



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

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

राजकोट / Rajkot - 360 001

Tele Fax No. 0281 - 2477952/2441142 Email: cexappealsrajkot@gmail.com



सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No. V2/241 /RAJ/2016	मूल आदेश नं / O.D. No. 03/SUPDT/C.EX./AR-V/2016- 17	दिनांक / Date 05.09.2016
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ख अपील आदेश संख्या (Order-In-Appeal No.):

RAJ-EXCUS-000-APP-041 -2017-18

आदेश का दिनांक / Date of Order:	11.09.2017	जारी करने की तारीख / Date of issue:	12.09.2017
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कुमार संतोष, आयुक्त (अपील), राजकोट द्वारा पारित /
Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot

ग अपर आयुक्त समूह/ आयुक्त/ अयायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क सेवाकर, राजकोट / जमनगर / गंधीधाम/ द्वारा उपरोक्तित जारी
मूल आदेश से उत्पन्न /
Arising out of above mentioned O/O 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. Turbo Bearing Pvt. Ltd., Plot No. 250-251-252 & C1B-262,, Aji Industrial Area Phase-II,Q- Road, Rajkot

इस आदेश(अपील) से व्यथित कोई व्यक्ति विम्बनविहित तरीके में आयुक्त परिष्कारी / परिष्कारण 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 अपीलार्थि न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अन्तर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अन्तर्गत विम्बनविहित 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) विशेष बेंच/संयुक्त बेंच में सम्बन्धित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलार्थि न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, की जा सकती है।
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 बतलाए गए अपील के अलावा सभी अपीलें सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलार्थि न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, 2nd तल, बहामली भवन असावा अहमदाबाद- 380016 को की जानी चाहिए।
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd Floor, Bhaumali Bhawan, Asawa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलार्थि न्यायाधिकरण के समक्ष अपील चारतल करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) विधिसूचनी, 2001, के नियम 6 के अन्तर्गत निर्धारित फीर रुपये प्रकर EA-3 की धारा परिच्छेद में दर्शाया जाता है। इसमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की राशि अथवा की राशि और अथवा सेवा कर/सुलभ, अथवा 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो कमरा: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न की। निर्धारित शुल्क का भुगतान, संबंधित अपीलार्थि न्यायाधिकरण की शाखा के महासक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाता है। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलार्थि 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/-.

(iv) अपीलार्थि न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अन्तर्गत सेवाकर विधिसूचनी, 1994, के नियम 9(1) के तहत निर्धारित धारा S.T-5 में धारा परिच्छेद में की जा सकती है। इसमें से कम से कम एक प्रति के साथ, जहां सेवाकर की राशि अथवा की राशि और अथवा सेवा कर/सुलभ, अथवा 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो कमरा: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न की। निर्धारित शुल्क का भुगतान, संबंधित अपीलार्थि न्यायाधिकरण की शाखा के महासक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाता है। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलार्थि 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 दायें की जाती अर्थात्, सेवाकर नियमावली, 1994, के नियम 8(2) एवं 9(2A) के तहत निर्धारित फॉर्म ST-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 (अर्थात् में एक प्रति प्रस्तुत होती चाहिए) और आयुक्त द्वारा सहमत आयुक्त अथवा आयुक्त, केन्द्रीय उत्पाद शुल्क सेवाकर, को अपील अथवा अधिकाधिकार को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST-7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील विभाग (सेस्टाट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एक के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपील विभाग में अपील करते समय उत्पाद शुल्कसेवा कर मॉडल के 10 प्रतिशत (10%), जब मॉडल एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत 'मॉडल किए गए शुल्क' में निम्न शामिल है।
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेस्टाट जमा की गयी गयी रकम राशि
(iii) सेस्टाट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपील विभाग के तहत विचारार्थ संलग्न अर्थात् एवं अपील की जाती नहीं होगी।
For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores.
Under Central Excise and Service Tax, "Duty Demanded" shall include :
(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.
- (C) भारत सरकार को पुनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षण अधिकार विभागाधिकारिता मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के अधिनियम के अंतर्गत अपील विभाग, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौकी मंजिल, जीवन टॉप स्थान, संसद भवन, नई दिल्ली-110001, में 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 अथवा गृह के परिसर के दौरान या किसी अन्य कारखाने या फिर किसी एक अंश गृह से दूसरे अंश गृह परिसर के दौरान, या किसी अंश गृह से या अंशगर्त में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी अंश 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 अर्पित गई केन्द्रीय उत्पाद शुल्क के छूट (क्रेडिट) 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) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इच्छित क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मजबूती की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तरीक़ अथवा समयावधि 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 निर्दिष्ट है, इस आदेश के संकेतन 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 लक्ष्य 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 विभागाधिकार निर्धारित शुल्क की अदायगी की जानी चाहिए। / जहां संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए। / The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved is 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 इन में किया जाना चाहिए। इस लक्ष्य के होने हुए भी की सिखा चर्ची रुपये दो हजार के लिए अध्याधिकार अपील अथवा अधिकाधिकार 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 Appellate 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) पचाससौषीत न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 8.50 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. 8.50 as prescribed under Schedule-I in terms of the Court Fee Act,1975, as amended.
(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील विभाग (सेस्टाट) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्बन्धित 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 अपील अधिकारी को अपील दाखिल करने से संबंधित जानकारी, विस्तृत और नवीनतम प्रावधानों के लिए, अपील विभाग वेबसाइट www.cbac.gov.in में 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.cbac.gov.in

