



::आयुक्त (अपील-III) का कार्यालय, केन्द्रीय उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS- III), CENTRAL EXCISE,
 द्वितीय तल, केन्द्रीय उत्पाद शुल्क भवन / 2nd floor, Central Excise 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.	मूल आदेश सं / O.I.D. No.	दिनांक / Date
	V2/7/EA2/RAJ/2016	28/ADC/PV/2015-16	29.01.2016

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

RAJ-EXCUS-000-APP-016-2017-18

आदेश दिनांक / Date:	29.05.2017	जारी करने की तारीख / Date of issue:	05.06.2017 6
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**श्री उमा शंकर, आयुक्त (अपील-III) द्वारा पारित /
Passed by Shri Uma Shanker, Commissioner (Appeals-III)**

ग अथवा आयुक्त संयुक्त आयुक्त/उपायुक्त/सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, राजकोट / जयनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से श्रुति: /
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 Appellant/ Respondent :-
**M/s. E.C. Valves ,
 Plot No. 4239/4240,, GIDC Phase- II, Jamnagar, .**

इस आदेश(अपील) से व्यक्ति निम्नलिखित तरीके से उपरोक्त 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.

- 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 सकता 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:-
- वर्गीकरण मुद्दाओं से सम्बन्धित सभी मामलों 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.
- उपरोक्त परिच्छेद 1(a) में बतलाए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, ओ-20, न्यू मेंटल हॉस्पिटल कंपाउंड, मेघानी नगर, अहमदाबाद-380016, को की जाती चाहिए। /
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad: 380016, in case of appeals other than as mentioned in para- 1(a) above
- अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवली, 2001 के नियम 6 के अंतर्गत निर्धारित फीच गवर्न एयर EA-3 को चार प्रतियों में दर्ज किया जाता चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की रॉंग, ब्याज की रॉंग 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 सलज्ज करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्रफ्ट द्वारा किया जाना चाहिए। संबंधित ड्रफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्वयंज आदेश (स्टै 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/-.

- अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती एवं उसके साथ वित्त आदेश के विरुद्ध अपील की सही हू, 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 रॉंग, ब्याज की रॉंग 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 सलज्ज करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्रफ्ट द्वारा किया जाना चाहिए। संबंधित ड्रफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्वयंज आदेश (स्टै 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 is Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

(i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत 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 आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करे (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उप-आयुक्त, केन्द्रीय उत्पाद शुल्क सेवाकर, को अपील की न्यायाधिकरण को अपील 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 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 का मूल्य के 10 प्रतिशत (10%), जब मूल्य 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 टैय रशि दस करोड़ रुपये से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत 'साल किया गए शुल्क' में विवर शामिल है

- (i) धारा 11 डी के अंतर्गत रकम
- (ii) सेल्वेट जमा की गयी गयी गलत रशि
- (iii) सेल्वेट जमा नियमावली के नियम 8 के अंतर्गत टैय रकम

- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के अंतर्गत से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचारार्थन प्रथम दर्ज एवं अपील को लागू नहीं होवे।

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 प्राधिकार निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम पंक्तिक के अंतर्गत अवर पारित, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवाणु दीप भवन, संसद भवन, नई दिल्ली-110001, को किया जाता 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-35 ibid:

(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के परिवहन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह परिवहन 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 गयी 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 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) मुद्रीकृत उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो हुचुटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मंजूर की गयी है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (सं. 2), 1998 की धारा 109 के द्वारा प्रियत की गयी लारीज अथवा सहायक विधि 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 विनिर्दिष्ट है, इस आदेश के संकेपण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदनों 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 साथ-साथ के ली 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 दम से किया जाना चाहिए। इस लक्ष्य के होते हुए भी की निम्न पढी रूप से बचने के लिए यथास्थिति अपीलीय प्राधिकरण 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, 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 स्वयं 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, केन्द्रीय 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 अवगत 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 सटीकतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। / For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in

:: ORDER IN APPEAL ::

The present appeal has been filed by the Commissioner, Central Excise and Service Tax, Rajkot (*hereinafter referred to as "appellant department"*) against the Order-in-Original No. 28/ ADC/PV/2015-16 dated 29.01.2016 (*hereinafter referred to as "the impugned order"*), passed by the Additional Commissioner, Central Excise & Service Tax Rajkot (*hereinafter referred to as "the adjudicating authority"*) in the matter of M/s. E C Valves, Plot No. 4239/4240, GIDC Phase-II, Dared, Jamnagar (*hereinafter referred to as "the Respondent".*)

