



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 Bhawan.

रेस कोर्स रिंग रोड, / Race Course Ring Road.

राजकोट / Rajkot - 360 001

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सत्यमेव जयते

54

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील संख्या / Appeal / File No.	मूल आदेश नं / O.I.O. No.	दिनांक / Date
	V2/238/RAJ/2016	32/D/AC/2016-17	29.09.2016

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

RAJ-EXCUS-000-APP-070 -2017-18

आदेश का दिनांक / 22.09.2017 जारी करने की तारीख / 25.09.2017
Date of Order: Date of issue:

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

ग अपर आयुक्त/ आयुक्त/ उप-आयुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवान्वय, राजकोट / जामनगर / गान्धिधाम, 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. Applied Auto Parts Pvt. Ltd., Plot No. 1610, Road F & 7A Corner., Almighty Gate, Lodhika GIDC., Vill. Metoda, Dist. Rajkot

इस आदेश(अपील) से व्यभिक्त कोई व्यक्ति निम्नलिखित तरीके से उपयुक्त अधिकारी / अधिकरण 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 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) अन्वेषण सुनवाईय में सम्बन्धित सभी आयात सीमा शुल्क, केन्द्रीय उत्पादन 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 बतौर सा अपीली के अलावा वेप सभी अपीले सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (विस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहामाली 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, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अन्तर्गत निम्नलिखित 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 सीमा, व्याज की सीमा और जमाया राशि आदि, 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 पूरी संरक्षण करें। निर्धारित शुल्क का अनुदान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के साथ से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेकॉग्नि बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का अनुदान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्वयंसेवक आदेश (एन.ओ.ए.) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /
The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/-, Rs.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-

(iv) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अन्तर्गत सेवाकर निवन्धन, 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 करें (उपरोक्त में एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की सीमा, व्याज की सीमा और जमाया राशि आदि, 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 पूरी संरक्षण करें। निर्धारित शुल्क का अनुदान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के साथ से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेकॉग्नि बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का अनुदान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्वयंसेवक आदेश (एन.ओ.ए.) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /
The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.5000/- 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/-

(v) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अन्तर्गत सेवाकर निवन्धन, 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 करें (उपरोक्त में एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की सीमा, व्याज की सीमा और जमाया राशि आदि, 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 पूरी संरक्षण करें। निर्धारित शुल्क का अनुदान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के साथ से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेकॉग्नि बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का अनुदान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्वयंसेवक आदेश (एन.ओ.ए.) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /
The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.5000/- 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/-

(vi) अपील के लिए अपीलकर्ता को अपील के अलावा वेप सभी अपीले सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (विस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहामाली 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, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दंड की सही अपील, सेवाकर नियमवली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित फॉर्म ST-7 में की जा सकती एवं उसके साथ अपील केन्द्रीय उत्पाद शुल्क अथवा अपील (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न की (जहाँ से एक प्रति परामर्शित होती चाहिए) और अनुबन्धित दस्तावेज़ संलग्न अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क सेवारत, को अपील न्यायाधिकरण को आदेश दंड 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) सेवा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (सेस्टैट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35ए के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवारत की भी लागू की गई है, इस आदेश के प्रति अपील न्यायाधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मूल्य के 10 प्रतिशत (10%), जब मूल्य एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपीलित देय राशि टस करौड़ रुपए से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत 'जमा किए गए शुल्क' में निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेवारत जमा की गई राशि राशि
(iii) सेवारत जमा नियमवली के नियम 6 के अंतर्गत देय रकम
बशर्त यह कि इस धारा के प्रावधान वित्तीय (नं. 2) अधिनियम 2014 के आठवें में पूरे किसी अपील न्यायाधिकरण के अग्रत विचारणीय स्थान नहीं एवं अपील को अनु मही 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 आदेशन :**
Revision application to Government of India:
इस आदेश की पुनरीक्षण याचना निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परन्तु के अंतर्गत अंतर लक्षित, भारत सरकार, पुनरीक्षण आदेशन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौकी नजिल, जौहर दीप भवन, संसद भवन, 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 अथवा गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक अथवा गृह से दूसरे अथवा गृह पारगमन के दौरान, या किसी अथवा गृह में या अथवा में माल के प्रसंभन के दौरान, किसी कारखाने या किसी अथवा 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 का क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कर्तव्य माल 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 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) मुनिनिर्धारित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इमुटी केवैट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत आवश की गई है और ऐसे आदेश जो आनुबन्ध (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई लक्षित अथवा समावृत्ति पर या बंद में परिवर्तित 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 आदेशन की दो प्रतियाँ फॉर्म संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमवली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के लक्ष्य के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आदेशन 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 अदायगी के साध्य के लिए 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 आदेशन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000/- का भुगतान किया जाए।
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved is Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपरोक्त धारा में किया जाना चाहिए। इस लक्ष्य के होते हुए भी की शिक्षा नहीं करनी से बचने के लिए कथनित अपील न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आदेश दिया 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) ब्याजसहित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं संलग्न आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट लगा होना चाहिए। / One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act,1975, as amended.
- (F) सेवा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (अपील) विनियमवली, 1982 में उल्लिखित एवं अन्य संबंधित मामलों को सम्भालित करने वाले नियमों की और भी ध्यान आकर्षित किया जाता है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.
- (G) उच्च अपील न्यायाधिकरण को अपील दायित्व करने में संबंधित व्यापक, विस्तृत और संबंधित प्रावधानों के लिए, अपील न्यायाधिकरण वेबसाइट www.cbec.gov.in को देख सकते हैं। / For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in

