::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

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/212 /RAJ/2016	DC/JAM/03/2016-17	09.08.2016

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

RAJ-EXCUS-000-APP-042 -2017-18

आदेश का दिनांक / Date of Order: **11.09.2017** जारी करने की तारीख / Date of issue: **12.09.2017**

कुमार संतोष, आयुक्त (अपील), राजकोट द्वारा पारित /
Passed by **Shri Kumar Santosh**, Commissioner (Appeals), Rajkot

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 **Appellant &** Respondent :-
M/s. Rajhans Metals P. Ltd.(formerly known as Rajhans Alloys P. Ltd), Plot No. 3985, GIDC Phase - III, DARED,,Jamnagar 361 004

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके से 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 उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए ।/

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असावी अहमदाबाद- ३८००१६ को की जानी चाहिए ।/

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

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

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

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमावली, 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 करे (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग ,ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/

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

149

(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 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 प्रतियाँ 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 अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब शुल्क 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 "मांग किए गए शुल्क" में निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवैट जमा की ली गई गलत राशि
(iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- 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 होंगे।/
For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores.
Under Central Excise and Service Tax, "Duty Demanded" shall include :
(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(C) **भारत सरकार को पुनरीक्षण आवेदन :**
Revision application to Government of India:
इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid.

(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के 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 करवे माल पर अदा की गई 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) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इयूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे क्रेडीट जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (सं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा तत्पश्चात पर या बाद में पारित किए गए है।/
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 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 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 O/O 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 है तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए ।
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

(D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की विभिन्न पार्टी ने अपने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है । /
In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। /
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act,1975, as amended.

(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। /
Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से सम्बंधित व्यापक, विस्तृत और नवीनतम 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 ::

M/s. Rajhans Metals Pvt Ltd (formerly known as M/s. Rajhans Alloys Pvt Ltd) Plot No.3985, GIDC, Phase- III, Dared Jamnagar 361004 (*hereinafter referred to as* '**the appellant**') has filed the present appeals against the Order-In-Original No. DC/JAM/03/2016-17 dated 09.08.2016 (*hereinafter referred to as* "**the impugned order**") passed by the Deputy Commissioner, Central Excise Division, Jamnagar (*hereinafter referred to as* "**the lower adjudicating authority**").

2. The facts of the case are that the appellant is engaged in manufacture of excisable goods falling under Chapter 74 of the Central Excise Tarff Act, 1985. During the course of CERA Audit it was found that the assesee has wrongly availed the Cenvat credit of the service tax paid on insurance services used to insure the goods meant for export. The insurance of goods was beyond the port of export i.e. the place of buyer in foreign destination. Audit was of the view that the since the services were utilized beyond the port of export, it cannot be considered as input services in terms of Rule 2(l) of the Cenvat Credit Rules, 2004 (*hereinafter referred to as* "**CCR,2004**") as services are used beyond the place of removal. The appellant was issued show cause notice demanding the wrongly availed Cenvat credit amount of Rs.1,30,691/- during the period from April, 2011 to March, 2016 under Rule 14 of the CCR,2004 read with Section 11A of the Central Excise Act, 1944 (*hereinafter referred to as* "**the Act**"). The lower adjudicating authority adjudicated the show cause notice vide impugned order and confirmed the demand of Rs.1,30,691/- under rule 14 of the CCR,2004 read with Section 11A of the Act and also interest and penalty under Section 11A and Rule 15 of CCR,2004 read with Section 11AC of the Act.

3. Being aggrieved with the impugned order, the appellant preferred the present appeal, inter-alia, on the following grounds:

(i) Export consignments were insured at the time when the goods were still lying in the factory premises and exported goods covered under insurance starting from the factory premises to the foreign destination.

(ii) Cenvat credit of services tax paid on any "input service" was available to them as per Rule 3 of the CCR,2004.