2. Briefly stated facts of the case are the respondent, a registered central excise assessee availed cenvat credit on the inputs for manufacturing their final products Brass Pipe Fitting and Copper Pipe fitting. During the manufacturing process of their final excisable goods, brass scrap is generated. The respondent as principal manufacturer, has sent the brass scrap under covers of challans for movement of inputs under Notification No. 214/86 dated 25.03.1986 and / or under Rule 4(5) of Cenvat Credit Rule, 2002 without payment of Central Excise duty to the job worker. However, the job-worker has returned the jobbed goods viz. Brass Rods/ Bars, after payment of Central Excise duty covering the value of the raw materials & conversion charges and prepared Central Excise invoices under Rule 11 of Central Excise Rules, 2002, without charging of the VAT/ Sales Tax. The respondent has availed the credit of such Central Excise duty paid and utilized the same towards payment of Central Excise duty on the manufactured goods. The respondent (principal manufacturer) has availed the credit of such Central Excise duty paid and utilized the same towards payment of Central Excise duty on the manufactured goods. The respondent was issued with the show cause Notice dated 28.03.2011 under Rule 14 of Cenvat Credit Rules, 2004 (*hereinafter referred to as 'the CCR'*) for recovery of Cenvat Credit wrongly availed by them, as the job- worker was not required to pay duty on job-worked goods under notification and hence respondent has wrongly availed the duty paid by the job-worker. The said notice was decided by the adjudicating authority vide Order In Original No. 28/ADC/PV/2015-16 dated 29.01.2016, wherein he dropped the proceedings initiated vide aforesaid Show Cause Notice dated 28.03.2011.



3. Aggrieved by the impugned order, the appellant department filed the present appeal. The gist of the grounds of appeal is as under:-

(i) The respondent - principal manufacturer i.e. M/s. E.C. Valves has availed the Cenvat credit at the time of initial purchase of inputs and again wrongly availed the same on the invoices issued by the job-worker, M/s. Super Impex. The appellant department submitted the details of Cenvat Credit availed on the inputs received initially in respect of inputs received from the different supplier namely (i) M/s. Gold Metal Extrusion and (ii) M/s Khandelwal Brass Industries, Jamnagar; that the said inputs were put into use in the manufacturing of pipe fittings and the residuals/waste in the form of remnants and scrap generated, during the manufacturing process; that the aforesaid brass scrap to the job-worker M/s. Super Impex, for conversion of same into Brass Rods/Bars and opted not to pay Central Excise duty and chose to avail benefit of exemption under Notification No. 214/86-CE dated 25.03.1986; that the respondent has undertaken to follow the procedure and to comply with the conditions prescribed under the said Notification No. 214/86-CE dated 25.03.1986 and cleared the brass scrap under cover of challans without payment of duty; that on conversion of the brass scrap into semi-finished goods-Brass Rods/Bars, the job-worker M/s. Super Impex, was required to clear the same on the counterpart of the challans, without payment of Central Excise duty; that the job-worker prepared invoices under Rule 11 of Central Excise Rules, 2002 and paid Central Excise duty on the value of the scrap including job charges.

(ii) The respondent has availed the Cenvat credit on the invoices issued by the job-worker, though they have cleared the brass scrap to the job worker without payment of Central Excise duty; that the sample copies of challans, under which the respondent- principal manufacturer has sent the brass scrap to the job-worker M/s. Super Impex and corresponding invoices issued by the job-worker are submitted.

(iii) The respondent vide Challan No. 328 dated 21.02.2009 has cleared generated scrap of 1528.4 Kgs. to the job-worker M/s. Super Impex and M/s. Super Impex, after conversion of brass scrap, returned the Brass rods/bars 1451.98 kgs. (after deducting burning loss of 76.42 Kgs.- appx. 5%) on the following invoices and the respondent- principal manufacturer, M/s E.C. Valves took credit of the Central Excise duty paid as under –



Invoice No.	Bars rods/Bars received	Cenvat Credit availed of Rs.	Entry No. & date
1357 dated 24.02.2009	598.35Kgs	12,924	132/24.02.2009
1409 date 10.03.2009	364.3 Kgs	6,288	139/10.03.2009
1460 dated 23.03.2009	305.65 Kgs	9,309	146/23.03.2009
1483 dated 30.03.2009	183.680 Kgs	6,526	150/30.03.2009