:: ORDER IN APPEAL ::

The present appeal has been filed by M/s. Applied Auto Parts Private Limited, Plot No. 1610, Road F & 7A Corner, Almighty Gate, Lodhika GIDC, Kalawad Road, Village – Metoda, Distt. Rajkot (hereinafter referred to as "the appellant") against Order-in-Original No. 32/D/AC/2016-17 dated 29.09.2016 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central Excise Division-I, Rajkot (hereinafter referred to as "the lower adjudicating authority").

2. The facts of the case are that during audit for the period from 2009-10 to 2010-11, it was noticed that the appellant had availed cenvat credit of service tax paid on outward transportation charges for the clearance of their finished goods. The jurisdictional Range Officer called for details of cenvat credit taken on outward transportation charges and scrutiny of information revealed that the appellant had availed cenvat credit of Rs. 2,97,347/- on outward transportation charges during the period from March, 2009 to March, 2013. Show Cause Notice No. V.84(4)-24/MP/D/2010-11 dated 30.05.2013 was issued to the appellant demanding wrongly availed Cenvat credit of Rs. 2,97,347/- along with interest under Rule 14 of the Cenvat Credit Rules, 2004 (hereinafter referred to as "the CCR, 2004) read with Section 11A and Section 11 AA (for interest) of the Central Excise Act, 1944 and imposing penalty under Rule 15 of CCR, 2004 read with Section 11 AC of the Central Excise Act, 1944. The lower adjudicating authority adjudicated the show cause notice vide impugned order wherein he confirmed demand of Rs 2,97,347/- under Rule 14 of the CCR,2004 read with Section 11A(4) of the Act; also ordered interest under Rule 14 of the CCR, 2004 read with Section 11AA of the Act and imposed penalty equal to cenvat credit involved under 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 on the grounds that the findings of the lower adjudicating authority that the transactions are not on F.O.R. basis are not only bad in law but not based on facts as the purchase order clarifies that the delivery is at the destination and the assessable value of the goods on which duty has been paid is inclusive of transportation charges; that it is settled law that if transactions are on F.O.R. basis, cenvat credit is allowable; that the department had knowledge of the fact that the appellant is availing credit of service tax paid on outward transportation charges and hence the demand is time barred; that penalty of Rs. 2,97,347/- imposed by the lower adjudicating authority is not sustainable on the above grounds.

