::आयुक्त (अपील्स) 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

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रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/191 & 273/RAJ/2016	01/D/AC/2016-17 36/D/AC/2016-17	29.04.2016 07.10.2016

6058 to 6061

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

RAJ-EXCUS-000-APP-108-TO-109-2017-18

आदेश का दिनांक / Date of Order:	01.11.2017	जारी करने की तारीख / Date of issue:	03.11.2017

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

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham :

घ **अपीलकर्ता &** प्रतिवादी का नाम एवं पता /Name&Address of the **Appellant &** Respondent :-
M/s. Bhavani Industries, Ganjiwada, Bhavnagar Road,,Rajkot-363003.

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क ,केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम ,1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है ।/

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय 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 बताए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असावां अहमदाबाद- ३८००१६ को की जानी चाहिए ।/

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

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

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

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग ,ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/

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

(i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमावली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। /

The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

(ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "माँग किए गए शुल्क" में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगे।/

For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,

Under Central Excise and Service Tax, "Duty Demanded" shall include :

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules

- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(C) **भारत सरकार को पुनरीक्षण आवेदन :**

Revision application to Government of India:

इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परन्तुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में।/

In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse

(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /

In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (सं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायावधि पर या बाद में पारित किए गए है।/

Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। /

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the 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 निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 1000 -/ का भुगतान किया जाए।

The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

(D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है। /

In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। /

One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act,1975, as amended.

(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की 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 अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। /

For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in

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:: ORDERs IN APPEAL ::

M/s. Bhavani Industries, Ganjiwada, Bhavanagar Road, Rajkot (*hereinafter referred to as* '**the appellant**') has filed the present two appeals against the Orders-In-Original as detailed in the Table below (*hereinafter referred* as "**impugned orders**") both passed by the Assistant Commissioner, Central Excise Division-I, Rajkot (*hereinafter referred to as* "**the adjudicating authority**").

Sr No.	Appeal No.	Order-in-Original	Period involved	Amount (Rs.)
1	V2/191/RAJ/ 2016	01/ D/ AC/ 2016-17 dated 29.04.2016	April, 2014 to March, 2015	3,39,900
2	V2/273/RAJ/ 2016	36/ D/ AC/ 2016-17 dated 07.10.2016	April, 2015 to February, 2016	4,69,680/-

2. The facts of the case are that the appellant is engaged in manufacture of excisable goods and audit of the Appellant reveals that that Appellant has wrongly availed the Cenvat credit of the service tax paid on insurance services of "Product Liability & Product Recall Insurance Policy" to insure the goods manufactured by them. Audit was of the view that the insurance policy covered insurance pertaining to Product recall expenses to cover up the financial losses incurred by the Appellant on account of recall of their products already sold to their customers and covers the eventuality occurring post removal of goods from the factory premises of the Appellant and hence did not fall within the ambit of definition of "input Service" in terms of Rule 2(1) of the Cenvat Credit Rules, 2004 (*hereinafter referred to as* "**CCR 2004**"). Therefore, Appellant was issued Show Cause Notices demanding the wrongly availed Cenvat Credit under Rule 14 of the CCR, 2004 read with Section 11A of the Central Excise Act, 1944 (*hereinafter referred to as* "**the Act**"), interest under Section 11A of the Act and penalty under Rule 15 of the CCR,2004 read with Section 11AC of the Act. Adjudicating authority adjudicated the show cause notices vied impugned orders and confirmed the demand under rule 14 of the CCR,2004 read with Section 11A of the Act and also interest and penalty under Section 11A and Rule 15 of CCR,2004 read with Section 11AC of the Act.

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

(i) The adjudicating authority has ignored the decision of Hon'ble CESTAT Ahmedabad in the case of M/s. Harsha Engineers Ltd reported as 2012 (27) STR164 (Tri-Ahmd) applicable in their case and not followed the binding precedent. They referred various case laws in support of their submission on non following of binding precedent.