(iv) That the respondent has unauthorisedly availed the Cenvat credit on the invoices issued by the job-worker which resulted into availment of Cenvat credit **twice on recycling** of generated brass scrap and was not in accordance with the provisions of Cenvat Credit Rules, 2004, which can be explained from the following illustration-

- The illustration is based on the invoice No. 164 dated 08.06.2009 under which the respondent- principal manufacturer has received 760.8 kgs. of Brass rods/bars. The purchase cost of the Bars/Rods were Rs. 220/- per kgs. After the date 08.06.2009, the respondent- principal manufacturer has sent the generated brass scrap after quoting of Rs. 200/- per Kg. in the challans prepared. The ratio of generating of the scrap is appx. 55% (which has been obtained from the ER-1 filed for the month of December, 2008, by the respondent- principal manufacturer, wherein, 3111.323kgs. of brass pipe fittings, 47.975 kgs. of copper pipe fittings & 5103 kgs. of brass scrap has been shown as manufactured. Thus ratio of scrap generated is appx. 61.7% $\{(5103 / (3111.323+47.975+5103))$. However, for illustration purposes, it is taken as 55% for calculation of recycling it. (Exhibit –C Page 1 of 1 to 5).

- Thus taking the above ratio on use of 760.800 kgs. of Brass rods/bars, the respondent- principal manufacturer has availed Cenvat credit of Rs. 13,792/- and as per the ratio arrived, the generated scrap will be 418 Kgs. On further use of the said brass scrap of 418 kgs. and sending it to the job worker, the job-worker has to pay the duty and the respondent- principal manufacturer has to avail the Cenvat Credit on subsequent transactions as under -

Brass scrap generated	Value Rs.	Total Value	Burning Loss @5% (in kgs.)	Brass Rods/ Bars produced at job-worker's end kgs.	Labour Charges @ Rs.25/- per Kg.	Central Excise duty rate	value arrived at the Job-worker's end	Cenvat available at the end of Principal Manufacturer Rs.
418	200	83600	20.9	397.1	9927	8.24 %	93527	7,707/-
(Brass scrap will again be generated @55% of the Brass rods/bars $397.1 \times 55\% = 218.4$ Kgs.)								
218.4	200	43680	10.92	207.48	5187	8.24 %	48867	4,027/-
(Brass scrap will again be generated @55% of the Brass rods/bars $207 \times 55\% = 114$ Kgs.)								
114	200	22800	5.7	108.3	2707	8.24 %	25507	2,102/-
(Brass scrap will again be generated @55% of the Brass rods/bars $108 \times 55\% = 59$ Kgs.)								
59	200	11800	2.95	56.05	1401	8.24 %	13201	1,088/-
(Brass scrap will again be generated @55% of the Brass rods/bars $56 \times 55\% = 31$ Kgs.)								
31	200	6200	1.55	29.45	736	8.24 %	6936	572/-
(Brass scrap will again be generated @55% of the Brass rods/bars $29 \times 55\% = 16$ Kgs.)								
16	200	3200	0.8	15.2	380	8.24 %	3580	295/-
(Brass scrap will again be generated @55% of the Brass rods/bars $15 \times 55\% = 8$ Kgs.)								
8	200	1600	0.4	7.6	190	8.24 %	1790	147/-
Total								Rs.15,938/-

Thus in addition to the Cenvat credit of Rs.13,792/- availed initially by the respondent- principal manufacturer, he will once again avail Cenvat credit of Rs. 15,938/- on subsequent recycling of brass scarp and conversion thereof to Brass Rods/Bars.

(v) The adjudicating authority has not appreciated the facts narrated in the statement dated 20.04.2010 recorded of Shri V.D. Gojiya, Authorised Signatory of the respondent- principal manufacturer, M/s. E.C.Valves, wherein, he, has inter-alia, categorically deposed that they used to send the brass scrap under job-work challans, without payment of duty and received back the finished /job worked goods under duty paid invoices from the job-workers and have availed the Cenvat credit of the Central Excise duty covered in the said invoices; that Central Excise duty paid on the removals of the semi-finished goods from the job-workers end, is not admissible, when the assessee has opted for availment of Exemption under the Notification No. 214/86- C.E. dated 25.03.1986 and removed the goods under job-work challans, and has not discharged any Central Excise duty at the time of sending the brass scrap for conversion of same into Brass Rods/Bars; that simultaneously, the job-worker has also given his consent to the respondent- principal manufacturer to attend the work allotted; that the Job-worker has paid the Central Excise duty on the value of the goods (inclusive of labour charges) per kilogram; that the job worker has no authority to pay the central excise duty when the movement of goods are claimed and covered under Notification 214/86 for exemption and hence cenvat credit can claimed by the Respondent is in contravention of the Central Excise Law .