4. Personal hearing in the matter was attended to by Shri Paresh Sheth, Advocate who reiterated the grounds of appeal and also submitted that the place of removal is buyer's premises in case of all sales made to M/s. VE Commercial Vehicles Limited, Pithampur and the transportation cost upto that plant/place of delivery is included in the price on which Central Excise duty has been paid by them as per

Section 4(1)(a) of the Central Excise Act, 1944; that in such case cenvat credit of service tax on GTA paid by them is available as the place of removal is place of delivery at Pithampur as has been laid in many case laws; he relied upon CESTAT, Ahmedabad's decision in the case of Kelvin Plastics Pvt. Ltd. vide Order No. A/11381/2017 dated 21.03.2017 and OIA No. BHV-EXCUS-000-APP-258-16-17 dated 21.03.2017 passed by Commissioner (Appeals), Central Excise, Rajkot in the case of Arya Metacast Pvt. Ltd.

FINDINGS:

5. I have carefully gone through the facts of the case, impugned order, grounds of appeal and submissions made by appellant. The limited issue to be decided in the present appeal is that whether the impugned order passed by the adjudicating authority disallowing cenvat credit of service tax paid on outward transportation charges, is correct or otherwise.

6. I observe that definition of "input service" as provided under Rule 2(l) of Cenvat Credit Rules, 2004 reads 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 the 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 setting up, 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, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal."

(Emphasis supplied)

6.1 From the above, it is observed that "input service" means any service used by the manufacturer, whether directly or indirectly, in or in relation to manufacture of final products and clearance of final products upto the place of removal, with the inclusions outward transportation upto the place of removal. It is therefore very clear that as per main clause - the service should be used by the manufacturer which has direct or indirect relation with the manufacture of final products and clearance of final products upto the place of removal and the inclusive clause restricts the outward transportation upto the place of removal. As per the provisions of Section 4(3)(c) of Central Excise Act, 1944, "place of removal" means a factory or any other place or premises of production or manufacture of excisable goods; a warehouse or any other place of premises wherein the excisable goods have been permitted to be stored without payment of duty or a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold.

6.2 I also observe that CBEC, New Delhi vide Circular No. 97/8/2007-ST dated 23.08.2007 has clarified admissibility of Cenvat credit in respect of service tax paid on goods transport by road. I would like to reproduce relevant text, which reads as under:

"(c) **ISSUE:** Up to what stage a manufacturer/consignor can take credit on the service tax paid on goods transport by road?

COMMENTS: This issue has been examined in great detail by the CESTAT in the case of **M/s Gujarat Ambuja Cements Ltd. vs CCE, Ludhiana [2007 (006) STR 0249 Tri-D]. In this case, CESTAT has made the following observations:-**

"the post sale transport of manufactured goods is not an input for the manufacturer/consignor. The two clauses in the definition of 'input services' take care to circumscribe input credit by stating that service used in relation to the clearance from the place of removal and service used for outward transportation upto the place of removal are to be treated as input service. The first clause does not mention transport service in particular. The second clause restricts transport service credit upto the place of removal. When these two clauses are read together, it becomes clear that transport service credit cannot go beyond transport upto the place of removal. The two clauses, the one dealing with general provision and other dealing with a specific item, are not to be read disjunctively so as to bring about conflict to defeat the laws' scheme. The purpose of interpretation is to find harmony and reconciliation among the various provisions".

Similarly, in the case of M/s Ultratech Cements Ltd vs CCE Bhavnagar 2007-TOIL-429-CESTAT-AHM, it was held that after the final products are cleared from the place of removal, there will be no scope of subsequent use of service to be treated as input. The above observations and views explain the scope of the relevant provisions clearly, correctly and in accordance with the legal provisions. In conclusion, a manufacturer / consignor can take credit on the service tax paid on outward transport of goods up to the place of removal and not beyond that.

8.2 In this connection, the phrase 'place of removal' needs determination taking into account the facts of an individual case and the applicable provisions. The phrase 'place of removal' has not been defined in CENVAT Credit Rules. In terms of sub-rule (t) of rule 2 of the said rules, if any words or expressions are used in the CENVAT Credit Rules, 2004 and are not defined therein but are defined in the Central Excise Act, 1944 or the Finance Act, 1994, they shall have the same meaning for the CENVAT Credit Rules as assigned to them in those Acts. The phrase 'place of removal' is defined under section 4 of the Central Excise Act, 1944. It states that,-

"place of removal" means-

- (i) a factory or any other place or premises of production or manufacture of the excisable goods ;
- (ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be stored without payment of duty ;
- (iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory; from where such goods are removed."