:: ORDER-IN-APPEAL ::

M/s. Turbo Bearing Pvt. Ltd., Plot No. 250-21-22 & C1B-262, Aji Industrial Area Phase-II, Q-Road, Rajkot – 360 003 (hereinafter referred to as '**the appellant**') filed appeal against the Order-In-Original No. 03/SUPDT/C.Ex./AR-V/2016-17 dated 05.09.2016 (hereinafter referred to as '**the impugned order**'), passed by the Superintendent, Central Excise AR-V, Rajkot (hereinafter referred to as "**the lower adjudicating authority**");

2. Brief facts of the case are that the appellant utilized credit of Education Cess and Secondary & Higher Secondary Education cess towards payment of basic excise duty in violation of the provisions of Rule 3(7)(b) of the Cenvat Credit Rules, 2004 and thereby short-paid Central Excise duty of Rs. 48,589/-. SCN No. C.Ex./AR-V/Turbo Bearing/2015-16 dated 12.05.2016 proposed recovery of Central Excise duty of Rs. 48,589/- under Section 11A of the Central Excise Act, 1944 readwith Rule 8 (3A) of the Central Excise Rules, 2002 & Rule 3(7)(b) of the CENVAT Credit Rules, 2004 alongwith interest under Section 11A of the Central Excise Act, 1944 (hereinafter referred to as "the Act") and imposition of penalty under Rule 8(3A) of the Rules. The lower adjudicating authority, vide impugned order, confirmed demand of Central Excise duty alongwith interest and imposed penalty @ 1% per month of the defaulted amount under Rule 8(3A) of the Rules.

3. Being aggrieved with the impugned order, the appellant filed the present appeal, *inter alia*, on the grounds that the sole intention behind issuance of Notification No. 12/2015(C.E.(N.T.)) has been to allow utilization credit of unutilized cess, lying as on 28.02.2015, towards payment of excise duty. Otherwise, with effect from 01.03.2015, no cess is leviable on inputs and capital goods as it was subsumed in the Central Excise duty. The duty structure was enhanced from aggregate of duty and cess @ 12.36 to a consolidated and subsumed duty of 12.50%; that the input and capital goods would have suffered the incidence of cess prior to 01.03.2015 only and such goods would reach the factory of the manufacture on or after 01.03.2015, the goods under reference are those goods i.e. input and capital goods which have already suffered cess prior to 01.03.2015 and they are referred here.

3.1 The appellant submitted that a different meaning cannot be drawn while interpreting this notification; that the appellant relied on decision in the case of Reserve Bank of India Vs. Pearless Co. (1987) SCC 424; that the notification has

no implication if any other meaning is drawn/ understood; that the Interpretation must depend on the text and the context, if the text is the texture, the context is what gives colour. Neither can be ignored, both are important. It was submitted that though it is the Court which can apply the constructive interpretation, however, going by the doctrine of constructive interpretation read with practicality, the expression "on 01.03.2017" has to be read as "as on 01.03.2017" since any meaning other than the intended by the legislation will make this notification redundant. Even otherwise, the month of February ended on 28.02.2015 and balance left was being carried to 01.03.2015 and hence the expression "on or after 01.03.2015" has been used in the said notification.

