adjudicating Authority will decide



the quantum of the amount of CENVAT credit admissible or otherwise after following the principles of natural justice.

13. In holding this, I also rely upon the case law of **Honda Seil Power Products Ltd.- 2013 (287) ELT 353 (Tri. Del.)** wherein a similar view has been taken as regard inherent power of the appellate authority to remit back the matters under the provisions of Section 35A(3) of the Central Excise Act, 1944. Further, **Hon'ble Gujarat High Court, in Tax Appeal No. 276 of 2014**, in the case of **Associated Hotels Ltd.** has held that even after amendment in Section 35A ibid after 10-05-2011, Commissioner of Central Excise would retain the powers of remand.

14. Accordingly, without expressing any opinion on quantum of admissible CENVAT credit the appeal of the Appellant is disposed by way of remand to the Lower Adjudicating Authority to decide the quantum of the amount of CENVAT credit admissible or otherwise after following the principal of natural justice.

F. N. V.2/42/GDM/2017  
Place: Rajkot.

Dated: 27.02.2018



**(LALIT PRASAD)**

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

**By Speed Post**

To,

**M/s. Sanghi Industries Limited, Cement Division, Grinding Unit,**  
Sanghipuram, Motiber, Taluka: Abdasa, Dist: Kutch

Copy to:

- 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 & CEX, Bhuj.
- 5) Guard file.