



::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,

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रजिस्टर्ड टाक ए. डी. द्वारा :-

क अपील / फाइल संख्या /  
Appeal / File No.  
V2/50/GDM/2017

मूल आदेश सं /  
O.I.O. No.  
23/AC/Anjar/2016-17

दिनांक /  
Date  
09.03.2017

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

**KCH-EXCUS-000-APP-199-2017-18**

आदेश का दिनांक /  
Date of Order: 09.03.2018

जारी करने की तारीख /  
Date of issue: 16.03.2018

16.03.2018

Passed by **Shri Lalit Prasad, Commissioner, Central Goods and Service Tax & Central Excise, Rajkot**

अधिसूचना संख्या 26.10/दिनांक (टी.एन) शु.उ.के-2016/10 2016 के साथ पढ़े बोर्ड ऑफिस आदेश सं . 16/दिनांक टी.एस-2016/0911 के अनुसरण में 2016 श्री ललित प्रसाद ,आयुक्त , केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क ,राजकोट को वित्त अधिनियम 1994 की धारा 29की 1994केन्द्रीय उत्पाद शुल्क अधिनियम के अंतर्गत टर्ज अधारा 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 Manaksia Coated Metals & Industries Ltd., Survey No.396,,Village : ChandraniTaluka Anjar - Kutchh**

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

(A) सीमा शुल्क ,केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम ,1944 की धारा 35B के अंतर्गत एवं 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.

(iii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलें 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, 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 भगतान, 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 भगतान, 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 भगतान, 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 भगतान, 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 (सेस्टेट) 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 भगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

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

- (i) धारा 11 डी के अंतर्गत रकम
- (ii) सेनवेट जमा की ली गई गलत राशि
- (iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्ते 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 मामले 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 प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। /  
In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse
- (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /  
In case of rebate of duty of excise on goods exported to any country or territory outside India of 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 इयूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (न. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा संमयाविधि पर या बाद में पारित किए गए हैं। /  
Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
- (v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। /  
The above application shall be made in duplicate in Form No. EA-8 as specified under Rule 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.
- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए। /  
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपरोक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पंटी कार्य से बचने के लिए यथास्थिति अपीलीय 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 Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। /  
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-1 in terms of the Court Fee Act, 1975, as amended.
- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की 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. 23/AC/Anjar/2016-17 dated 09.03.2017 (**hereinafter referred to as impugned order**) passed by the Assistant Commissioner, Central Excise, Division: Anjar (**hereinafter referred to as Lower Adjudicating Authority**), M/s. Manaksia Limited, now M/s. Manaksia Coated Metals and Industries Limited, Survey No. 396, Village : Chandrani, Taluka: Anjar, Dist. Kutch (**hereinafter referred to the appellants**) have filed present appeal.

2. The facts of the case are that during the scrutiny of ER-1 returns for the period from April, 2013 to May, 2016, it was observed that the appellant had availed the CENVAT credit of Service Tax of Rs. 4,10,640/-, including Education Cess and Secondary & Higher Education Cess, paid on the professional services received by them from M/s. Winner's Engineering Solutions, Dewas (MP) in connection with their upcoming galvanizing plant i.e. expansion. Since the services was in connection with upcoming project therefore it was observed that the same does not appear to be valid "input service", as defined under Rule 2(l) of CENVAT Credit Rules, 2004. Further, the fact of availment of credit was suppressed from the department. Therefore, Show Cause Notice dated 05.08.2016 was issued to the appellant wherein it was proposed to recover the wrongly availed CENVAT credit, by invoking extended period, along with interest. Also penalty equivalent to CENVAT credit was proposed.

3.1 The Lower Adjudicating Authority while deciding the Show Cause Notice vide his impugned order held that professional service for construction of Galvanizing Line cannot be treated as valid input service as it does not have any direct or indirection relation to the manufacturing of final products since they are in relation to upcoming Galvanizing plant. Therefore, he held that CENVAT credit is not admissible. He also placed reliance on the Order-in-Appeal No. KCH-EXCUS-000-054-16-17 dated 26.12.2016.



