

290



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	मूल आदेश नं / O.O. No	दिनांक / Date
	V2/112/RAJ/2016,	DC/JAM/12/2015-16,	14.03.2016
	V2/219/RAJ/2016,	DC/JAM/02/2016-17,	29.07.2016
	V2/249/RAJ/2016	DC/JAM/21/2016-17	27.10.2016

42950 4298

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

RAJ-EXCUS-000-APP-065-TO-67 -2017-18

आदेश का दिनांक / **18.09.2017** जारी करने की तारीख / **19.09.2017**
Date of Order: Date of issue:

कुमार संतोष, आयुक्त (अपील), राजकोट द्वारा परित /

Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot

ग अगर आयुक्त/सदस्य आयुक्त/अध्यायुक्त/सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, राजकोट / जामनगर / गान्धीधाम) द्वारा उपरोक्तित जरी मूल आदेश से नृजित /

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. Shree Digvijay Cement Co. Ltd., Digvijay Gram - 361 140, Jamnagar, Gujarat,

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके से उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील टापर 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 अपीलिय 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) वकीलरत मूल्यवकास से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलिय 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 अपील के अलावा शेष सभी अपीलें सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलिय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहामली भवन अलावा अहमदाबाद-380016 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) अपीलिय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये फॉर्म EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की राशि, व्यय की राशि और जमाया गया जुर्माना, स्पष्ट 5 लाख या उससे कम, 5 लाख रुपया या 50 लाख रुपया तक अथवा 50 लाख रुपए से अधिक है तो कमरा: 1,000/- रुपए, 5,000/- रुपए अथवा 10,000/- रुपए का निर्धारित जमा शुल्क की प्रति संलग्न की। निर्धारित शुल्क का भुगतान, संबंधित अपीलिय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सांख्यिक 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 अपीलिय न्यायाधिकरण की शाखा स्थित है। स्वयंसेवक आदेश (स्टे ऑर्डर) के लिए आवंटन-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) अपीलिय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवली, 1994, के नियम 9(1) के तहत निर्धारित फॉर्म S.T.-5 में चार प्रतियों में की जा सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न की (उनकी दो एक प्रति प्रमाणित होती चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की राशि, व्यय की राशि और जमाया गया जुर्माना, स्पष्ट 5 लाख या उससे कम, 5 लाख रुपया या 50 लाख रुपया तक अथवा 50 लाख रुपए से अधिक है तो कमरा: 1,000/- रुपए, 5,000/- रुपए अथवा 10,000/- रुपए का निर्धारित जमा शुल्क की प्रति संलग्न की। निर्धारित शुल्क का भुगतान, संबंधित अपीलिय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सांख्यिक 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 अपीलिय न्यायाधिकरण की शाखा स्थित है। स्वयंसेवक आदेश (स्टे ऑर्डर) के लिए आवंटन-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-धारा (2) एवं (2A) के अंतर्गत दंड की राशि अर्पित, सेवाकर नियमावली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित धारा S.T.-7 में की जा सकती एवं उसके साथ अनुसूचक, केन्द्रीय उत्पाद शुल्क अध्याज अनुसूचक (अपील), केन्द्रीय उत्पाद शुल्क द्वारा जारी आदेश की प्रतियाँ संलग्न की (जिसमें से एक प्रति प्रामाणिक होनी चाहिए) और अनुसूचक द्वारा सहायक अनुसूचक अथवा उपानुसूचक, केन्द्रीय उत्पाद शुल्क सेवाकर, को अपील एवं न्यायधिकरण 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) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील प्रक्रिया (सेलटेड) 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 प्रक्रिया में अपील करते समय उत्पाद शुल्कसेवा कर राशि के 10 प्रतिशत (10%), जब राशि 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 रुपए से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत 'सांग किए गए शुल्क' में विवाद शामिल है।
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेलटेड जमा की ली गई राशि
