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::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,
 रस 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 / OIO No.	दिनांक / Date
	V2/9/EA2/RAJ/2016	27/ADC/PV/2015-16	29.01.2016

4752 & 4753, 4754
 4752
 4753

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

RAJ-EXCUS-000-APP-055 -2017-18

आदेश का दिनांक / 12.09.2017 जारी करने की तारीख / 13.09.2017
 Date of Order; Date of issue:

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

ग अगर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जामनगर / गान्धीधाम, द्वारा उपरोक्तित जारी मूल आदेश से सूचित /

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. Paloma Turnings Co. Pvt. Ltd., Plot No. 13, GIDC Phase - II, Dared, Jamnagar.,

इस आदेश(अपील) से संतुष्ट कोई व्यक्ति निम्नलिखित तरीके से उपरोक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दाखल 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 अपीलार्थ न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अन्तर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अन्तर्गत 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) विशेषण शुल्कांकन से सम्बंधित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलार्थ न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, अर. 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 बतलाए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलार्थ न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, - द्वितीय तल, भ्रामली 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) अपीलार्थ न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अन्तर्गत निर्धारित फॉर्म गवे फॉर्म EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मात्रा, धराज की मात्रा और लगाया गया जुर्माना, रफ्त 5 लाख या उससे कम, 5 लाख रफ्त या 50 लाख रफ्त तक अथवा 50 लाख रफ्त 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 अपीलार्थ न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के पास से किसी भी सर्वजिम्मेदार बैंक के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलार्थ न्यायाधिकरण की शाखा स्थित है। स्वयं आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा कराया 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) अपीलार्थ न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अन्तर्गत सेवाकर विधानवली, 1994, के नियम 9(1) के तहत निर्धारित फॉर्म S.T.-5 में चार प्रतियों में की जा सकती एवं उसके साथ वित्त आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मात्रा, धराज की मात्रा और लगाया गया जुर्माना, रफ्त 5 लाख या उससे कम, 5 लाख रफ्त या 50 लाख रफ्त तक अथवा 50 लाख रफ्त 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 अपीलार्थ न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के पास से किसी भी सर्वजिम्मेदार बैंक के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलार्थ न्यायाधिकरण की शाखा स्थित है। स्वयं आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा कराया 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) क्लिप अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दंड की राशि अपील, सेवाकर विद्यमानगी, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकती एवं उसके साथ अप्रकृत, केन्द्रीय उत्पाद शुल्क अध्याय आवृत्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न की (जहाँ में एक प्रति प्रमाणित होनी चाहिए) और अप्रकृत द्वारा सहायक अप्रकृत अध्याय उत्पादक, केन्द्रीय उत्पाद शुल्क सेवाकर, को अपीलार्थी न्यायाधिकरण को आवेदन दाने 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) शीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलार्थी न्यायाधिकरण (सेलैट) 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 अपीलार्थी न्यायाधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपये 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) सेलैट जमा की गई राशि
(iii) सेलैट जमा विद्यमानगी के नियम 6 के अंतर्गत देय रकम
- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के अर्थ में पूर्व किसी अपीलार्थी न्यायाधिकरण के समक्ष विचारणीय स्थिति नहीं एवं अपील को लागू नहीं होगी।
For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores.
Under Central Excise and Service Tax, "Duty Demanded" shall include :
(i) amount determined under Section 11 D,
(ii) amount of erroneous Cenvat Credit taken,
(iii) amount payable under Rule 6 of the Cenvat Credit Rules
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.
- (C) भारत सरकार को पुनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षण प्राविका विमललिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम प्रांतिक के अंतर्गत अन्वय सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, क्लिप अन्वय, राजस्व विभाग, चौथी मंजिल, जीवन टॉप भवन, सस्ट 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 मांग के किसी नुकसान के मामले में, जहां नुकसान किसी मांग को किसी कारखाने से भंडार गृह के परामर्श के टीएन या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह परामर्श के टीएन, या किसी भंडार गृह से या भंडारण में मांग के परामर्श के टीएन, किसी कारखाने या किसी भंडार गृह में मांग 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 मांग के विनियमन में प्रदुक्त कच्चे मांग पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। / In case of rebate of duty of excise on goods exported to any country or territory outside India of an excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
- (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को मांग निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
- (iv) मुनिविधत उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इप्टी केडीट इस अधिनियम एवं इसके विविध प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो अप्रकृत (अपील) के द्वारा क्लिप अधिनियम (सं. 2), 1998 की धारा 109 के द्वारा निर्यात की गई जरीब अध्याय समावधि पर या बाद में पारित किए गये हैं। / Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
- (v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) विद्यमानगी, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संशोधन 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 अद्यतनी के संशय 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 विमललिखित निर्धारित शुल्क की अद्यतनी की जानी चाहिए।
जहाँ संशय रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संशय 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 उग से किया जाना चाहिए। इस संशय के होने हुए भी की विचार पट्टी कार्य से बचने के लिए अध्याधिकारी अपीलार्थी न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, 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 filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
- (E) पञ्चासोपिठ न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। / One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.
- (F) शीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलार्थी न्यायाधिकरण (कार्य विधि) विद्यमानगी, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले विधियों 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 अपीलार्थी न्यायाधिकरण को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विद्यमानगी 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 Principal Commissioner, Central Excise and Service Tax, Rajkot (*hereinafter referred to as "the department"*) filed present appeal against the Order-in-Original No. 27/ 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 lower adjudicating authority"*) in the matter of M/s. Paloma Turning Co Pvt Ltd, Plot No.13, GIDC Phase, II, Dared, Jamnagar (*hereinafter referred to as "the Respondent"*).