(ii) Appellant has taken Cenvat credit of Service Taxpaid on insurance policies taken for Product Liability and product Recall Insurance Policy; that the risk is for product recall expenses i.e. to provide for expenses incurred for recall of products or work initiated by the insured to recall that products which may cause body injury or damage to property; that policy covers product recall liability expenses i.e. recall expenses incurred by our customers or third parties subsequent to unconditional acceptance for which Appellant is liable with regard to conditions precedent to liability of the customers, products guarantee, etc; that the policy covers the losses incurred by their customers or by third parties arising due to damages etc; that the policy also covers recall liability expenses incurred by their customer or by third party subsequent to unconditional acceptance for which the appellant is liable; that it covers product guarantee which includes cost of removal, repair, alteration treatment, detection and analyze (cost of examination) reworking or replacement of any product or part thereof which fails to perform the function for which it was manufactured by the appellant; that the policy is nothing but the product guarantee policy for which risk coverage is borne by the Insurance Company i.e. M/s. National Insurance Co Ltd; that in absence of insurance Appellant would have to suffer the loss due to damage product, recall expenses and loss incurred by their customers and third parties; that to avoid such losses Appellant has taken the policy and

(iii) Appellant further submitted that the word "includes" and 'such as" is illustrative in nature and can not be given restrictive meaning as substantive part of the definition of 'input service' as well as the inclusive part of the definition of 'input service 'purport to cover not only services used prior to the manufacture of final products, subsequent to the manufacture of final products but also services relating to the business such as accounting, auditing, etc. Thus, the definition of input service seeks to cover every conceivable service used in the business of manufacturing the final products; that the categories of services enumerated after

the expression 'such as' in the definition of 'input service' do not relate to any particular class or category of services, but refer to variety of services used in the business of manufacturing the final products; that definition do not suggest legislation intention to restrict the definition of 'input services' to any particular class or category of services used in the business and it would be reasonable to construe that the expression 'such as' in the inclusive part of the definition of input service is only illustrative and not exhaustive. They rely Hon'ble Bombay High Court's judgments in the case of M/s. Coca Cola India Pvt Ltd reported as 2009 (242) ELT 168 (Bom), and in the case of M/s. Ultratech Cement Ltd reported as 2010 (260) ELT 369 (Bom). Appellant also relied upon Hon'ble CESTAT's decision in the cases of (a) M/s. Harsh Engineers Ltd -2012 (27) STR 164(Tri-Ahmd) – (b) M/s Rotork Control(India) Pvt Ltd (2010) (20) STR 684 (Tri-Chennai)

(iv) Appellant submitted that extended period can not be invoked as availement of Cenvat credit is already reported in their monthly ER-1 returnsand relied upon the Hon'ble CESTAT's decision in the cases of M/s. Marsha Pharama Pvt Ltd reported as 2009(2480 ELT 687(Tri-Ahmd), M/s. Sunil Metal Corporation reported as 2009(16)STR 469 (Tri-Ahmd) and M/s. NIRAV Industries reported as 2009 (16) STR 69 (Tri- Ahmd).

4. Assistant Commissioner, GST & Central Excise Division-1, Rajkot, in response to P.H notice issued on 11.07.2017, submitted his comments vide his letter F No. V.84(4)-10 MP/D/15-16 dated 09.08.2017 wherein he inter-alia submitted as under:-

4.1 The nature of services involved in the instant case is absolutely an after sale activity and have no nexus with the manufacture of the goods; that the services are post manufacturing services and can not be included in the category of input services under any part of the definition of input services; that CBEC vide Circular No. 97/8/2007 dated23.08.2007 clarified that after final products are cleared from the place of removal, there will be no scope of subsequent use of service to be treated as input service. He referred Hon'ble Supreme Court's judgment in the case of M/s. Maruti Suzuki Ltd reported as 2009(240) ELT 641 (SC). It is further submitted that Appellant was under contractual obligation to avail the services and that value of such services already stood included in the

Assessable value of the finished goods would not at all be relevant for determination of their eligibility as input services; that CEBC vide Circular NO. 137/3/2006-Cx-4 dated 02.02.2006 also clarified that availment of Cenvat credit and valuation for payment of duty are two independent issues and valuation aspect is not relevant with admissibility of Cenvat credit and also referred the Hon'ble CESTAT's decision in the case of M/s. Dhananjay Confectionary as reported in 2010 (26) STT24 (CESTAT) and in the case of M/s. ABB Ltd reported as 2009 (21) STT 77 (CESTAT).

4.2 It is also submitted that case laws relied upon by the appellant are not relevant in the matter and referred the following case laws against the contention of the appellant:-

(a) 2014 (307) ELT 7 (Chhatitisgarh)
(b) 2015 (319) ELT 221 (SC) and
(c) 2015 (37) STR 567 (Tri-Del).