It is, therefore, clear that for a manufacturer /consignor, the eligibility to avail credit of the service tax paid on the transportation during removal of excisable goods would depend upon the place of removal as per the definition. In case of a factory gate sale, sale from a non-duty paid warehouse, or from a duty paid depot (from where the excisable goods are sold, after their clearance from the factory), the determination of the 'place of removal' does not pose much problem. However, there may be situations where the manufacturer /consignor may claim that the sale has taken place at the destination point because in terms of the sale contract /agreement (i) the ownership of goods and the property in the goods remained with the seller of the goods till the delivery of the goods in acceptable condition to the purchaser at his door step; (ii) the seller bore the risk of loss of or damage to the goods during transit to the destination; and (iii) the freight charges were an integral part of the price of goods. In such cases, the credit of the service tax paid on the transportation up to such place of sale would be admissible if it can be established by the claimant of such credit that the sale and the transfer of property in goods (in terms of the definition as under section 2 of the Central Excise Act, 1944 as also in terms of the provisions under the Sale of Goods Act, 1930) occurred at the said place.

(Emphasis supplied)

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6.3 The above circular was modified vide CBEC Circular No. 988 / 12 / 2014 – CX dated 20.10.2014. The relevant para of said circular reads as under:

"4) Instances have come to notice of the Board, where on the basis of the claims of the manufacturer regarding freight charges or who bore the risk of insurance, the place of removal was decided without ascertaining the place where transfer of property in goods has taken place. This is a deviation from the Board's circular and is also contrary to the legal position on the subject.

5) It may be noted that there are very well laid rules regarding the time when property in goods is transferred from the buyer to the seller in the Sale of Goods Act, 1930 which has been referred at paragraph 17 of the Associated Strips Case (supra) reproduced below for ease of reference -

"17. Now we are to consider the facts of the present case as to find out when did the transfer of possession of the goods to the buyer occur or when did the property in the goods pass from the seller to the buyer. Is it at the factory gate as claimed by the appellant or is it at the place of the buyer as alleged by the Revenue? In this connection it is necessary to refer to certain provisions of the Sale of Goods Act, 1930. Section 19 of the Sale of Goods Act provides that where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred. Intention of the parties are to be ascertained with reference to the terms of the contract, the conduct of the parties and the circumstances of the case. Unless a different intention appears; the rules contained in Sections 20 to 24 are provisions for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer. Section 23 provides that where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be expressed or implied and may be given either before or after the appropriation is made. Sub-section (2) of Section 23 further 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 purposes 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."

6) It is reiterated that the place of removal needs to be ascertained in term of provisions of Central Excise Act, 1944 read with provisions of the Sale of Goods Act, 1930. Payment of transport, inclusion of transport charges in value, payment of insurance or who bears the risk are not the relevant considerations to ascertain the place of removal. The place where sale has taken place or when the property in goods passes from the seller to the buyer is the relevant consideration to determine the place of removal."

(Emphasis supplied)

6.4 The harmonious reading of the above Circulars issued by the CBEC on the availability of cenvat credit in respect of service tax paid on outward transportation charges provides that such credit would be admissible only if the claimant establishes that the sale and the transfer of property in goods (in terms of the definition as under section 2 of the Central Excise Act, 1944 as also in terms of the provisions under the Sale of Goods Act, 1930) occurred at the said place. The Circulars very categorically says that the place where sale has taken place or **when the property in goods passes from the seller to the buyer is the relevant consideration to determine the place of removal**. The facts as to who paid to the transporter, who paid insurance premium or who bears the risk **are not the relevant factors to ascertain the place of removal**.