(iii) सेलटेड जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्त यह कि इस धारा के प्राधान वित्तीय (सं. 2) अधिनियम 2014 के अंश में पूर्व किसी अपील प्रक्रिया के अन्तर्गत विचारणीय स्थान अर्पित एवं अपील को लागू नहीं होवे।
For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores.
Under Central Excise and Service Tax, "Duty Demanded" shall include :
(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.
- (C) **भारत सरकार को पुनरीक्षण आवेदन :**
Revision application to Government of India:
इस आदेश की पुनरीक्षण प्रक्रिया निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम पंजीक के अंतर्गत अन्तः राष्ट्रीय, अन्तः सरकारी, पुनरीक्षण आवेदन हेतु, वित्त अन्तः, राज्य विभाग, चौक अन्तः, जीवन दीप अन्तः, अन्तः राज्य, नई दिल्ली-110001, को किया जाता है। /
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-35E-ibk:
(i) यदि भंडार के किसी नुकसान के मामले में, जहां नुकसान किसी भंडार को किसी कारखाने से अन्तः 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 अन्तःकरण में भंडार के प्रत्यक्षकरण के दौरान, किसी कारखाने या किसी भंडार गृह में भंडार 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 भंडार के विनिर्माण में प्रयुक्त कच्चे भंडार पर लगी 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 भंडार निर्यात किया गया है। /
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty
(iv) समिचित उत्पाद के उत्पादन शुल्क के अन्तर्गत के लिए जो इच्छी केंद्रित इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत लागू की गई है और ऐसे आदेश जो अनुसूचक (अपील) के द्वारा वित्त अधिनियम (सं. 2), 1998 की धारा 109 के द्वारा निर्यात की गई लागू अथवा अन्तःनिर्माण पर या बट में पर्याप्त 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 प्रतियाँ पत्र संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 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 प्रतियाँ संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अद्यतनी के साथ के ली पर TR-6 की प्रति संलग्न की जानी चाहिए। /
The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-in-Appeal. It should also be accompanied by a copy of TR-6 Chalan 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 अद्यतनी की जानी चाहिए।
जहाँ संलग्न रकम एक लाख रुपये या उसके कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से अधिक 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 दान में किया जाना चाहिए। इस लेख के अंतर्गत ही अपील की निष्ठा नहीं करके से बचने के लिए एकत्रित अपील प्रक्रिया के एक अपील या केवल 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 existing Rs. 1 lakh fee of Rs. 100/- for each
(E) पञ्चसदस्य न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट लगा होना चाहिए। /
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-1 in terms of the Court Fee Act, 1975, as amended
(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील प्रक्रिया (सर्वे विधि) नियमावली, 1982 में वर्णित एवं अन्य सम्बन्धित मामलों को सम्मिलित करने वाले विधियों की और भी ध्यान अर्पित 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 प्रक्रिया को अपील दायित्व करने में संबंधित न्यायक, 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

The appeals detailed below have been filed by M/s. Shree Digvijay Cement Co. Ltd., Digvijaygram, District – Jamnagar (hereinafter referred to as "the appellant), against below mentioned Orders-In-Original No. (hereinafter referred to as "the impugned orders") passed by the Deputy Commissioner, Central Excise & Service Tax, Jamnagar (hereinafter referred to as "the lower adjudicating authority").

Sr. No.	Appeal File No.	Order-In-Original No. & Date	SCN No. & Date	Period	Cenvat credit disallowed (in Rs.)
01.	V2/112/RAJ/2016	DC/JAM/12/2015-16 dated 14.03.2016	V.25(4)41/Demand/15-16 dated 14.10.2015	October,2014 to March,2015	1,02,360
02	V2/219/RAJ /2016	DC/JAM/02/2016-17 dated 29.07.2016	V.25(4)53/Demand/15-16 dated 18.01.2016	April, 2015 to September, 2015	1,50,818
03	V2/249/RAJ /2016	DC/JAM/21/2016-17 dated 27.10.2016	V.25(4)21/Demand/16-17 dated 08.07.2016	October, 2015 to March, 2016	98,271