5. Personal hearing in the matter was attended by Shri Rahul Gajera, Advocate under Vakalatnama, who reiterated the grounds of appeal and submitted that SCN has been issued to deny credit of Service Tax paid on insurance of Product Recall and Product Recall Liability which has direct nexus with their manufacture of the goods as held by the Commissioner (A), Rajkot in his Order No. RAJ-EXCUS-000-APP-208-16-17 dated 28.03.2017 and by the Hon'ble CESTAT, Chennai in the case of M/s. India Cements Ltd reported as 2014 (313) ELT 714 (Tri- Chennai) wherein it has been held that Cenvat Credit of Service Tax paid on insurance of Plant and Machinery on the ground that it is not only physical security but financial security of business which is equally important and covered for Cenvat Credit under Sales promotion in inclusive clause.

5.1 Appellant also made written submission wherein it is inter-alia contended that,

(a) Insurance Services covers risk and liabilities after manufacturing of final products an covers only financial losses after sales,

(b) the appellant is required to cover the product under insurance for promotion of sale and financial security of the business,

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(c) services are integral for manufacturing of final produced without which appellant could not secured the contract and hence it is directly or indirectly connected with manufacturing of final product and hence services are covered under the first limb of definition of input services i.e. Section 2 (10) (i) and

(d) services are in nature of sales promotion which is specified in the second limb of definition i.e. Section 2 (1) (ii) which refers various services in relation to procurement of inputs, market research, sales promotion , business exhibition , security etc. .

FINDINGS

6. I have carefully gone through the facts of the case, impugned orders and submissions made by the appellant in grounds of appeals, written as well oral submissions during the course of personal hearing. The issue to be decided in the present appeal is that whether appellant is eligible to avail Cenvat Credit of service tax paid on Insurance Services availed by them or not.

6.1 I find that the definition of "input service" under Cenvat Credit Rules, 2004 with effect from 01.04.2011 reads as under:-

> *"Rule – 2 (l) 'input service' means any service, -*
>
> *(i) used by a provider of output service for providing an output service; or*
>
> *(ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the **place of removal**,*
>
> *and includes services used in relation to modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, **storage upto the place of removal**, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation **upto the place of removal**; but excludes services, -*
>
> *(A) specified in sub - clauses (p), (zn), (zzl), (zzm), (zzq), (zzzh) and (zzzza) of clause (105) of section 65 of the Finance Act (hereinafter referred to as specified services), in so far as they are used for –*

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a) construction of a building or a civil structure or a part thereof; or
b) laying of foundation or making of structures for support of capital goods,
except for the provisions of one or more of the specified services; or

(B) specified in sub- clauses (d), (o), (zo) and (zzzzj) of clause (105) of section 65 of the Finance Act, in so far as they relate to a motor vehicle except when used for the provision of taxable services for which the credit on motor vehicle is available as capital goods; or

(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness center, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee."

(Emphasis supplied)

6.2 I find that Appellant has contended that Services covers risk and liabilities after manufacturing of final products and covers only financial losses after sales. Thus, it is not in dispute that the said insurance services are meant for use after the clearance and removal of finished goods from the place of removal and that too after sale of the goods. Therefore, I am of the considered view that the services in dispute cannot be held as connected directly or indirectly in relation to manufacture of finished goods to justify appellant's claim that services falls within the purview of the first part of the definition of Input Services under Clause 2(l)(ii).

7.1 The appellant has contended that the services are required to secure purchase orders and for the financial security of the business and hence services are covered under second part of clause (ii) of definition of "Input Service" i.e. used in relation to. I find that Clause (ii) of the above definition reveals that 'input service' is restricted to services used up to the place of removal and availed and utilized when the goods exported are lying in the factory. However, I find that the said insurance taken by the appellant is mere a business transaction as much as the payment is made to the service provider Insurer whereas services of insurance is effectively used after goods already sold to their customers. Services in dispute covers risk or consequent liabilities post clearance from the factory gate of the Appellant. It has been argued that it relates to Sales and

hence relating to sales promotion. I find that the definition of Input services phrases used are "Advertisement and Sales Promotion" which is in context of services in relation to nature of marketing, publicity etc being utilized prior to sale of finished goods and this category mentioned in the definition is no way connected to the insurance of finished goods for the purpose of financial security of the Appellant but of any damage subsequent to sale of goods. I find that legislation has put the word and phrases "up to the place of removal" not only first part of the Clause (ii) but it is repeatedly used in second part of Clause (ii) also such as "storage up to the place of removal' and 'Transportation up to the place of removal" making it explicit that all services referred therein must be used up to place of removal, which is not the case here. This has also been clarified by CBEC vide Circular No. Circular No. 999/6/2015-CX, dated 28-2-2015 (F.No. 267/13/2015-CX. 8),which is reproduced for ease of reference as below:-