(vi) The respondent- principal manufacturer was well aware of these facts right from the receipt of inputs, generation of the brass scrap from the manufacturing process of the final products, and issue thereof to the job-worker, receipt of the intermediate goods and dispatch of final manufactured goods, that the ownership of the goods was remained with the respondent- principal manufacturer only, since the generated brass scrap goods were not cleared on invoices. In spite of these facts, the job-worker M/s. Super Impex, had issued invoices and without any authority, the respondent-principal manufacturer has availed the Cenvat credit, which was not legal and proper since, the job-worker was required to charge the job charges only and in no circumstances they were required to pay Central Excise duty on the value of job-worked goods. Further, while preparing the invoices, the job-worker, M/s. Super Impex, has not charged any VAT / Sales Tax, as such the transactions entered into between the job-worker, M/s. Super Impex and the respondent- principal manufacturer, M/s. E.C.Valves, are not at arm's length and they have prepared invoices only for transfer of Cenvat credit, which remained unutilized and accumulated at the end of the job-worker.

(vii) The adjudicating authority, without appreciating the facts narrated in the Show Cause Notice, has dropped the charges levelled against the

respondent by merely stating that they cannot be made responsible for contravention of statutory or procedural requirements by a job-worker; that there is no dispute that the duty has been paid at the Job-worker's end and the assessment cannot be re-opened at the recipient end; that as regards reliance in the decision of Hon'ble High Court in the case of CCE, Ahmedabad-I Vs. Rohan Dyes and Intermediates Ltd. {2012 (284) E.L.T. 484 (Guj.)} the issue involved was that the department has demanded reversal of Cenvat credit on the clearances of duty paid raw materials to the job-worker, whereas, the present case is entirely different, as the department has demanded the Cenvat credit wrongly availed twice by the respondent- principal manufacturer.

(viii) Thus, though the Central Excise duty was not payable on the jobbed goods, being exempted vide Notification No. 214/86, the respondent-principal manufacturer, while availing the Cenvat credit, has availed the Cenvat credit of Central Excise duty at the time of purchase of the inputs, has again availed the Cenvat credit on receipt of intermediate goods (Brass Rods/Bars) after conversion of the generated brass scrap by the job-worker, that too when the brass scrap was cleared without payment of Central Excise duty. Thus, it is a clear case of avoidance of Central Excise duty at the respondent- principal manufacturers end, which he accumulated in his Cenvat credit account, in spite of the fact that value addition in their case is almost 90 % (as per ER-1 return for the month of December, 2008) (Raw Material cost of 307.488kgs. brass pipes sold was Rs. 59,960/- {Rs.195/- (Rs. 175/-+ Rs.20 labour charges) per kg. – Invoice No. 1050 dated 11.12.2008-Exhibit-D} and the sale proceeds was Rs. 1,13,577/- (1,13,577/- / 59,960 x 100)(Exhibit-C-Page 1 of 1 to 5), and the balance at the end of March, 2011 was around Rs. 16.44 Lakhs. (copy of relevant page of Cenvat credit register for the month of March, 2011 is placed as Exhibit –A Page 8)

(ix) In the present case, the respondent- principal manufacturer has filed declaration and undertaken to follow all the statutory and procedural requirements and accordingly availed the benefit of exemption Notification No. 214/86-C.E. dated 25.03.1986 and not paid any Central Excise duty on brass scrap generated and cleared to the job-worker's premises. Thus, once the respondent- principal manufacturer M/s. E.C. valves, in the present case opted for the said Notification, they should have barred themselves to avail the Cenvat credit of the duty paid by the job-worker and any Central Excise duty paid by the job-worker was required to be deposited with the Government only, under the provisions of Section 11D of the Central Excise Act, 1944. The respondent-principal manufacturer, in spite of knowing these facts, has wrongly availed the

Cenvat credit of the Central Excise duty, paid by the job-worker, which was paid unauthorizedly and in contravention of the provisions of Cenvat Credit Rules, 2004. The Board's Circular No. 940/1/2011-CX dated 14.01.2011, issued on application of provisions of Section 5A(1A) of the Central Excise Act, 1944 is very specific and clearly bars the Cenvat credit availed by the downstream units, when the Central Excise duty has been paid on the exempted goods. Para 2 & 3 of the Board's Circular dated 14.01.2011 are re-produced as under :

"2. It is further clarified that in case the assessee pays any amount as Excise duty on such exempted goods, the same cannot be allowed as "CENVAT Credit" to the downstream units, as the amount paid by the assessee cannot be termed as "duty of excise" under Rule 3 of the CENVAT Credit Rules, 2004.

