



::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 / 2<sup>nd</sup> Floor, GST Bhavan.

रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot – 360 001

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सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/259/RAJ/2016	33/D/AC/2016-17	03.10.2016

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

**RAJ-EXCUS-000-APP-118-2017-18**

आदेश का दिनांक / 07.11.2017 जारी करने की तारीख / 09.11.2017  
Date of Order: Date of issue:

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.

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 अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को की जानी चाहिए। /

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> 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) नियमवाली, 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 नियमवाली, 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 नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र ST-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 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 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, 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 "मांग किए गए शुल्क" में निम्न शामिल है

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

- बशर्त यह कि इस धारा के प्रावधान वित्तीय (स. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा।/

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

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

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

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

(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे 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) 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 (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समयावधि पर या बाद में पारित 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 प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संश्लेषण 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 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 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 पट्टी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। /

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

(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। /

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

(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। /

Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट [www.cbec.gov.in](http://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](http://www.cbec.gov.in)

**:: ORDER IN APPEAL ::**

M/s. Bhavani Industries, Ganjiwada, Bhavanagar Road, Rajkot (*hereinafter referred to as 'the appellant'*) have filed appeal against the Order-In-Original No.33/AC/D/2016-17 dated 03.10.2016 (*hereinafter referred as "impugned order"*) passed by the Assistant Commissioner, Central Excise Division-I, Rajkot (*hereinafter referred to as "the lower adjudicating authority"*).

2. Brief facts of the case are that the appellant is engaged in manufacture of excisable goods and audit of the Appellant reveals that Appellant has wrongly availed the Cenvat credit of the service tax paid on Insurance services in respect of Health Insurance Policies of the workers which is allegedly excluded from the purview of definition of "Input Services" as defined under Rule 2(1)(ii)(C) of the Cenvat Credit Rules, 2004 (*hereinafter referred to as "CCR, 2004"*). This observation culminated into issuance of a show cause notice No.V.84(4)-23/MP/D/2015-16 dated 27.01.2016, which was decided by the lower adjudicating authority vide the impugned order, confirming demand of wrongly availed Cenvat Credit of Rs.2,06,571/- under Rule 14 of the CCR, 2004 read with Section 11A of the Central Excise Act, 1944 (*hereinafter referred to as "the Act"*), ordered recovery of interest under Section 11A of the Act and imposed penalty under Rule 15 of the 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 appellant has already paid wrongly availed Cenvat Credit for the period pertaining to 2014-15 as per the Audit observation; that extended period cannot be invoked as appellant has shown the Cenvat Credit in their monthly ER-1 returns; that no penalty and interest was imposable under Rule 15 with Section 11AC ; that they relied upon the case laws reported as (a) 2015 (324) ELT 453 (All) (b)2016 (337) ELT 301 (Tri- Del) (c) 2015 (329) ELT 485 (Tri- Mumbai) (d) 2009 (240) ELT14 (Cal) (e) 2009 (248) ELT 687 (Tri- Ahmd) (f) 2009 (16) STR 469 (Tri- Ahmd) (g) 2009 (16) STR 69 (Tri-Ahmd)

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(ii) It is settled legal position that the adjudicating authority is bound to follow the decision of higher forum and relied upon decisions reported as (i) 2015 (318) ELT 309 (Tr-Delhi) (ii) 2010 (251) ELT 494 (Guj) (iii) 2006 (199) ELT 209 (Guj) (iv) 2003 (152) ELT 128 (Tri-Del).

5. Personal hearing in the matter was attended by Shri Rahul Gajera, Advocate, on behalf of the appellant, who submitted that the insurance has been taken under obligation under the Factory Act and Workers Compensation Act; that they rely on the judgment of the Hon'ble CESTAT in the cases of M/s. FIEM Industries Ltd reported as 2016 (43) STR 470 (Tri-Chennai) and M/s. Hydus Technologies India Pvt Ltd reported as 2017 (52) STR 186 (Tri-Hyd) which are applicable in this case. He also submitted copy of insurance policy number 066182/ 48 /12/97/ 00000341 issued by M/s. United India Insurance Company Ltd.