**3.2** On the point of limitation with reference to appellants arguments that on the similar point, for the period from September, 2012 to March, 2013, they have already been issued Show Cause Notice dated 08.06.2015, therefore the present Show Cause Notice dated 05.08.2016 covering the period from April, 2013 to March, 2016 is time barred, the Lower Adjudicating Authority held that appellants vide letter dated 09.0.2015, 22.05.2015, 15.12.2015 & 05.02.2016 were repeatedly asked to provide the information for the period from April, 2013 but they did not provide the same. Therefore, the extended period has rightly been invoked.

**3.3** Accordingly, he confirmed the demand of irregularly availed CENVAT credit of Rs. 4,10,640/- along with interest. He further imposed penalty equivalent to irregularly availed CENVAT credit under Rule 15 of CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.

**4.** Being aggrieved with the impugned order the appellants have filed present appeal on the grounds that:

- (i) the Show Cause Notice covering the period from April, 2013 to May, 2016 have been served on them on 09.08.2016 therefore the demand for the period prior to 09.08.2015 is time barred as they have already earlier been issued Show Cause Notice dated 08.06.2015 covering the period from September, 2012 to March, 2015; that therefore the demand of Rs. 3,26,910/- is liable to be dropped on the point of limitation itself;
- (ii) the definition of "input service" include the services received in relation to setting up, modernization, renovations or repairs of a factory premises therefore the services on which they have availed CENVAT credit is valid "input" service and placed reliance on the case laws of **Reliance Gas Transportation Infrastructure Limited - 2016 (46) STR 286 (Tri. Mum)**, **Radhe Renewable Energy Development Private Limited -**



**2015 (315) ELT 33 (Tri. Ahmd), GSPL India Transco Ltd -  
2015 (40) STR 398 (AAR) & 2015 (40) STR 393 (AAR);**

- (iii) that since the services are well within the scope of valid input service; that department was already having information regarding availment of such credit therefore penalty under Rule 15 of CENVAT Credit Rules, 2004 is not imposable since it is a settled position of law that provisions for suppression of facts cannot be invoked for subsequent period; that therefore no penalty under Section 11AC of Central Excise Act, 1944 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 these appeals.

**6.** Accordingly, personal hearing in the matter was held on 27.02.2018 which was attended by Shri Sudhir Kumar Maheshwari, Authorized Representative of the appellant along with Shri Sujit Kumar Datta, Authorised Signatory of Appellant during which they reiterated their grounds of appeals and also filed additional written submission which is similar to grounds of appeal.

**Discussions & Findings:**

**7.** I have carefully gone through the entire appeal memorandum and the submissions made orally as well as in writing during the personal hearing. I find that appellant have debited their CENVAT credit account with Rs. 30,800/- on 12.05.2017 which is more than 7.5% of the amount of Rs. 4,10,640/- confirmed. Thus, I find that there is sufficient compliance to provisions of Section 35F(i) of Central Excise Act, 1944 and accordingly, I proceed to decide the appeal.

**8.** I find that in the present appeal following two points are arising for consideration:



- (i) whether demand made for the period from April, 2013 to July, 2015 is time barred?
- (ii) whether CENVAT credit of Service Tax has been correctly availed by the appellant on services availed by them?

**9.1** I find that the Show Cause Notice on hand covering the period from April, 2013 to May, 2016 has been issued on 09.08.2016 invoking the extended clause. The appellant have argued that they have already been issued Show Cause Notice dated 08.06.2015 covering the period from September, 2012 to March, 2013 therefore extended period cannot be invoked and hence the demand for the period prior to July, 2015 is time-barred.