(iii) The definition of input service can be effectively divided into three parts i.e 'main part', 'inclusive part' and 'exclusion part'. Each part of the definition of input service should be considered as an independent benefit of concession (unless covered under exclusion part) and if an assessee can satisfy any one part, then credit of the said input service would be available. Cenvat credit of insurance services availed by them are covered under 'main part' of the definition, wherein any service used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of the final products has been made eligible for Cenvat credit; that without insurance cover they can't export their products in foreign territories thereby reducing the manufacturing activity and hence the services are directly related to manufacture of final products; that insurance services are integrally connected with manufacture and sale of products and has direct relation between insurance services and goods manufactured by them. They relied upon the Hon'ble Bombay High Court's decision in the case of M/s. Coca Cola India Pvt Ltd reported as 2009 (15) STR 657(Bom.) It is further submitted that services received by them are also not covered under 'exclusion part' of the definition

(iv) Allegation that insurance services for export consignments were used beyond the port (place of removal) is untenable in law as subject goods were insured before their dispatches when they were still lying in the factory premises; that eligibility to avail credit of any service depends upon the point of time and place where such services was availed and not upon the time and places till services were utilized. They further rely upon the following decisions:-

(a) M/s. Alstom T & D Ltd - 206(41)STR 646 (Tri-Chennai)

(b) M/s. Gobind Sugar Mills Ltd -2015(38)STR 68 (Tri-Del)

(c) M/s. Vijay Cotton & Fibre Co – 2014(36)STR 1164(Tri-Mumbai)

(v) Expenses incurred by the appellant for above services are part and parcel of their 'cost of production' which, in turn, is the basic component of 'assessable value' of final product and therefore denying cenvat credit on the same is unsustainable.

(vi) They also pointed out arithmetical inaccuracies of Rs.15,040/- to submit that actual disputed credit amount for the period 201-12 comes to Rs.1,15,651/- as against Rs.1,30,691/-. The appellant submitted that the lower adjudicating authority has incorrectly found that the figures of credit availed were provided by the appellant only; that in fact the disputed amount of credit was

worked out by CERA audit officers; that mistake at the end of CERA objection can be seen from the facts that for the financial year 2011-12 disputed credit amount is worked out @12.36% as against the rate of service tax prevailed in that financial year of 10.30%;

(vii) The impugned order is partly barred by limitation as extended period of limitation cannot be invoked in as much as monthly returns prescribed to submit consolidated figures of credit and nothing prevented the department from calling the details of 'input services' on which credit was availed; that the appellant was under bona fide belief that credit of service tax paid on subject 'input services' was available to them; that their records are regularly audited by the department and availment of Cenvat credit on such insurance services were never objected. They relied upon the Hon'ble CESTAT's decision in the case of M/s. MTR Foods Ltd reported as 2014 (312) ELT 730(Tri-Bang.)

(viii) It is also contended that recovery of interest and imposing penalty was not sustainable as recovery of Cenvat credit itself is not sustainable.

4. Personal hearing in the matter was attended by Shri Dinesh Kumar Jain, Chartered Accountant, on behalf of the appellant who reiterated the grounds of appeal. He submitted that goods were dispatched from the Jamnagar factory premises and exported from Mundra/Kandla port; that place of removal for export will be Mundra/ Kandla that insurance taken from the factory of Jamnagar and hence credit availed from Jamnagar factory onwars will be available as held by CESAT in the case of M/s. Alstom T &D Ltd reported as 2016(41) STR 646 (tri-Chennai) and Hon'ble High Court of Bombay in the case of M/s. Coca Cola India Pvt Ltd reported as 2009(15) SR 657(Bombay); that insurance was taken before export took place and goods were taken out of Jamnagar factory that in view of above, Cenvat credit taken on Service Tax paid on Insurance premium is available to them.

FINDINGS

5. I have carefully gone through the facts of the instant case, the impugned order, appeal memorandum and records of personal hearing.

6. The issue involved in the matter is that whether the appellant is eligible for Cenvat Credit of service tax paid on Insurance Service utilized for export of goods or not.

7. I find that the definition of "input service" under Cenvat Credit Rules, 2004 provides as under:-

> *"Rule – 2 (l) 'input service' means any service, -*
>
> *(i) used by a provider of output service for providing an output service; or*
> *(ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the* ***place of removal,***
>
> *and includes services used in relation to modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal; but excludes services, -*
>
> *(A) specified in sub - clauses (p), (zn), (zzl), (zzm), (zzq), (zzzh) and (zzzza) of clause (105) of section 65 of the Finance Act (hereinafter referred to as specified services), in so far as they are used for –*
> *a) construction of a building or a civil structure or a part thereof; or*
> *b) laying of foundation or making of structures for support of capital goods,*
> *except for the provisions of one or more of the specified services; or*
>
> *(B) specified in sub- clauses (d), (o), (zo) and (zzzzj) of clause (105) of section 65 of the Finance Act, in so far as they relate to a motor vehicle except when used for the provision of taxable services for which the credit on motor vehicle is available as capital goods; or*
>
> *(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness center, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee."*
>
> **(Emphasis provided)**