6.5 Section 19 of the Sale of Goods Act, 1930 reads as under:-

*19. Property passes when intended to pass.—
(1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the*

6.7 The Scanned image of Invoice No. 10911 dated 25.03.2017 issued by the appellant to M/s. VE Commercial Vehicles Limited, Pithampur is also reproduced as under:-

For removal of excisable goods from factory or Warehouse (Duty Payable UVR 11 of CE Rule-2002) TRIPPLICATE FOR Assessee

	Name and Address of Licensee: Applied Auto Parts Pvt. Ltd. Plot No. 16/10, Road F & 7 A corner, Alnrighty Gaha, Ludhiana (1) (C.C. Rajat Katarwal Road), Metoda, Dist. Rajkot (Gujarat, India) Phone & Fax: 91-2827 251900, 251900	INVOICE CUM CHALLAN 0010911 Retail Invoice INVOICE NO.: 0010911																							
C.E. Regn. No.: AAFCAL188081001 PAN No.: AAFCAL18808 S.T. No.: AAFCAL188081001 Range: AN-N, Central Excise Station, Race Course Ring Road, RAJKOT. Division: I, Central Excise Station, Race Course Ring Road, RAJKOT. Commissionerate: RAJKOT	G.S.T. TIN No.: 24092400966 Dt. 28-06-2005 C.S.T. TIN No.: 24092400966 Dt. 28-06-2005 CIN: U34300GJ2005PTC45300 Debit Memo																								
Buyer's Name & Address: VE COMMERCIAL VEHICLES LIMITED. (A VEICAR GROUP AND EICHER MOTORS JOINT VENTURE) 102 2ND AREA NO. 1, DOST-DWAR, PITHAMPUR, Madhya Pradesh Vendor Code: 112404	Preparation Date: 25/03/2017 Time: 18:17 Removal Date: 25/03/2017 Time: 20:12 P.O. No.: 1621003721 Date: 29/11/2015 Dispatch Through: SARC ROADLINES PVT. LTD.	Vehicle No.: I.H. No.: 2996080 Date: 25/03/2017 Weight (Kgs.): 80																							
Buyer's E.C.C. No.: AACBES278F18M812 Buyer's TIN No.: 23321001945 Buyer's G.S.T. TIN No.: 011/24/1945/S-2 Buyer's C.S.T. TIN No.: 23321001945	Name Of Excisable Goods & Tariff Sub Heading No.: Track Arm, LH HDA331646 (87099900) Concessional rate of duty are claimed under Notification No. NOTI.No. 12/2015 C.E. DT.01-09-2015 HSN CODE No.:																								
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 40%;">Description Of Goods</th> <th style="width: 10%;">Identification Mark</th> <th style="width: 10%;">Average Contents per Package Nos.</th> <th style="width: 10%;">No. & Description Of Packages</th> <th style="width: 10%;">Total Quantity Net Nos./Kgs.</th> <th style="width: 10%;">Price Without Excise Duty Per No.</th> <th style="width: 10%;">Value Rs.</th> </tr> </thead> <tbody> <tr> <td>Track Arm, LH HDA331646 (F.O.R.) WSN NO. 1334793619</td> <td></td> <td style="text-align: center;">5</td> <td style="text-align: center;">4</td> <td style="text-align: center;">20</td> <td style="text-align: right;">836.30</td> <td style="text-align: right;">16720.00</td> </tr> <tr> <td colspan="4" style="text-align: center;">YDT%</td> <td style="text-align: center;">20</td> <td></td> <td></td> </tr> </tbody> </table>	Description Of Goods	Identification Mark	Average Contents per Package Nos.	No. & Description Of Packages	Total Quantity Net Nos./Kgs.	Price Without Excise Duty Per No.	Value Rs.	Track Arm, LH HDA331646 (F.O.R.) WSN NO. 1334793619		5	4	20	836.30	16720.00	YDT%				20						
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Serial No. & Date of Debit Entry of Duty in:	Central Excise Rate of Duty %: 12.50%	Net Value Excise Duty: 12.50%	16720.00 2091.25																						
Duty Payable: Two Thousand Ninety One And Twenty Five (In Words): Paise Only		Taxable Value C.S.T.: 2.00%	18921.25 376.43																						
Ed. Chas Payable (In Words):			19197.68																						
Rupees: Nineteen Thousand One Hundred Ninety Seven And (In Words): Sixty Eight Paise Only	TOTAL INVOICE VALUE Rs.		19197.68																						