2. The 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 other turned parts falling under Chapter 74 of the Central Excise Tariff Act, 1985. During the manufacturing process of their final excisable goods, brass scrap is generated. The respondent is also using imported Brass Scrap and sending the imported brass scrap as well as generated brass scrap for converting into extruded Brass Rod through job workers. The generated brass scrap was being then cleared on duty paid invoices, whereas imported brass scrap was being sent under Job work challan (duly filled form Annexure -158(II)) under Notification No. 214/86 dated 25.03.1986 without payment of Central Excise duty to the job worker after undertaking to follow the procedure and conditions as prescribed under the said notification for movement of raw material/ semi-finished goods to and from under the cover of job-work challans. Job-workers returned the extruded Brass Rods by paying Central Excise duty on the value of raw materials & conversion charges and issued invoices under Rule 11 of Central Excise Rules, 2002. The respondent availed Cenvat credit on the basis of invoices issued by the job-workers and utilized the same towards payment of Central Excise duty on their final products. The SCN alleged that the job-worker was not required to pay central excise duty and hence the payment can not be treated as duty and no credit was available to the Respondent. The respondent was issued with the show cause Notice dated 29.06.2011 under Rule 14 of Cenvat Credit Rules, 2004 (*hereinafter referred to as 'the CCR'*) for recovery of Cenvat Credit availed in contravention of Rule 3(1) of the CCR, as the job-worker was not required to pay duty on job-worked goods under notification and hence respondent had wrongly availed the duty paid by the job-worker. The said notice was decided by the adjudicating authority vide Order In Original No. 27/ADC/PV/2015-16 dated 29.01.2016, wherein he dropped the proceedings initiated vide aforesaid Show Cause Notice dated 29.06.2011.

3. Aggrieved by the impugned order, the department filed the present appeal on the grounds as under:-

(i) The respondent i.e. M/s. Paloma Turning Co. Pvt Ltd has availed Cenvat credit on Imported brass scrap; that they cleared the imported brass scrap to job-worker M/s. Senor Metals Pvt Ltd for converting it into Brass Rods and availed benefit of exemption under Notification No.214/86 CE dated 25.03.1986 and undertook to follow and comply with the procedure and conditions prescribed therein; that on conversion of the brass scrap into semi-finished goods i.e. Brass Rods, the job-worker M/s. Senor Metal P Ltd, was required to clear the brass Rods to the respondent on the counterpart of the challans, without payment of Central Excise duty whereas the job-worker prepared invoices under Rule 11 of Central Excise Rules, 2002 and paid Central Excise duty.