> *" Attention is invited to Circular No. 988/12/2014-CX, dated 20-10-2014 issued from F. No. 267/49/2013-CX.8 [2014 (309) E.L.T. (T3)] on the above subject wherein it was clarified that the place of removal needs to be ascertained in terms of provisions of Central Excise Act, 1944 read with provisions of the Sale of Goods Act, 1930 and that payment of transport, payment of insurance etc are not the relevant considerations to ascertain the place of removal. The place where sale takes place or when the property in goods passes from the seller to the buyer is the relevant consideration to determine the place of removal.*
>
> *2. In this regard, a demand has been raised by the trade that it may be clarified that in the case of exports, for purposes of CENVAT credit of input services, the place of removal is the port or the airport from where the goods are finally exported.*
>
> *3. The matter has been examined. It is seen that section 23 of the Sale of Goods Act, 1930 provides that where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract, and therefore, in view of the provisions of the Section 23 (1) of the Sale of Goods Act, 1930, the property in the goods would thereupon pass to the buyer. Similarly, section 39 of the Sale of Goods Act, 1930 provides that where, in pursuance of a contract of sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not for the purpose of transmission to the buyer, or delivery of the goods to a wharfinger for safe custody, is prima facie deemed to be a delivery of the goods to the buyer.*

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4. In most of the cases, therefore, it would appear that handing over of the goods to the carrier/transporter for further delivery of the goods to the buyer, with the seller not reserving the right of disposal of the goods, would lead to passing on of the property in goods from the seller to the buyer and it is the factory gate or the warehouse or the depot of the manufacturer which would be the place of removal since it is here that the goods are handed over to the transporter for the purpose of transmission to the buyer. It is in this backdrop that the eligibility to Cenvat Credit on related input services has to determined.

5. Clearance of goods for exports....

6. In the case of clearance of goods for export by manufacturer exporter, shipping bill is filed by the manufacturer exporter and goods are handed over to the shipping line. After Let Export Order is issued, it is the responsibility of the shipping line to ship the goods to the foreign buyer with the exporter having no control over the goods. In such a situation, transfer of property can be said to have taken place at the port where the shipping bill is filed by the manufacturer exporter and place of removal would be this Port/ICD/CFS. Needless to say, eligibility to CENVAT Credit shall be determined accordingly.

7. ......
8. ......"

(Emphasis supplied)

7.2 I find that issue has been very categorically addressed by Para 4 & 6 of the above CBEC circular that Cenvat credit would not be allowed once the goods are handed over to the transporter for the purpose of transmission to the buyer. I find that in the case on hand, insurance services are extended beyond the time and place of "removal" as it is meant for insurance of goods sold and subsequent after the clearance and removal by the Appellant. I am, therefore, of considered view that appellant is not eligible for credit of service tax paid on insurance services.

7.3 As regards, reliance placed by the appellant on various decision, I find that the definition of 'input services" has been changed w.e.f. 01.04.2011 by virtue of Notification No. 3/2011-CE(N.T.) dated 01.03.2011. Prior to 01.04.2011, words and phrase "*activities relating to business*" was included in the inclusive part of the definition of Input Service and the decisions of the Hon'ble Bombay High Court in the Case of M/s. Coca Cola India Pvt Ltd reported as 2009(15) STR 657(Bom.) and in the case of M/s. Ultratech Cement Ltd reported as 2010 (260) ELT (369) and of the Hon'ble CETSTAT in the cases of M/s. India Cement Ltd reported as 2014 (313) ELT 714 (Tri- Chennai) and M/s. Harsh Engineers Ltd -

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2012 (27) STR 164(Tri-Ahmd) were given in that background. I find that decisions of the Hon'ble CESTAT, Chennai in the case of M/s. Rotork Control (India) Pvt Ltd reported as 2010 (20) STR 684 (Tri- Chennai) is in relation to insurance for Laptop computer used in the factory premises and hence cannot be made applicable to the case on hand. As regards decision of Commissioner (Appeals), Rajkot under OIA No RAJ-EXCUS-000-APP-208-16-17, I am of the view that the decision is not a binding precedent to follow in the case on hand in light of the discussion in foregoing paras.