2. Since the issues involved are common, these appeals are being taken up together for passing Orders-In-Appeal.

3. Briefly stated facts of the case are that the appellant had wrongly availed Cenvat credit of service tax paid on hotel accommodation charges. It was found that the said service has no nexus, in or in relation to the manufacture of the final product of the appellant; that hotel service was not part of the main or inclusive part of the definition of "input service" under Rule 2(l) of the Cenvat Credit Rules, 2004. Show Cause Notices were issued for recovery of wrongly availed Cenvat credit under Rule 14 of the Cenvat Credit Rules read with Section 11A (1) of the Central Excise Act, 1944 along with interest under Section 11AA of the Act and for imposing penalty under Rule 15 of the Cenvat Credit Rules read with Section 11AC of the Act. The Show Cause Notices were decided by the lower adjudicating authority vide impugned orders wherein he disallowed the Cenvat Credit and ordered recovery of cenvat credit so availed along with interest and also imposed penalty equal to the credit disallowed giving option to pay 25% of imposed penalty under Section 11AC(i)(e) of the Act.

3. Being aggrieved by the impugned orders, the appellant preferred the appeals, *interalia*, on the following grounds:-

28

(i) The services are used by the appellant for the market research, business development, sale promotion and advertisement and since no contrary evidence had been brought, the services are definitely used for the purpose mentioned by the appellant. The said services are included in the definition of input service.

(ii) The credit of service tax paid on any taxable service that forms part of the assessable value of the final product has to be allowed under the Cenvat Credit Rules. The expression "input service" as per Rule 2(l) of the Rules cannot be restricted to the services used directly in or in relation to the manufacture of the final products, but is also liable to be extended to all services, which are used in relation to the business of the manufacturer. The hotel service has been used for official purpose by the company executives for sales promotion/business development, technical know-how, meetings/dealings related to the business, etc. which are integral part of the business activities and such charges are borne by the appellant.

(iii) The inclusive part of the definition of 'input service' makes it clear that credit of service tax paid on services which are used in relation to the business such as accounting, auditing, etc. would be allowable even if the said services are not *per se* used in or in relation to manufacture of the final product. The expression "such as" is merely illustrative and not exhaustive. Therefore, credit of service tax paid on any service used by the assessee in relation to the business of manufacturing cement has to be allowed. The appellant relied on the decisions of Hon'ble Apex court in the case of Goodyear India Ltd. reported as 1997 (95) ELT 450 (SC) and Royal Hatcheries (P) Ltd. reported as 1994 SUPP (1) 429.

(iv) The business activity is an integrated/continuous activity and is not confined/restricted to mere manufacturing activity. Business activity covers all activities that are related to carrying on the business. Therefore, the term 'in relation to business' in Rule 2(l) of the Cenvat Credit Rules, 2004 cannot be given a restricted meaning so as to cover only those activities which churn out the final product from the raw materials. The expression 'activity relating to business clearly denotes that the legislature intended to give wider meaning and not narrow meaning. The appellant relied on the decisions of the Apex Court in the case of Shreyas Paper Pvt. Ltd. reported as 2006 (1) SCC 615; Mazgaon Dock Ltd. reported as AIR 1958 S.C. 861 and Doypack Systems (P) Ltd. reported as 1988 (36) ELT 201 (SC).

(v) The expenses incurred as a result of commercial expediency are covered by the term "activities relating to business". Where the services used have direct and immediate link with the business of the assessee, then credit of service tax paid on those services would be allowable. The appellant relied on the decisions of the Apex Court in the case of Chandulal Keshavlal & Co. reported as 1960 (38) ITR 601 (SC), Eastern Investments Ltd. reported as 1951 (20) ITR-1 (SC) and Redrow Group PLC reported as 1999 SIMON Tax cases 161.