(ii) The respondent availed Cenvat credit on the invoices issued by the job-worker, though they had cleared the brass scrap to the job worker without payment of Central Excise duty; that the sample copies of challans, under which the respondent has sent the brass scrap to the job-worker M/s. Senor Metals P Ltd.

(iii) The respondent vide 9 challns cleared the 175790 kgs of Brass Scrap but received 167000 kgs of Brass Rods under 107 invoices. Details of one such lot covered under Challan No. IS-001 dated 26.12.2009 for 21950 kgs of Brass Scrap cleared by the Respondent and returning 20852 kgs of Brass Rods under 7 invoices by job workers are as under. Respondent availed the Cenvat Credit in their Credit register as per the details given in the table below:-

Invoice No.	Barss Rods/Bars received (in kgs)	Cenvat Credit availed of Rs.	Entry No. & date
3118 dated 23.12.2009	4131.5	76142/-	203/29.12.2009
3119 dated 29.12.2009	2920	58506/-	204/29.12.2009
3121 dated 29.12.2009	1302.8	24969/-	205/29.12.2009
3122 dated 29.12.2009	4701.3	90198/-	206/29.12.2009
3127 dated 29.12.2009	882.65	16383/-	207/29.12.2009
3163 dated 02.01.2010	2387.55	44433/-	210/02.01.2010
3175 dated 04.01.2010	4526.7	83947/-	212/04.01.2010
	20852.5	394578/-	

(iv) The respondent has wrongly availed the Cenvat credit on the invoices issued by the job-worker which is not in accordance with the provisions of Cenvat Credit Rules, 2004.

(v) The adjudicating authority has not appreciated the facts narrated in the statement dated 05.07.2010 of Shri Ajay J Anjaria, Chief Executive of the respondent, wherein, he had, inter-alia, categorically deposed that they used to send the brass scrap under job-work challans, without payment of duty and received back the job worked goods under duty paid invoices from the job-worker and availed Cenvat credit of Central Excise duty paid. Central Excise duty paid on the semi-finished goods at the job-workers end, is not admissible, when they opted for availment of Exemption under Notification No. 214/86- C.E. dated 25.03.1986 and removed the goods under job-work challans where no Central Excise duty was paid at the time of sending the brass scrap for conversion of same into Brass Rods; that the job-worker has also given consent to the respondent to attend the job-work under notification 214/86-CE ibid; that the Job-worker has paid Central Excise duty on the value of the goods inclusive of labour charges per kilogram. Thus, it was in the knowledge of the respondent that they had been clearing the goods under job-work challans, without payment of duty and receiving the processed goods back then the job worker has no authority to pay central excise duty when the movement of goods are covered under Notification 214/86-CE for exemption and hence Cenvat credit availed by the Respondent is in contravention of Central Excise Law .

(vi) The respondent was well aware of these facts right from the receipt of imported brass scrap, receipt of the intermediate goods and dispatch of final manufactured goods, that the ownership of the goods always remained with the respondent only, since the imported brass scrap were not sold/ cleared on invoices. In spite of this factual position, the job-worker had issued invoices and Respondent has availed Cenvat credit, which was not legal and proper since, the job-worker was required to charge job charges only and not required to discharge Central Excise duty on the value of job-worked goods. Further, while preparing the invoices, the job-worker, M/s. Senor Metals P Ltd. did not charge any VAT / Sales Tax, as such the transactions entered into between the job-worker, and the respondent 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.