7.1 Clause (ii) of the above definition reveals that 'input service' is restricted to services used up to the place of removal. The appellant has contended that the services are availed and utilized when the goods exported are lying in the factory. However, I find that the said insurance taken by the appellant is mere a business transaction as much as the payment is made to the service provider Insurer whereas services of insurance is effectively used till the goods

reaches foreign port i.e. beyond the port of export which is the place of removal. I find that CBEC vide Circular No. Circular No. 999/6/2015-CX, dated 28-2-2015 (F.No. 267/13/2015-CX. 8) has issued clarification, which is as below:-

> *" Attention is invited to Circular No. 988/12/2014-CX, dated 20-10-2014 issued from F. No. 267/49/2013-CX.8 [2014 (309) E.L.T. (T3)] on the above subject wherein it was clarified that the place of removal needs to be ascertained in terms of provisions of Central Excise Act, 1944 read with provisions of the Sale of Goods Act, 1930 and that payment of transport, payment of insurance etc are not the relevant considerations to ascertain the place of removal. The place where sale takes place or when the property in goods passes from the seller to the buyer is the relevant consideration to determine the place of removal.*
>
> *2. In this regard, a demand has been raised by the trade that it may be clarified that in the case of exports, for purposes of CENVAT credit of input services, the place of removal is the port or the airport from where the goods are finally exported.*
>
> *3. The matter has been examined. It is seen that section 23 of the Sale of Goods Act, 1930 provides that where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract, and therefore, in view of the provisions of the Section 23 (1) of the Sale of Goods Act, 1930, the property in the goods would thereupon pass to the buyer. Similarly, section 39 of the Sale of Goods Act, 1930 provides that where, in pursuance of a contract of sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not for the purpose of transmission to the buyer, or delivery of the goods to a wharfinger for safe custody, is prima facie deemed to be a delivery of the goods to the buyer.*
>
> *4. In most of the cases, therefore, it would appear that handing over of the goods to the carrier/transporter for further delivery of the goods to the buyer, with the seller not reserving the right of disposal of the goods, would lead to passing on of the property in goods from the seller to the buyer and it is the factory gate or the warehouse or the depot of the manufacturer which would be the place of removal since it is here that the goods are handed over to the transporter for the purpose of transmission to the buyer. It is in this backdrop that the eligibility to Cenvat Credit on related input services has to determined.*
>
> *5. Clearance of goods for exports from a factory can be of two types. The goods may be exported by the manufacturer directly to his foreign buyer or the goods may be cleared from the factory for export by a merchant-exporter.*
>
> *6. In the case of clearance of goods for export by manufacturer exporter, shipping bill is filed by the manufacturer exporter and goods are handed over to the shipping line. After Let Export Order is issued, it is the responsibility of the shipping line to ship the goods to the foreign buyer with the exporter having no control over*

the goods. In such a situation, transfer of property can be said to have taken place at the port where the shipping bill is filed by the manufacturer exporter and place of removal would be this Port/ICD/CFS. Needless to say, eligibility to CENVAT Credit shall be determined accordingly.

7. In the case of export through merchant exporters, however, two transactions are involved. First is the transaction between the manufacturer and the merchant exporter. The second transaction is that between the merchant exporter and the foreign buyer. As far as Central Excise provisions are concerned, the place of removal shall be the place where the property in the goods passes from the manufacturer to the merchant exporter. As explained in paragraph 4 supra, in most of the cases, this place would be the factory gate since it is here that the goods are unconditionally appropriated to the contract in cases where the goods are sealed in the factory, either by the Central Excise officer or by way of self-sealing with the manufacturer of export goods taking the responsibility of sealing and certification, in terms of Notification No. 19/2004- Central Excise (N.T.), dated 6-9-2004, etc.

8. However, in isolated cases, it may extend further also depending on the facts of the case, but in no case, this place can be beyond the Port/ICD/CFS where shipping bill is filed by the merchant exporter. The eligibility to CENVAT Credit shall be determined accordingly."