(vi) The appellant relied on the following decisions in support of their contentions:

- Bellsonica Auto Components India P. Ltd. – 2015 (40) STR 41 (P&H)
- Coco Cola India Pvt. Ltd. – 2009 (242) ELT 168 (Bom.)
- Deepak Fertilizers & Petrochemicals Corp Limited – 2013 (32) STR 532 (Bom.)
- Ultratech Cement Ltd. – 2010 (20) STR 577 (Bom.)
- Mangalore Refinery & Petrochemicals Ltd. – 2015 (319) ELT 121 (Tri.-Bang.)
- ABB Ltd. – 2009 (15) STR 23 (Tribunal-LB)

(vii) It is submitted that Central Excise and Financial records and Service Tax records are verified by the audit team before, however, this said matter was raised for the first time. The appellant has submitted Central Excise returns on time every month and also has given the details of cenvat credit availed in respect of service tax paid by them. Therefore, the department cannot claim at any stage that the appellant had suppressed the fact from the department. There are various judgments clarifying that no extended period can be invoked when the records have been audited. The appellant relied on the following judgments and submitted that extended period does not survive at all.

- Trans Engineers India Pvt. Ltd. – 2015 (40) STR 490 (Tri.-Mumbai)
- Madras Cements Ltd. – 2015 (40) STR 645 (Kar.)
- Bajaj Hindustan – 2015 (40) STR 281 (Tri. Del.)
- Panoli Intermediates (India) Pvt. Ltd. – 2015 (40) STR 328 (Tri.-Ahmd.)
- Ellora Time Ltd. – 2014 (34) STR 801 (Guj.)
- Andhra Sugars Ltd. – 2015 (319) ELT 297 (AP)

(viii) SCN F.No. V.25/AR-V/JMR/86/Com:mr./2014 dated 28.07.2014 and SCN No. V.25(4)06/Demand/2015-16 dated 16.04.2015 have been issued on the same ground and this is second periodical demand on this issue by the department. Hence, the charge of suppression, misstatement, mis-declaration cannot be invoked. The appellant relied on the following decisions:-

- ECE Industries Ltd. – 2004 (164) ELT 236 (SC)
- Frick India Ltd. – 2006 (203) ELT 82 (Tri.-Del.)
- Gautami Textile Indus. & Sales Corpn. – 2006 (197) ELT 87 (Tri.-Bang.)
- Nizam Sugar Factory – 2008 (9) STR 314 (SC)

(ix) The issue is bona fide in nature and it is settled legal position that for imposition of penalty under Section 11AC, mens-rea should be there. The appellant relied on the following decisions in this regard:-

- Pepsi Foods Ltd. – 2010 (260) ELT 481 (SC)
- Aabhas Spinners – 2009 (239) ELT 161 (Tri.-Del.)
- Ballarpur Industries – 2009 (23) STT 254 (CESTAT SMB)
- Knit Foulds – 2008 (230) ELT 442 (Tri.-Del.)

4. The appellant vide their letter dated SDCCL/JG/HOTEL/PH-ADJ/2017-18 dated 05.09.2017 stated that the submissions made in the Grounds of Appeals may please be taken as their final and personal submission and they waived the requirement of personal hearing for disposal of these appeals. Hence, I take up these appeals for passing Orders-In-Appeal now.

FINDINGS:-

5. I have carefully gone through the facts of the case and the submissions of the appellant in the memorandum of appeals. The issue to be decided in the present appeals is whether cenvat credit of service tax paid on hotel accommodation charges is allowable in terms of Rule 2(l) of the Cenvat Credit Rules, 2004 or not.