AS-140

(vii) The adjudicating authority, without appreciating the facts narrated in the Show Cause Notice, 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 and there is no dispute that the duty has been paid at the Job-worker's end; that the assessment cannot be re-opened at the recipient end. The decisions relied upon by the lower adjudicating authority in the cases of M/s. Rohan Dyes and Intermediates Ltd. Reported as 2012 (284) E.L.T. 484 (Guj.) and M/s. Ruptex Mineral water Pvt Ltd reported as 2008(228) ELT440(Tri-Del) are not applicable in the present case. The issue involved in the case of M/s. Rohan Dyes, was that the department had demanded reversal of Cenvat credit on the clearances of duty paid raw materials to the job-worker, whereas, the present case is entirely different and the department has demanded wrongly availed Cenvat credit (by the Respondent) of duty paid on invoices issued by the job-worker.

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

(ix) Exemption Notification No. 214/86-CE dated 25.03.1986 has been issued under Section 5A of the Central Excise Act, 1944. As per sub Section (1A) of Section 5A 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".

(x) It was incumbent upon the Respondent under Rule 9(5) and Rule 9(6) of the Cenvat Credit Rules, 2004 to verify its genuineness of payment of duty, before taking such Cenvat credit.

(xi) The respondent has acted in contravention of the provisions of Notification No. 214/86-CE dated 25.03.1986 and availed Cenvat credit wrongly in violation of the provisions of Cenvat Credit Rules, 2004. Therefore, Respondent was liable to pay /reverse Cenvat credit wrongly availed along with interest thereon as provided under Rule 14 of 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 29.06.2011.

4. The respondent was intimated and provided the copy of the Appeal papers filed by the department vide letter F. No. V2/9/EA2/RAJ/2016 dated 28.04.2016 and directed to file the cross objection if any. However, no cross objection is filed by the Respondent.

5. Personal hearing in the matter was attended by Shri Nirav P Shah, Advocate and Shri Mihir Amin, DGM, Finance & Accounts of the Respondent. They submitted that the issued has already been settled by Hon'ble Gujarat High Court in the case of M/s. Aries Dyechem Industries reported as 2014(299) ELT A88 (Gujarat) and in the case of M/s. Rohan Dyes & Intermediate Ltd reported as 2012(284)ELT 484(Gujarat that the job-worker can pay duty and duty paid by him can be availed as Cenvat Credit. Applying ration of Hon'ble Supreme Court's

decision in the case of M/s. Sarvesh Refractories P Ltd reported as 2007 (218) ELT 488 (SC) that the duty paid can't be denied to be availed as Cenvat Credit.

5.1 Shri Nirav Shah, on behalf of the appellant filed written submission on 24.08.2017 wherein they re-iterated the above decisions to assert that the matter is no more *res-integra* and has been decided by the Hon'ble Gujarat High Court. It is also contended that since assessment at the end of job worker is not disputed, the payment of duty has become final and it is settled law that the assessment cannot be opened at the end of recipient of goods. They relied upon the decision of Hon'ble Supreme Court in the case of M/s. Sarvesh Refractoriness Pvt Ltd (Supra).

FINDINGS

6. I have carefully gone through the facts of the case, impugned order, grounds of appeal made by the department and submissions made by the respondent during the personal hearing. The issues involved in the present matters order is that whether Cenvat Credit of duty paid by the job worker can be availed by the Respondent assessee or otherwise.

7. I find that the department has raised the issue of movement of goods for job work under Notification 214/86-CE dated 25.03.1986 stating that once opted and exemption claimed by the Respondent. It is argued that by adopting such methodology of paying duty by Job worker and claiming Credit is an unauthorized way to utilize accumulated Cenvat Credit of inputs which were cleared by the respondent without payment of duty but availed the Cenvat credit initially. The unchallenged facts remain that at one hand, each time inputs cleared by the respondent do not bear any duty, on the other hand it returns with duty payment. The department has raised very valid point that the purpose of payment of duty by job worker was to pass on Cenvat credit accumulated at the end of job worker and evading payment of central excise duty by wrong avaiement and utilization at Respondent end as much as the imported scrap is being sent by the Respondent for job work and not cleared on payment of duty. Copies of the invoices and challans available in the appeal papers suggest that the job worker has paid duty whereas it was a case of job work and hence job-worker was not required to pay duty as decided by Hon'ble Tribunal in the case of M/s. Vako Seals Pvt Ltd