3. The amount so paid by the assessee on exempted goods and collected from the buyers by representing it as "duty of excise" will have to be deposited with the Central Government in terms of Section 11D of the Central Excise Act, 1944. Moreover, the CENVAT Credit of such amount utilized by downstream units also needs to be recovered in terms of the Rule 14 of the CENVAT Credit Rules, 2004."

(x) The Notification No. 214/86-CE dated 25.03.1986, under which the respondent- principal manufacturer has cleared the raw materials to the job-worker for conversion of the same into the Brass Rods/bars, has been issued under Section 5A of the Central Excise Act, 1944, granting exemption from payment of Central Excise duty. With effect from 13.05.2005, sub Section (1A) has been inserted into said Section which clarifies that "where an exemption under sub-section (1) in respect of any excisable goods from the whole of the duty of excise leviable thereon has been granted absolutely, the manufacturer of such excisable goods shall not pay the duty of excise".

(xi) Also before availing of the Cenvat credit involved in the invoices issued by the job-worker, it was incumbent upon the respondent - principal manufacturer to verify its genuineness of payment of duty, before taking such Cenvat credit. Rules 9(5) and 9(6) of Cenvat Credit Rules, 2004 provided that the "the manufacturer of final products or the provider of output services shall maintain proper records for the receipt and consumption of the inputs, capital goods, and input services in which the relevant information regarding the value, tax paid, CENVAT credit taken and utilized, the person from whom the inputs, capital goods and input service has been procured is recorded and the burden of proof

regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit".

(xii) In view of the above, the respondent- principal manufacturer M/s. E.C. Valves, have acted in contravention of the provisions of Notification No. 214/86-CE dated 25.03.1986 and have availed the Cenvat credit wrongly in contravention of the provisions of Cenvat Credit Rules, 2004, which has resulted into double benefit of availment of Cenvat credit, on the same recycled goods viz. generated brass scrap. As such the respondent- principal manufacturer was liable to pay /reverse the Cenvat credit wrongly availed along with interest thereon as provided under Rule 14 of the Cenvat Credit Rules, 2004, readwith Section 11A of the Act and were also liable for penal actions as proposed in the Show cause Notice dated 28.03.2011.

4. Personal hearing in the matter was held on 25.04.2017, which was attended by Shri Dinesh Kumar Jain, C.A., on behalf of the appellant. Learned CA explain the case and submits that duty cannot be reassessed at input recipient end. He makes written submission and submits case law of M/s Rohan Dyes & Intermediate Ltd reported at 2012 (284) ELT 484 (Guj). In their written submission dated 25.04.2017, referred the adjudicating authority's observation at Para 4.3 of the impugned order and submitted that the department have tried to re-open the assessment of duties paid by the job-worker at the recipient's end which is not permissible in law.

5. I have carefully gone through the facts of the case, impugned order and submissions made by the appellant in ground of appeal, additional submissions and records of personal hearing. The issues involved in the present matters order is that whether the Cenvat Credit of duty paid by the job worker was rightly availed by the Respondent assessee or otherwise.

6. On examining the entire issue I observe that the appellant department has raised the issue of movement of goods for job work under Notification 214/86-CE dated 25.03.1986 opted and exemption claimed by the Respondent and its job worker. It is vehemently argued that by adopting such methodology of paying duty by Job worker and claiming Credit is un-authorized accumulation of Cenvat Credit on same quantity of inputs for which they have availed the Credit initially. The facts remained un challenged is that at the one hand, each time inputs cleared by the respondent do not bear any duty, on the other hand it returns with duty payment. I further observe that nothing on record to