6. I find that the lower adjudicating authority has disallowed the Cenvat Credit of service tax paid on hotel charges holding that the said service has not been received in or in relation to manufacture of their finished product and clearance thereof upto the place of removal. The appellant has contended that services are used by the appellant for market research, business development, sales promotion and advertisement and are included in the definition of input service. To understand the definition of "input services", Rule 2(l) of the Cenvat Credit Rules, 2004 as applicable during the material time is reproduced as under:

"(l) "input service" means any service, -

- (i) used by a provider of taxable 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), (zzi), (zzm), (zzq), (zzzh) and (zzzza) of clause (105) of section 65 of the Finance Act (hereinafter referred 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 provision 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 centre, 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 supplied)

6.1. As can be seen from above, "input service" means any service 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, with the inclusions such as advertisement, market research and sales promotion, etc. but excludes services if used primarily for personal use or consumption of any employee. The appellant strongly pleaded that hotel services are used by the appellant for the market research, business development, sales promotion and advertisement, however the appellant has not produced any cogent evidence to establish the same. The appellant has not made out the case as to how and in which manner, the hotel services have been used, in or in relation to manufacture of their final products and clearance thereof. The appellant has also failed to demonstrate as to how the hotel services can be linked to the activities relating to market research, sales promotion or advertisement. I find that as per Rule 9(5) of

the Cenvat Credit Rules, 2004, the burden of proof regarding admissibility of cenvat credit shall lie upon them. In absence of the same, cenvat credit of service tax paid on hotel charges cannot be allowed to the appellant.

6.2 The appellant has also contended that "input service" as per Rule 2(l) of the Rules cannot be restricted to the services used in or in relation to the manufacture of the final products, but needs to be extended to all services that are used in relation to the business of the manufacturer and that the hotel services have been used for the official purpose by the company executives to attend meetings/dealings related to business, sales promotion, business development, technical know-how etc. which are integral part of business activities. I find that the appellant while raising the plea that hotel service is used for market research, advertisement, sales promotion, etc. to qualify it as "input service" within inclusive clause of the definition, they have also argued that hotel services were used by their executives/employees for meetings related to business, technical know-how, etc. I am of the view that the definition has to be considered in its entirety. The availability of cenvat credit is not outside the purview of exclusion clause and if certain credit has not been allowed specifically by the legislation, then it cannot be allowed by general clause or general description. It is also a fact that Central Government consciously amended the definition of "input service" w.e.f. 01.04.2011, vide Notification 3/2011-CE (NT) dated 01.03.2011, wherein expression "activities relating to business" has been deleted from the definition of 'input service'. The intention of legislation is very clear not to allow cenvat credit in respect of services used for consumption of any employee and activities related to business beyond place of removal.

6.3 I find that the Hon'ble Apex Court in the case of Dharmendra Textile Processors reported as 2008 (231) ELT 3 (SC) also held that *"the 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. The language employed in a statute is the determinative factor of legislative intent.* The Hon'ble Apex Court in the case of Parmeshwar Subramani reported as 2009 (242) ELT 162 (S.C.) has also held as under:-

"14. It is settled law that where there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to undertake any exercise to read something into the provisions which the legislature in its wisdom consciously omitted. Such an exercise

Raj

if undertaken by the courts may amount to amending or altering the statutory provisions.

15. In a plethora of cases, it has been stated that where, the language is clear, the intention of the legislature is to be gathered from the language used. It is not the duty of the court either to enlarge the scope of legislation or the intention of the legislature, when the language of the provision is plain. The court cannot rewrite the legislation for the reason that it had no power to legislate. The court cannot add words to a statute or read words into it which are not there. The court cannot, on an assumption that there is a defect or an omission in the words used by the legislature, correct or make up assumed deficiency, when the words are clear and unambiguous. Courts have to decide what the law is and not what it should be. The courts adopt a construction which will carry out the obvious intention of the legislature but cannot set at naught legislative judgment because such course would be subversive of constitutional harmony.