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reported as 2016 (344)ELT 482 (Tri-Mumbai). Relevant portion of the decision is reproduced below:-

"As regard the dispute raised by the Revenue that the value of machines body supplied by the principle should be added in the assessable value of the job work goods, we are of the view that activity over and above of manufacture of rubber product, i.e., rubber bonding in the machine body is purely job work activity. It is undisputed fact that machine bodies are supplied by the principle under Rule 57F(3) of the Central Excise Rules, 1944 and Rule 4(5)(a) of Cenvat Credit Rules, 2004 read with Notification No. 214/86-C.E. The appellant also filed declaration to this effect to the Jurisdictional Asstt Commissioner in compliance of condition of the Notification No. 214/86-C.E. which clearly provides exemption from payment of excise duty on the job work activity subject to condition the principle supplier of raw material discharging the excise duty on their final product wherein job work goods is used. This fact is also not under dispute, in view of declaration filed by the principle supplier of the machine bodies. In the given fact, we are of the view that the job work activity since clearly covered under job work provisions, no duty is required to be paid on the job work activity in terms of Notification No. 214/86-C.E. Accordingly value of machine bodies supplied by the principle manufacturer need not to be added or same should not be levied with excise duty."

7.1 It is not in dispute that inputs (brass scrap) were being sent to job worker without payment of duty by Respondent. Therefore, by availing Cenvat credit again on intermediate stage goods (manufactured out of same input), credit was being claimed by the respondent twice and 2nd time more than that of initially availed by them and hence basic principle of value added tax is defeated. In other words, if inputs were "**cleared**" on payment of duty i.e. not **sent for job work** without payment of duty, then the credit of inputs was to be initially passed on to the job-worker under normal business transaction and Respondent would reclaim the Cenvat Credit of 'value added' tax on receipt of intermediate goods. Further, it is not a case countered by the respondent that the payment of duty was made by the job worker in cash. Thus, job-worker has utilized the Credit of Inputs he had accumulated while manufacturing his other finished goods. It is a fact that the job worker neither owned inputs of the respondent nor finished goods. Thus, basic principle of availing and utilizing Cenvat credit on inputs put into use for manufacturing of finished goods stands violated by the method adopted by job worker and appellant together. The key point missed by the adjudicating authority is that the goods are under "movement for job work" and not the clearance at either end. Thus, duty paid by the job worker is nothing but a mere debit entry in their account which can not be treated as duty paid on the goods manufactured after job work. If the contention of the Respondent is believed, then the very concept of job work vis-à-vis input tax credit and value added tax gets defeated. The fact that credit taken by the respondent of duty paid by the job worker is only true on the face but unanswered question remains that duty is not payable by job worker from his account but only on behalf of the Principal manufacturer in case

As to

job worked goods are not returned to the Principal manufacturer. The job workers can not be allowed to pay duty from their Cenvat Credit account to allow availment of Cenvat credit by the Principal manufacturer. I do not find the argument valid, legal and proper that job worker is free to pay central excise duty, even if the goods are supplied by the Principal manufacturer for a job work without payment of duty to allow the principal manufacturer to avail the credit of duty payment by the job worker. This issue has been clarified by the Board vide Circular No. 940/1/2011-Cx dated 14.01.2011 text of which is reproduced below of ease of reference:-

"Attention is invited to Board's Circular No. 937/27/2010-CX., dated 26-11-10 issued from F. No. 52/1/2009-CX1 (Pt.) [2010 (260) E.L.T. T3], wherein based on the opinion of the Law Ministry, it was clarified that in view of the specific bar provided under sub-section (1A) of Section 5A of the Central Excise Act, 1944, the manufacturer cannot opt to pay the duty in respect of unconditionally fully exempted goods and he cannot avail the CENVAT credit of the duty paid on inputs.

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.