* Our responsibility ceases as soon as the goods leave our Premises, however not for F.O.R. transaction
 * All Transactions subject to Local Jurisdiction only * This is to Certify that the price declared herein is as per Section 4 of The Central Excise Act, & that the amount indicated in the statement represents the price actually charged to us and that there is no additional consideration either directly or indirectly for the goods that has been delivered & if any difference duty shall be paid by you.

For and on behalf of
APPLIED AUTO PARTS PVT. LTD.


6.8 The purchase order placed by the said buyer specifically mentioned "free on road (F.O.R.) Pithampur Price inclusive of all freight, storage and unloading charges till delivery at VECV Plant unloading points" The invoices issued by the appellant also specify the term "our responsibility ceases as soon as the goods leave our premises, however not for F.O.R. transactions". It has also been declared in the invoices issued by the appellant that there is no additional consideration either directly or indirectly flowing back to the appellant over and above the invoice price. Thus, I find that the sale of goods gets completed and the ownership of the goods is transferred at the doorstep of the buyer in terms of Section 19 of the Sale of Goods Act, 1930.

6.9 I find that the appellant has produced sufficient documentary evidences to show that (i) sale of goods had taken place at the destination point; (ii) the ownership of goods and the property in the goods remained with the appellant till the delivery of the goods in acceptable condition to the purchaser at his door step; (iii) the appellant bore

the risk of loss of or damage to the goods during transit to the destination; (iv) the freight charges were an integral part of the price of goods; and (v) the sale and the transfer of property in goods occurred at the destination place to prove that the place of removal was the destination point. Accordingly, I find that the appellant is eligible to avail cenvat credit of service tax paid on outward transportation charges. Hence, I find that the impugned order is not legally sustainable considering the final order of the Hon'ble High Court of Karnataka in the case of Madras Cements Limited – 2015 (40) STR 645 (Kar.) wherein it has been that:-

8. *Having heard learned counsel for the parties and considering the facts and circumstances of this case, we are of the considered view that as long as the sale of the goods is finalized at the destination, which is at the doorstep of the buyer, the change in definition of 'input service' which came into effect from 1-4-2008 would not make any difference. A perusal of invoices makes it clear that the goods were to be delivered and sale completed at the address of the buyer and no additional charge was levied by the assessee for such delivery. From these facts it is clear that the sale was completed only when the goods were received by the buyer. The Circular dated 20-10-2014 issued by the Central Board of Excise and Customs also, in paragraph-6 makes it clear that 'payment of transport, inclusion of transport charges in value, payment of insurance or who bears the risk are not the relevant considerations to ascertain the place of removal.'*

9. *As per the said Circular, the place of removal has to be ascertained in terms of Central Excise Act, 1944 read with the provisions of the Sale of Goods Act, 1930 which has been dealt with in detail in the said Circular. According to the provisions of the Sale of Goods Act, 1930, the intention of the parties as to the time when the property in goods has to pass to the buyer is of material consideration. The record clearly shows that the intention of the parties was that the sale would be complete only after goods are delivered by the seller at the address of the buyer. The assessing officer as well as the appellate authority have held that the assessee would not be entitled to the benefit merely because no documentary evidence has been adduced to establish the fact of insurance coverage by the assessee. In our view, who pays for insurance or bears the risk of goods in transit would not be a material consideration. The same has also been made clear by the Central Board of Excise and Customs, Department of Revenue, Ministry of Finance, in its Circular dated 20-10-2014.*

12. *Since we are of the opinion that the sale had concluded only after the delivery of the goods was made at the address of the buyer, in the facts of the present case the appellant-assessee would be entitled to the benefit of Cenvat credit on Service Tax paid on outward transportation of goods by the assessee even after 1-4-2008. The appellant-assessee would thus be entitled to such benefit for the period 1-4-2008 to 31-7-2008 which has been denied to it by the authorities below.*

(Emphasis supplied)

6.9 I also find that the above ratio has been followed by the Hon'ble High Court of Punjab & Haryana in the case of Ambuja Cement Ltd. reported as 2009 (236) ELT 431 (P&H), wherein it has been held that Cenvat credit of service tax paid on outward transportation would be admissible to the assessee.