8. As regards issue of limitation, the appellant has contended that details of Credit were shown in their prescribed Monthly return hence the practice adopted by them was known to the department. I find that monthly returns are consolidated figures and mere statistical data. I am of the view that appellant can not hide behind the argument of format of Monthly returns and to suggest that department was free to inquire in this regard. It is highly unacceptable and beyond logic to believe that department can go for inquiry in each and every case of consolidated information provided by the assesse. The appellant on his own, was giving an interpretation to law though there was no ambiguity and did not bring the relevant facts to the notice of the department at any point of time. The fact is fortified that when appellant refers case laws relating to earlier provisions of law and ignored the change in the Cenvat Credit Rules with effect from 01.04.2011 and hence case laws relied upon can not be made applicable in this case.

8.1 I am of the view that barely filing returns in form of consolidate statistical data, does not mean that the matter relating to the present proceedings being disclosed to the department by the appellant. I find that the Hon'ble CESTAT in the case of M/s. Agrico Engg. Works (India) Pvt. Ltd. Reported as 2000(122) ELT891 (Tribunal) has held that even visit of departmental officer for limited purpose cannot tantamount to disclosure of the facts as under:-

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

of Excise Officers was limited and there is nothing on record to show that ever Revenue authority pointed out this fact to the appellants and even after the discovery of this fact, the Revenue has not taken any action.

8.2 I am of the considered view that in era of self compliance, the appellant is required to comply with law on their own, would not know unless it is informed. Hence, required ingredient of suppression of facts for invoking extended period is found to be existing in first Show Cause Notice involving period of April, 2014 to March, 2015 and such suppression was not without intention to evade payment of duty.

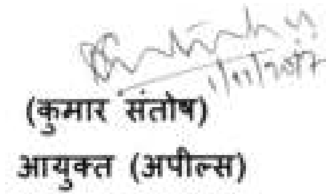
8.3 Show cause notice relating to period from April, 2014 to March, 2015 has been issued proposing imposition of penalty under Section 11AC of the Act since payment made by the appellant was under protest and the appellant has not opted for conclusion of the proceedings and the protest lodged by the Appellant was vacated by the impugned order. Appellant also did not pay penalty @25% of demand confirmed within a period of thirty days from the date of receipt of the impugned order dated 29.04.2016. Therefore, I am of view that imposition of penalty equal to the demand confirmed determined under Section 11AC of the Act is correct, legal and proper. However, the lower adjudicating authority was required to give option to the appellant to pay interest and reduced penalty @25% of Rs.3,39,900/- within 30 days from the receipt of the impugned order. Having not been done so by the lower adjudicating authority, payment of full interest liability as well as reduced penalty of 25% of penalty imposed can be availed by the appellant within 30 days of receipt of this order, as per ratio of the judgement of the Hon'ble Supreme Court in the case of R. A. Shaikh Paper Mills P. Ltd. reported at 2016 (335) E.L.T. 203 (S.C.) read with CBEC Circular F. No. 208/07/2008 – CX – 6 dated 22.05.2008.

8.4 The penalty of Rs. 4,69,680/- under Section 11AC for the subsequent period from April, 2015 to February, 2016, is not correct as ingredient of suppression of facts can not exist for second and subsequent notices. Section 11AC (1) (a) provides for a penalty not exceeding ten per cent of the demand confirmed in normal cases. I, therefore, reduce penalty to 10% of demand confirmed vide impugned order dated 6.10.2016, which stands modified to this extent.

9. In view of the foregoing discussions, I reject the appeal filed by the appellant and uphold the impugned orders except modifications in the Penalty imposed as per Para 8.3 and 8.4 above.

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

9.1 Appeals filed by the appellant are disposed off in above terms.



(कुमार संतोष)
आयुक्त (अपील्स)

By R.P.A.D.
To

M/s. Bhavani Industries, Ganjiwada, Bhavanagar Road, Rajkot	मेसर्स भवानी इंडस्ट्रिस गंजीवाड़ा , भावनगर रोड, 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-1, Rajkot.
4. Guard File
5. F No. V2/273/RAJ/2016.