(Emphasis supplied)

7.2 I find that CBEC has very categorically addressed this issue and clarified at Para 6 of the circular that Cenvat credit would not be allowed once the 'let export order' is issued. I find that in the case on hand, insurance services are extended beyond the time and place of "Let Export Order" as it is meant for insurance of exported goods after the export took place. I am, therefore, of considered view that appellant is not eligible for credit of service tax paid on insurance services.

7.3 As regards, reliance placed by the appellant on various decision, I find that the definition of 'input services" are changed w.e.f. 01.04.2011 by virtue of amending notification No. 3/2011-CE(N.T.) dated 01.03.2011. Prior to 01.04.2011, words and phrase "*activities relating to business*" was included in the inclusive part of the definition of Input Service whereas decision of Hon'ble Bombay High Court in the Case of M/s. Coca Cola India Pvt Ltd reported as 2009(15) STR 657(Bom) was given in that background. The appellant has relied upon the decisions in the case of M/s. Alstom T & D Ltd and in the case of M/s. Gobind Sugar Mills Ltd. However, it is not forthcoming that these decisions are in respect of Cenvat credit pertaining to period after 01.04.2011. I, therefore, hold that these case laws are not applicable in the present case.

8. As regards issue of limitation, the appellant has contended that prescribed Monthly return refers only consolidated figures and department was free to inquire detail; that Audit of their records has earlier done by the department and hence the practice adopted by them was known to the department. In this regard I am of the view that appellant can not hide behind the argument of format of Monthly returns and to suggest that department was free to inquire in this regard. It is highly unacceptable and beyond logic to believe that department can go for inquiry in each and every case of consolidated information provided by the assesse. As regards reliance placed upon the decision of Hon'ble CESTAT in the case of M/s. MTR Foods Ltd reported as 2014(312)ELT 730 (Tri-Bang), I find that this decision is given in the context where assesse was furnishing details of credit under Annexure 10 under Rule 7 prevailing at the material time, which is not the case here. Therefore, the said case law is not applicable to the case on hand.

8.1 Further, I am of the view that barely producing the records before the Audit officers, does not mean that the matter relating to the present proceedings being disclosed by the appellant. In the circumstances, I do not think that appellant can derive any benefit by mere raising technical point of earlier Audit. The audit is being conducted on selective criteria and mere production of record books before the departmental officer for audit does not tantamount to disclosure of facts. The departmental officers carry out test checks of the records with selective & limited purposes and therefore, it cannot be said that all the records are audited. My views are supported by the decision of Hon'ble CESTAT in the case of M/s. Agrico Engg. Works (India) Pvt. Ltd. Reported as 2000(122) ELT891 (Tribunal) wherein it is held that visit of departmental officer for limited purpose cannot tantamount to disclosure of facts by the appellant.

> *" **11.**The contention of the appellants is also that the goods were marked with 'BM' and 'ESCORT' with bold letters and which were visible with the naked eyes and the officers of the Revenue visited the factory at various times. Therefore, suppression cannot be alleged. There is nothing on record to show that appellants ever disclosed the fact of clearing the goods with the trade marks of others to the Revenue. Therefore, in absence of this evidence, the assessee cannot argue that Revenue was aware of this fact. The purpose of visit of Excise Officers was limited and there is nothing on record to show that ever Revenue authority pointed out this fact to the appellants and even after the discovery of this fact, the Revenue has not taken any action.*

9. In view of the foregoing discussions, I am of the considered view that the disputed service does not merit consideration as 'input service', since the impugned service has been utilized beyond the place of removal. Accordingly, I reject the appeal filed by the appellant.

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

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

11/9/2012

(कुमार संतोष)
आयुक्त (अपील्स)

By R.P.A.D.

To

M/s. Rajhans Metals Pvt Ltd (formerly known as M/s. Rajhans Alloys Pvt Ltd) Plot No.3985, GIDC, Phase- III, Dared, Jamnagar 361004	मेसर्स राजहंस मेटल्स प्रा ली प्लॉट नं ३९८५, जीआईडीसी फेस- III, दरेड , जामनगर ३६१ ००४

Copy to:-

1. The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
2. The Commissioner, GST & Central Excise, Rajkot Commissionerate, Rajkot.
3. The Assistant Commissioner, GST & Central Excise Division, Jamnagar
4. Guard File.