4. Trade & Industry as well as field formations may be suitably informed.

5. Receipt of this circular may kindly be acknowledged.

6. Hindi version will follow."

(Emphasis supplied)

7.1.1 Therefore, the goods sent to job work by the Principal manufacturer is exempted, if the goods are received back by the said principal manufacturer from the job worker. I find merit in department's plea to claim that the invoices were used only for transfer of Cenvat Credit which remained unutilized and accumulated at the job worker's end. This fact has not been challenged by the Respondent at any stage.

7.2. Further, when clearance is made by the respondent by opting exemption under Notification No. 214/86 CE, the respondent has knowledge that the goods would return to them 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 as explained by CBEC vide above Circular dated 14.01.2011. The respondents failed to comply with Rule 9 (5) of the Cenvat Credit Rules, 2004. It is obvious that the assessment under Notification 214/86-CE involves the Principal manufacturer as well as the job workers and can not be seen in isolation for convenience at either end. Consent of the Job worker is given at the time of opting for the movement of inputs cleared by the Respondent. Assessment of clearance under Notification 214/86-CE can be finalized only after job-worked goods return to the supplier unit/Principal manufacturer end. Therefore, question of reopening of assessment does not arise and I do not agree to the views expressed by the adjudicating authority in the impugned order.

8. 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 imported brass scrap, an excisable goods cleared under Notification 214/86-CE dated 25.03.1986 and credit of duty paid by the job worker is denied. In that case Hon'ble High Court was not considering a situation where excisable goods were cleared under Notification 214/86. Further, the said decision of Hon'ble High Court was given in different backdrop and had 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. The decision by the Hon'ble High Court was 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 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 above decision of Hon'ble High Court's was given in a different set of facts and in different context and can not be made applicable in the present case

on hand. Similarly, decision in the case of M/s. Aries Dyechem Industries reported as 2010 (257) ELT 113 (Tri-Ahd) relied upon by the Respondent, is in respect of double benefit accrued to the principal manufacture and hence reversal of credit claimed at initial stage by the principal manufacture (and not duty paid by job worker) unlike the facts of the present case where credit of duty paid by the job worker is denied. Therefore, I find the case law relied upon by the Respondent does not help them.

9. In light of the above discussion, I hold that the Respondents are not eligible to avail Cenvat Credit claimed by them and liable to pay demand of Rs.48,07,704/- under Rule 14 of the Rules readwith Section 11A of the Act along with interest and they are also liable to penalty of Rs.48,07,704/- under Rule 15(2) of the Rules read with Section 11AC of the Act. I, therefore, set aside the impugned order and allow the appeal filed by the department.

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

9.1 The appeal filed by the department stands disposed off in above terms.

(Handwritten Signature)
12/11/2012
(कुमार संतोष)
आयुक्त (अपील्स)

By R.P.A.D.

To,

1	The Commissioner Central Excise, Rajkot Commissionerate, GST Bhavan, Race Course Ring Road, Rajkot	आयुक्त जीएसटी एवं के उ.शु. एवं स.क. जीएसटी भवन रेस कोर्स रिंग रोड, राजकोट
2	M/s. Paloma Turning Co Pvt Ltd. Plot NO.13, GIDC Phase-II, Dared, Jamnagar.	मे पलोमा टर्निंग कं प्रा ली प्लॉट नं १३ जी आई डी सी फेज़ -II दरेड - जामनगर

Copy to:

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

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9.1 The appeal filed by the department stands disposed off in above terms.

सत्यापित,

(Handwritten Signature)
12/11/2012
(कुमार संतोष)

आर. एन. मीणा, आयुक्त (अपील्स)

अधीक्षक (अपील)

By R.P.A.D.

To,

1	The Commissioner Central Excise, Rajkot Commissionerate, GST Bhavan, Race Course Ring Road, Rajkot	आयुक्त जीएसटी एवं के.उ.शु. एवं से.क. जीएसटी भवन रेस कोर्स रिंग रोड, राजकोट
2	M/s. Paloma Turning Co Pvt Ltd. Plot NO.13, GIDC Phase-II, Dared, Jamnagar.	मे पलोमा टर्निंग कं प्रा ली प्लॉट नं १३ जी आई डी सी फेज़ -II दरेड - जामनगर

Copy to:

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