7. However, I find that the appellant has produced few sample invoices in respect of M/s. VE Commercial Vehicles Limited, Pithampur and not in respect of all such buyers, the basis of which their entire claim for availment of cenvat credit of Service Tax paid on GTA for transportation of final products to their buyers cannot be verified. Therefore, I find this case is proper to be remanded to the lower adjudicating

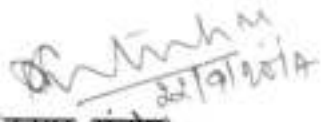
authority who shall verify documents covering the period under dispute and shall pass order after affording fair and reasonable opportunities to the appellant to explain their case. The appellant is directed to submit their written submissions along with all relevant documents within 2 months from the date of receipt of this order. 148

7.1 I find that Commissioner (Appeals) has power to remand as decided by the Hon'ble CESTAT in the case of CCE, Meerut Vs. Singh Alloys (P) Ltd. reported as 2012(284) ELT 97 (Tri-Del). I also rely upon decision of the Hon'ble Tribunal in the case of CCE, Meerut-II Vs. Honda Seil Power Products Ltd. reported in 2013 (287) ELT 353 (Tri-Del) wherein views have been expressed in respect of inherent power of Commissioner (Appeals) to remand a case under the provisions of Section 35A of the Act. The Hon'ble Gujarat High Court in Tax Appeal No. 276 of 2014 in respect of Associated Hotels Ltd. has also held that even after the amendment in Section 35A(3) of the Central Excise Act, 1944 after 11.05.2011, the Commissioner (Appeals) would retain the power to remand.

8. In view of the above, I set aside the impugned order and allow the appeal filed by the appellant by way of remand.

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

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


(कुमार संतोष)
आयुक्त (अपील्स)

By Regd. Post AD.

To,

M/s. Applied Auto Parts Private Limited,
Plot No. 1610, Road F & 7A Corner,
Almighty Gate, Lodhika GIDC,
Kalawad Road,
Village - Metoda,
Distt. Rajkot

मे. अप्लाइड ऑटो पार्ट्स प्रा.लिमिटेड,
प्लॉट न. १६१०, रोड एफ एवं ७ए कोर्नर,
अल्माईटी गेट, लोधीका जीआईडीसी,
कलावाड रोड, गाम - मेटोडा,
जिल्ला - राजकोट

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-I, Rajkot.
4. Guard File.


authority who shall verify documents covering the period under dispute and shall pass order after affording fair and reasonable opportunities to the appellant to explain their case. The appellant is directed to submit their written submissions along with all relevant documents within 2 months from the date of receipt of this order.


7.1 I find that Commissioner (Appeals) has power to remand as decided by the Hon'ble CESTAT in the case of CCE, Meerut Vs. Singh Alloys (P) Ltd. reported as 2012(284) ELT 97 (Tri-Del). I also rely upon decision of the Hon'ble Tribunal in the case of CCE, Meerut-II Vs. Honda Seil Power Products Ltd. reported in 2013 (287) ELT 353 (Tri-Del) wherein views have been expressed in respect of inherent power of Commissioner (Appeals) to remand a case under the provisions of Section 35A of the Act. The Hon'ble Gujarat High Court in Tax Appeal No. 276 of 2014 in respect of Associated Hotels Ltd. has also held that even after the amendment in Section 35A(3) of the Central Excise Act, 1944 after 11.05.2011, the Commissioner (Appeals) would retain the power to remand.

8. In view of the above, I set aside the impugned order and allow the appeal filed by the appellant by way of remand.

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

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

सत्यापित

 आर. एन. मोहन,
 अधीक्षक (अपील)


 (कुमार संतोष)
 आयुक्त (अपील्स)

By Regd. Post AD.

To,

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