(Emphasis supplied)

6.4 The appellant relied on the decisions in the case of Bellsonica Auto Components India P. Ltd. – 2015 (40) STR 41 (P&H), Coco Cola India Pvt. Ltd. – 2009 (242) ELT 168 (Bom.), Ultratech Cement Ltd. – 2010 (20) STR 577 (Bom.), Mangalore Refinery & Petrochemicals Ltd. – 2015 (319) ELT 121 (Tri.-Bang.) and ABB Ltd. – 2009 (15) STR 23 (Tribunal-LB) in support of their contentions. I find that all these orders/judgments have been pronounced in the context of the definition of "input service" existed prior to 01.04.2011. The legislation consciously amended the earlier definition of input service vide Notification No. 3/2011-CE (NT) dated 01.03.2011, omitting the word "activities relating to business" from the definition of "input service" provided under Rule 2(l) of Cenvat Credit Rules, 2004. Thus, I am of the considered view that the cenvat credit of service tax paid on hotel accommodation charges is not admissible to the appellant under Rule 2(l) of the Cenvat Credit Rules, 2004 as the said service does not fall within main clause or inclusive clause of definition of 'input service' under Rule 2(l) of the Cenvat Credit Rules, 2004. Hence, I do not find any justified reason to interfere with the orders of the lower adjudicating authority in this regard and uphold the impugned orders to this extent.

7. The appellant has contended that these being periodical demands on the same issue, the charge of suppression, misstatement, mis-declaration cannot be invoked. I find force in the arguments made by the appellant. It is settled legal position that in case of periodical demands, the allegation of suppression of facts, misstatement or mis-declaration cannot be alleged. I find that the impugned SCNs issued by the department are periodical in nature and therefore, the charges of suppression of facts etc. with intent to evade payment of Central Excise duty cannot be invoked and penalty under Section 11AC(1)(c) of the Act cannot be imposed.

Accordingly, I set aside the equal penalty imposed under Section 11AC of the Act imposed by the lower adjudicating authority. However, I find that the appellant has wrongly availed cenvat credit on hotel service in contravention of Rule 2(l) of the Cenvat Credit Rules, 2004. Hence, they are liable to penalty under Rule 15(1) of the Cenvat Credit Rules, 2004 read with Section 11AC(1)(a) of the Central Excise Act, 1944 @ 10% of amount of wrongly availed cenvat credit pertaining to these appeals. Accordingly, I modify the impugned orders in this regard to this extent.

८. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
8. The appeals filed by the appellant stand disposed off in above terms.

(Signature)
18/9/2017
(कुमार संतोष)
आयुक्त (अपील्स)

By Speed Post

To,

M/s. Shree Digvijay Cement Co. Ltd.,
Digvijaygram,
District – Jamnagar

मै. श्री दिग्विजय सीमेंट कंपनी लिमिटेड,
दिग्विजयग्राम,
डिस्ट्रिक्ट - जामनगर

Copy to:

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

Accordingly, I set aside the equal penalty imposed under Section 11AC of the Act imposed by the lower adjudicating authority. However, I find that the appellant has wrongly availed cenvat credit on hotel service in contravention of Rule 2(l) of the Cenvat Credit Rules, 2004. Hence, they are liable to penalty under Rule 15(1) of the Cenvat Credit Rules, 2004 read with Section 11AC(1)(a) of the Central Excise Act, 1944 @ 10% of amount of wrongly availed cenvat credit pertaining to these appeals. Accordingly, I modify the impugned orders in this regard to this extent.

7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
8. The appeals filed by the appellant stand disposed off in above terms.

सत्यापित,
 आर. एन. मीणा (कुमार संतोष)
 अधीक्षक (अपील) आयुक्त (अपील्स)
 19/9/2017 15/9/2017

By Speed Post

To,

M/s. Shree Digvijay Cement Co. Ltd., Digvijaygram, District - Jamnagar	श्री दिग्विजय सीमेंट कंपनी लिमिटेड, दिग्विजयग्राम, डिस्ट्रिक्ट - जामनगर
--	---

Copy to:

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