3.2 The appellant also relied on a decision in the case of Hyderabad Asbestos Cement Product Ltd. Vs. UOI and others – 1987 (32) E.L.T. 28 (A.P); that in this case where specified goods are manufactured out of the material or component parts which may not be dutiable under the same Tariff Item, even then if the Central Government has specifically sanctioned remission or adjustment of duty paid on them the manufacturer of such specified goods can claim benefit of the procedure of proforma credit as per Rule 56A(2).

4. Personal hearing in the matter was attended to by Shri Pragnesh B. Hirapara, Advocate who reiterated grounds of Appeal and submitted copy of Notification No. 12/2015-CE(NT) dated 30.04.2015 emphasizing that the Cess on goods received on 01.03.2015 can be used for payment of Central Excise duty and they have accordingly done.

FINDINGS:

5. I have carefully gone through the facts of the case, impugned order, grounds of appeals and submissions made by the appellant.

6. I find that the issue to be decided in the present appeal is that whether the impugned order confirming recovery of central excise duty for the months of November-2015, paid from credit of CESS account is correct or not, and whether imposing penalty under Rule 8(3A) of the Central Excise Rules, 2002 on the appellant, is proper or otherwise.

7. The lower adjudicating authority vide impugned order held that the proviso to Rule 3(7)(b) of Cenvat Credit Rules, 2004 is clear wherein it has been specified that the Education Cess can be utilized for payment of Education Cess and S&Hsc. Education Cess can be utilized for payment of S&Hsc. Education

Cess only and that any deviation in this aspect would tantamount to violation of Central Excise Act and Rules framed thereunder. I would like to reproduce Rule 3(7)(b) of Cenvat Credit Rules, 2004, substituted by, Notification No. 13/2005-CE(NT) dated 01.03.2005 as amended by Notification No. 27/2007-CE(NT) dated 12.05.2007, which reads as under:-

"3(7)(b) : CENVAT credit in respect of -

(i)

(ii)

(iii) the education cess on excisable goods leviable under section 91 read with section 93 of the Finance (No. 2) Act, 2004 (23 of 2004);

(iiia) the Secondary and Higher Education Cess on excisable goods leviable under section 136 read with section 138 of the Finance Act, 2007 (22 of 2007);

(iv)

(v)

(vi) the education cess on taxable services leviable under section 91 read with section 95 of the Finance (No. 2) Act, 2004 (23 of 2004);

(via) the Secondary and Higher Education Cess on taxable services leviable under section 136 read with section 140 of the Finance Act, 2007 (22 of 2007); and

(vii)

Provided that the credit of the education cess on excisable goods and the education cess on taxable services can be utilized, either for payment of the education cess on excisable goods or for the payment of the education cess on taxable services :

Provided further that the credit of the Secondary and Higher Education Cess on excisable goods and the Secondary and Higher Education Cess on taxable services can be utilized, either for payment of the Secondary and Higher Education Cess on excisable goods or for the payment of the Secondary and Higher Education Cess on taxable services."

(Emphasis supplied)

7.1

I find that 1st and 2nd proviso to Rule 3(7)(b) of the Cenvat Credit Rules, 2004 clearly stipulated that credit of Education Cess and credit of S&Hsc. Education Cess on excisable goods/taxable services can only be utilized for payment of Education Cess and S&Hsc. Education Cess on excisable goods/taxable services respectively. The proviso to Rule 3(7)(b) of the Rules, were not amended or rescinded by the Central Government. Therefore, the

contention that when the levy of these two cesses has been withdrawn, the question of utilization and restrictions put thereupon have also become redundant, appears incorrect. It is well-settled principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and not in any other manner. The reading of the provisions of Rule 3(7)(b) of the Cenvat Credit Rules, 2004, reveals that the wordings used there in is very clear and there is no reason to read the said provision in any other manner to conclude that the appellant is entitled to utilize accumulated credit of Education Cess and S&Hsc. Education Cess towards payment of central excise duty. Therefore, I find that the arguments of the appellant are devoid of merits.