**9.2** First of all I find that w.e.f. 14.05.2016, consequent to Presidential assent to the Finance Act, 2016, the time limit for issuance of Show Cause Notice for the cases involving other than suppression has been increased from one year to two year. Thus, the Show Cause Notice can cover the period upto July, 2014. Thus the contention of the appellant that the demand for the period prior to July, 2015 is time barred lacks legislative backing.

**9.3** On the other hand I find that Lower Adjudicating Authority in his findings at Para 22 of the impugned order has clearly stated that the appellants have already been requested vide letters dated 09.03.2015, 22.05.2015, 15.12.2015 & 05.02.2016 to provide the information and finally they supplied the complete information vide their letters dated 16.02.2016, 18.02.2016 & 21.06.2016. I also find that the appellants have not rebutted these facts. Thus, I find that despite being asked to provide the information vide letter dated 09.03.2015 the appellant deliberately delayed the submissions of information till 21.06.2016 which in turn delayed in issuance of Show Cause Notice therefore invoking extended period is just and proper and I find no defect therein. I find that my views are well supported by the decision of the Tribunal in the case of **Sundaram Clayton Limited - 2000 (117) ELT 116 (Tri)** wherein it has been held that since relevant information was



not provided by the assessee during the course of inquiry despite knowing about excisability of the goods, therefore the extended period has been rightly invoked. I find that in the instant case also despite being requested vide letter dated 09.03.2015, 22.05.2015, 15.12.2015 and 05.02.2016 the information was provided by the appellants, in piecemeal vide their letter dated 16.02.2016, 18.02.2016 & 21.06.2016 and it was well within the knowledge that the department has objections about availment of such CENVAT credit. Thus, demand is not time-barred.

**10.1** On the point of merit, I find that it is not disputed that the CENVAT credit of Service Tax has been claimed on the services which were utilized for expansion of their current plant by construction of galvanizing line engineering, however, the only ground for its denial is that since the said services are in relation to the upcoming plant therefore it cannot be termed as utilized directly or indirectly in or in relation to the manufacture of final product.

**10.2** I find that Lower Adjudicating Authority in his impugned order at Para 15 has reproduced the definition of "input services" given in Rule 2(l) of CENVAT Credit Rules, 2004. Upon its perusal **I find that in "inclusive" part consists the services in relation to setting up, modernization, renovation and repairs of factory.** I find that the services received by the appellant are nothing but in relation to modernization of their factory by adding construction of galvanizing line engineering. I also find that there is no allegation in the entire proceedings that the Central Excise registration number of the present plant and the upcoming plant are different.

**10.3** As regards to the Order-in-Appeal dated 26.12.2016 relied upon by the Lower Adjudicating Authority in his impugned order wherein it has been held that services were received in relation to expansion / setting up of the new facility and are not in connection with modernization, renovation and repairs of factory, I am unable to agree with my Learned predecessor in as much as the inclusive part clearly includes the services in relation to setting up, modernization, renovation and repairs of factory and construction of galvanizing line engineering in



the existing factory is nothing but an act of modernization of the factory. I further find that if the expansion of existing factory is not a valid activity then there is no proposal for denial of CENVAT credit on the inputs used in said expansion. Thus, I hold that there is no irregularity in availment of CENVAT credit by the appellants. Further, when demand does not survive the question of interest and imposition of penalty does not arise.

**11.** In light of above discussions and findings, I set-aside the impugned order and allow the appeal filed by the appellant.

F. N. V.2/50/GDM/2017  
Place: Rajkot.

Dated: 09.03.2018



**(LALIT PRASAD)**

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

**By Speed Post**

To,  
M/s. Manaksia Limited,  
now M/s. Manaksia Coated Metals and Industries Limited,  
Madhav Villa Society (House No. 1),  
Survey No.421, Plot No. 1  
Anjar Satapar Road,  
Near Railway Crossing (Anjar)  
Taluka: Anjar,  
Dist. Kutch - 370 110

**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, Anjar - Bhachau.
- 5) Guard File.