suggest that the job worker has paid the duty in cash. By presenting illustration of entire cycle of input being sent for job work and its credit, the department has raised very valid point that the Cenvat credit is being accumulated on same input again and again as much as the same is being sent by the Respondent for job work and not cleared on payment of duty. The appellant department has submitted calculation chart of Cenvat Credit available to the Respondent where the job worker has adopted the value which also represent and includes the value of inputs supplied by the Respondent to pay the duty and not restricted to the job charges only. It is worked out that at every Recycling stage of same brass scrap credit was being claimed more than that of initially availed by them. Therefore, I find merit in appellant department's plea to claim that the invoices were used only for transfer of Cenvat Credit which remained unutilized and accumulated at job worker's end. This facts are also not challenged by the Respondent. I further find that the clearance made by the respondent by opting for notification No. 214/86 CE, the respondent has knowledge that the goods will return under Job work challan and not under duty paying documents and hence duty paid by the job worker at his own volition is not the duty for the purpose of claiming cenvat credit by the Respondent. The respondent erred in referring Para 4.3 of the impugned order as much as to claim that they i.e. Respondent are least concerned with the contravention of provisions of Notification No. 214/86 by the job worker and hence fails to comply with the Rule 9 (5) of the Cenvat Credit Rules, 2004. It is very obvious that the assessment under Notification 214/86 involves both, the Principal and the job worker and can not be seen in isolation for convenience at either end. Inputs cleared by the Respondents are assessed under 214/86-CE until it returns to the unit as otherwise it ought to be cleared on payment of duty. Thus, issue of reopening of assessment does not arise and I do not find valid objection by the Respondent.

7. I further find that the appellant department has rightly pointed out that the issue involved in the case of M/s. Rohan Dyes and Intermediates Ltd (212(284)ELT 484(Guj) is not applicable in the instant case as much as issue involved in the said matter was that Principal Manufacturer was asked to reverse the Cenvat Credit initially availed on the inputs cleared as such by them for job work. Whereas in the present case Respondents have cleared generated brass scrap, an excisable manufactured goods cleared under Notification 214/86-CE dated 25.03.1986. In that case Hon'ble High Court was not considering a situation where excisable goods were cleared under Notification 214/86. Further, in the said decision Hon'ble high court has given in different backdrop and relied upon a Supreme Court's decision in the case of International Auto Ltd (2005(183) ELT

23((SC) which is in relation to inclusion of value of free supply of inputs received by the job worker wherein issue of Modvat claimed by the supplier was discussed. The decision by the Hon'ble High Court is given with regard to credit on inputs sent for job work. To better appreciate the facts, relevant portion of the decision of Hon'ble High Court in the case of M/s. Rohan Dyes and Intermediates supra is reproduced below:-

'13. If we apply the aforesaid principle to the facts of the present case, there is no dispute that according to the modvat scheme, it is the modvat of such final product which would have to include the cost of the inputs and in respect of which Modvat credit could be taken at the time of clearance of the final product and thus, in the facts of the present case, the Tribunal rightly rejected the contention of the Revenue that the respondents should have reversed the Cenvat credit taken before sending the goods to the job worker since the job worker had not followed the procedure of job work. It may not be out of place to mention here that what was earlier provision contained in Rule 57F(2)(b) is exactly the present provision of Rule 4(5A) of the Cenvat Credit Rules, 2004.'

Thus, the Hon'ble High Court's decision was given in different set of facts and in different context. Hence, it can not be made applicable in the present case on hand.

8. In light of the above discussion, I hold that the Respondents are liable to pay/ reverse the Cenvat Credit under Rule 14 of the Rules readwith Section 11A of the Act and also liable for penal action as proposed in the Show Cause Notice dated 28.03.2011. I therefore, set aside the impugned order and allow the appeal filed by the appellant department.

९. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

9. The appeal filed by the appellant stands disposed off in above terms.



(उमा शंकर)

आयुक्त (अपील्स - III)

By R.P.A.D.

To,

1	M/s. E C Valves, Plot No. 4239/4240, GIDC Phase-II, Dared, Jamnagar.	मे ई सी वाल्व्स प्लॉट नं ४२३९/४२४० जी आई डी सी फेझ -II दरेड - जामनगर
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Copy submitted to:-

- 1) The Chief Commissioner, Central Excise, Ahmedabad.
- 2) The Principal Commissioner, Customs and Central Excise, Rajkot.
- 3) The Assistant Commissioner, C Ex & Service Tax Division, Jamnagar
- 4) The Deputy Commissioner, Systems, Hq, Rajkot.
- 5) The Superintendent, C Excise, Range-II, Jamnagar.
- 6) PA to Commissioner (Appeals-III), Central Excise, Ahmedabad.
- 7) Guard File