7.2 The Central Government vide Notification No. 14/2015-CE and Notification No. 15/2015-2015-CE, both dated 01.03.2015 exempted all goods from whole of the Education Cess and S&Hsc. Education Cess leviable thereon and also issued Notification No. 12/2015-CE (NT) dated 30.04.2015, which reads as under:-

2. *In the CENVAT Credit Rules, 2004 (hereinafter referred to as the said rules), in rule 3, in sub-rule (7), in clause (b), after the second proviso, the following shall be substituted, namely :-*

"Provided also that the credit of Education Cess and Secondary and Higher Education Cess paid on inputs or capital goods received in the factory of manufacture of final product on or after the 1st day of March, 2015 can be utilized for payment of the duty of excise leviable under the First Schedule to the Excise Tariff Act :

Provided also that the credit of balance fifty per cent. Education Cess and Secondary and Higher Education Cess paid on capital goods received in the factory of manufacture of final product in the financial year 2014-15 can be utilized for payment of the duty of excise specified in the First Schedule to the Excise Tariff Act:

Provided also that the credit of Education Cess and Secondary and Higher Education Cess paid on input services received by the manufacturer of final product on or after the 1st day of March, 2015 can be utilized for payment of the duty of excise specified in the First Schedule to the Excise Tariff Act ."

(Emphasis supplied)

7.3 The above notification says for the goods and input service received in the factory on or after 01.03.2015 and does not talk of accumulated credit at all.

7.4 CBEC vide letter D.O. F.No. 334/5/2015-TRU dated 30.04.2015, has also clarified that:-

(1) Rule 3(7)(b) of the CCR, 2004 has been amended so as to allow utilisation of credit of Education Cess and Secondary & Higher Education Cess for payment of basic excise duty in the following situations :

a. Education Cess and Secondary & Higher Education Cess on inputs or capital goods received in the factory of manufacture of final product on or after the 1st day of March, 2015;

b. Balance 50% Education Cess and Secondary & Higher Education Cess on capital goods received in the factory of manufacture of final product in the financial year 2014-15; and

c. Education Cess and Secondary & Higher Education Cess on input services received by the manufacturer of final product on or after the 1st day of March, 2015.

(Emphasis supplied)

7.5 The above clarification issued by CBEC also does not allow accumulated credit of these two Cess to be utilized for payment of Central Excise duty. The appellant contention that accumulated Education Cess and S&Hsc. Education Cess on inputs received in the factory of manufacture of final products even before 01.03.2015 can also be used for payment of basic excise duty after 01.03.2015 is therefore legally not tenable.

7.6 The Hon'ble Bombay High Court in the case of *Greatship (India) Pvt. Ltd. v. Commissioner of Service Tax, Mumbai-I*, 2015 (39) S.T.R. 754 (Bom.) on the principle of interpretation of Taxing statutes observed as :

"34. *It would thus appear that it is settled position of law that in taxing statute, the Courts have to adhere to literal interpretation. At first instance, the Court is required to examine the language of the statute and make an attempt to derive its natural meaning. The Court interpreting the statute should not proceed to add the words which are not found in the statute. It is equally settled that if the person sought to be taxed comes within the letter of the law he must be taxed, however, great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of law the case might otherwise appear to be. It is further settled that an equitable construction, is not admissible in a taxing statute, where the Courts can simply adhere to the words of the statute. It is equally settled that a taxing statute is required to be strictly construed. Common sense approach, equity, logic, ethics and morality have no role to play while interpreting the taxing statute. It is equally settled that nothing is to be read in, nothing is*

to be implied and one is required to look fairly at the language used and nothing more and nothing less. No doubt, there are certain judgments of the Apex Court which also holds that resort to purposive construction would be permissible in certain situation. However, it has been held that the same can be done in the limited type of cases where the Court finds that the language used is so obscure which would give two different meanings, one leading to the workability of the Act and another to absurdity."

7.7 The Hon'ble Apex Court has also settled legal position that the law must be interpreted the way it is stated and conditions specified must be followed.

DHARAMENDRA TEXTILE PROCESSORS – 2008 (231) ELT 3 (S.C.)

Interpretation of statutes - Principles therefor - Court cannot read anything into a statutory provision or a stipulated condition which is plain and unambiguous - A statute is an edict of the legislature - Language employed in statute is determinative factor of legislative intent.

PARMESHWAR SUBRAMANI 2009 (242) ELT 162 (S.C.)

Interpretation of statutes - Legislative intention - No scope for court to undertake exercise to read something into provisions which the legislature in its wisdom consciously omitted - Intention of legislature to be gathered from language used where the language is clear - Enlarging scope of legislation or legislative intention not the duty of Court when language of provision is plain - Court cannot rewrite legislation as it has no power to legislate - Courts cannot add words to a statute or read words into it which are not there - Court cannot correct or make assumed deficiency when words are clear and unambiguous - Courts to decide what the law is and not what it should be - Courts to adopt construction which will carry out obvious intention of legislature.

7.8 The Hon'ble Bombay High Court has also decided that hardship can't brought to interpret the rules/law differently.

NICHOLAS PIRAMAL (INDIA) LTD. - 2009 (244) E.L.T. 321 (Bom.)

Interpretation of statutes - Hardship, relevance in construction of rule - Hardship cannot result in giving a go-by to language of the rule and making rule superfluous - Assessee to represent to rule making authority pointing out defects - Court in the guise of interpretation cannot take upon task legislative function - Difficulties in few cases cannot result in departing from normal rule of construction. - The rule must ordinarily be read in its literal sense unless it gives rise to an ambiguity or absurd results

Statutory provisions - Rules when not absurd or unjust - Not possible for Legislature to conceive every possible difficulty - Provision or rule can occasion hardship to a few, that cannot result in rule being considered as absurd or manifestly unjust - Hardship or breaking down of the rule even if it happens in some cases by itself does not make the rule bad unless the rule itself cannot be made operative.

7.9 The appellant has relied on a decision in the case of Hyderabad Asbestos Cement Product Ltd. V/s. UOI and others – 1987 (32) E.L.T. 28 (A.P). However, I find that in this case, question arose for decision was whether the benefit of proforma credit procedure specified in Rule 56A (1) is available to the appellants even though the raw materials consumed by the appellants in their manufacture of the final products are excisable under tariff items different from the one under which their final products are excisable, which is not the case here. The appellant also relied on decision in the case of Reserve Bank of India Vs Pearlless Co. (1987) SCC 424 to emphasize that the Interpretation must depend on the text and the context, if the text is the texture, the context is what gives the colour. Neither can be ignored, both are important. This decision carry different facts and circumstances and therefore, ratio of the said decisions cannot be made applicable.

7.10 In view of the above factual and legal position, I find that the appellant cannot utilize credit of Education Cess and S&Hsc. Education Cess accumulated before 01.03.2015, towards payment of central excise duty on excisable goods as per provisions of Rule 3(7)(b) of the Rules *ibid*.

8. The wrong utilization of credit of Education cesses towards payment of duty resulted into short payment of duty as held in the impugned order and hence the appellant is liable for penal action under Rule 8 (3A) of the Central Excise Rules, 2002. I find that the Central Government substituted the provisions of Rule 8(3A) of the Central Excise Rules, 2002 vide Notification No. 19/2014-CE(NT) dated 11.07.2014, which reads as under:-

“(3A) If the assessee fails to pay the duty declared as payable by him in the return within a period of one month from the due date, then the assessee is liable to pay the penalty at the rate of one per cent on such amount of the duty not paid, for each month or part thereof calculated from the due date, for the period during which such failure continues.”

(Emphasis supplied)

8.1 Rule 8(3A) of Central Excise Rules, 2002, referred above, states that in the event of failure of payment of duty within a period of one month from the due date, the assessee is liable to pay penalty @ 1% on such amount of the duty not paid, for each month or part thereof calculated from the due date. Since the appellant has wrongly paid duty from accumulated credit of Education Cess & S&H Education Cess, the same cannot be treated as payment of Central Excise duty payable for the months under reference. Therefore, the appellant rendered

themselves liable for penal action under Rule 8(3A) of the Rules, and I uphold the impugned order imposing penalty on the appellant.

9. In view of above discussions and findings, I reject the appeal filed by appellant.

९.१. अपीलकर्ता द्वारा दर्ज की गई अपीलों का निपटारा उपरोक्त तरीके से किया जाता है।

9.1 The appeal filed by the appellant stand disposed off in above terms.

(Handwritten Signature)
11/9/2017
(कुमार संतोष)
आयुक्त (अपील्स)

By Speed Post

To,

M/s. Turbo Bearing Pvt. Ltd., Plot No. 250-251-252 & C1B-262, Aji Industrial Area, Phase -II, Q Road, Rajkot – 360 003	मै. टर्बो बेयरिंग प्रा. लिमिटेड, प्लॉट न. २५०-२५१-२५२ & सी१बी-२६२, आजी जी.आइ.डी.सी, आजी इंडस्ट्रियल एरिया फेस-II, राजकोट - ३६० ००३
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Copy to:

1. The Chief Commissioner, CGST & Central Excise, Ahmedabad Zone, Ahmedabad.
2. The Principal Commissioner, CGST & Central Excise, Rajkot.
3. The Assistant Commissioner, CGST & Central Excise Division-I, Rajkot.
4. The Superintendent, CGST & Central Excise, AR-V, Rajkot.
5. Guard File.