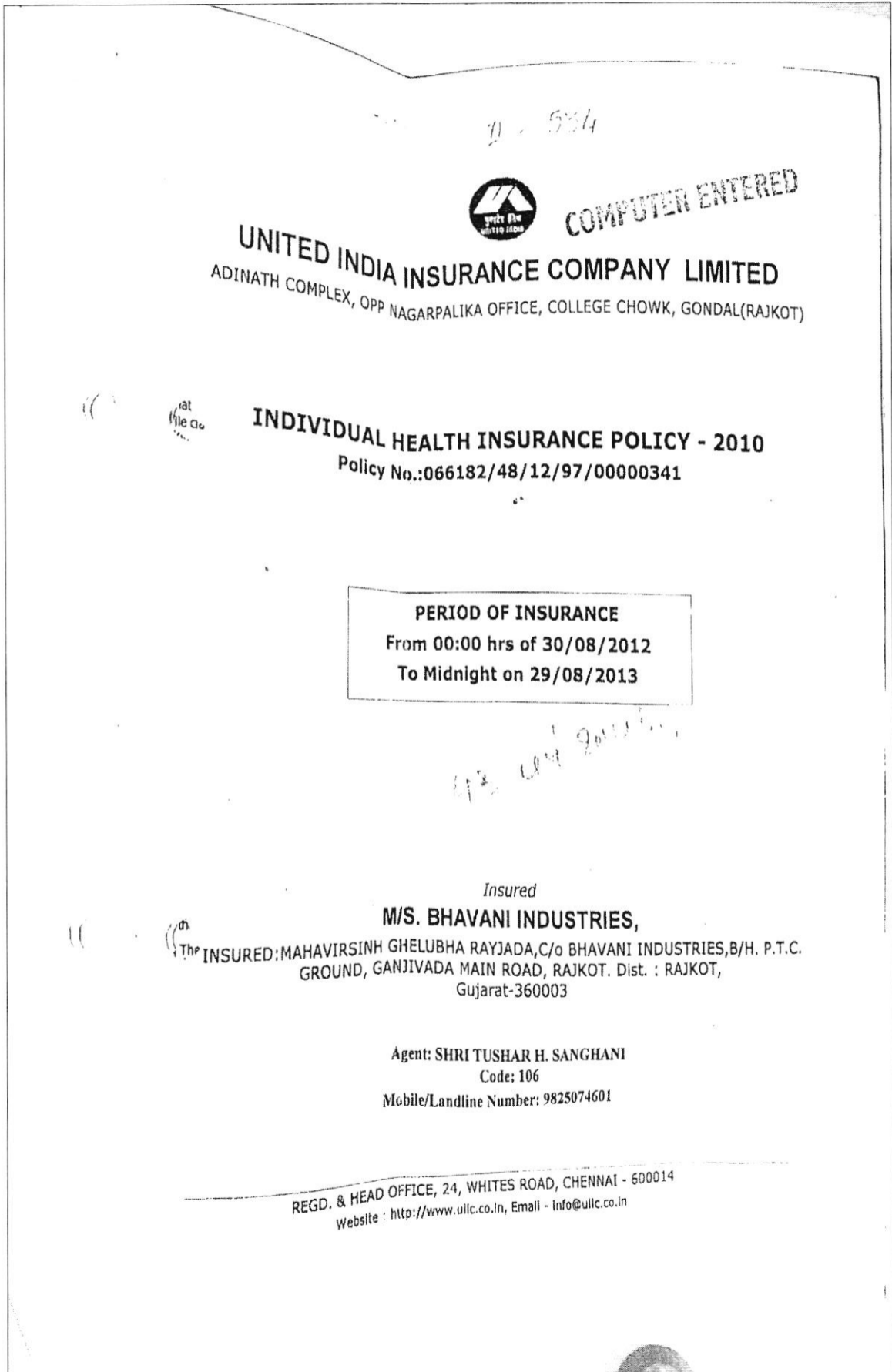
5.1 Appellant has submitted written submission also during the personal hearing wherein it is submitted that the credit has been denied on the ground that said services are specifically excluded from the purview of definition of "input services" under sub rule 2 (1)(ii) (c) of CCR,2004 even though show cause notice does not allege that the said services are used by the employees for personal use or consumption, in absence of which cenvat credit should not be denied. The issue is well covered by the Hon'ble CESTAT's decisions relied upon by them. They also contended demand is time barred on the ground that amount of credit was reflected in the monthly ER-1 return filed by them and nothing has been suppressed by them.

### **FINDINGS**

6. I have carefully gone through the facts of the case, impugned order and written as well as oral submissions made by the appellant. The issue to be decided in the present appeal is as to whether appellant is eligible to avail Cenvat Credit of service tax paid on Insurance Services availed in respect of Individual Health Insurance Policy of their employees or not.

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7. I find that the insurance policy is individual health insurance policy insured in favour of M/s. Bhavani Industries, the Appellant. Copy of one of the policies is reproduced below as sample:-



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**INDIVIDUAL HEALTH INSURANCE POLICY - 2010**  
**SCHEDULE**

Policy Number	066182/48/12/97/00000341		Previous Policy No.	36618248119700000211								
Insured Details	Name M/S. BHAVANI INDUSTRIES,											
	Tel. (O)	Tel.(R)		Fax								
	EMail		Mobile									
	Business/Occupation SERVICE											
Period of Insurance	From	00:00 hrs of 30/08/2012		To	Midnight on 29/08/2013							
Coinsurance Details	UIIC 066182 : 100%											
Details of the Persons Covered under Platinum Policy Conditions:												
Sl No	Name of Insured persons	Age	Sex	Occupn.	Relation	Premium	* Sum Insured	Dom. Limit	Hos. Exclusion	Subject to the First Date	Inspn Amb. Charge	Hosp. Daily Cash
1	MAHAVIRSINH GHELUBHA RAYJADA	39	M	SERVICE	Self	3,250	200000	35000		30/08/2005		
Total Basic Premium : Rs.3,250						No Claim Disc : 487.5		Premium :Rs. 2,763.00				
PAN Number : Not Mentioned						Net Premium : Rs.2,763		Service Tax :Rs. 342.00				
								Stamp duty :Rs. 1.00				
								Total :Rs. 3,105.00				
								Receipt Number : 066182/81/12/000000318				
								Receipt Date : 07/08/2012				
								STax Regn. No. : AAACJ5552CST001				
								Dev. Officer/Agent: 60 / 106				
								Cover Note No.: 0				
								Cover Note Date :				


\* Terms, conditions and clauses attached as per the respective Individual schemes

Date of Proposal and Declaration: 28/08/2009

IN WITNESS WHEREOF, the undersigned being duly authorised has hereunto set his/her hand at GONDAL (RAJKOT) on this 07th day of August 2012.

For and on behalf of  
United India Insurance Co. Ltd  
Agent: SHRI TUSHAR H. SANGHANI (106)  
Contact: NA NA NA

*[Signature]*  
Authorised signatory



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7.1 Appellant has submitted that the insurance has been taken under obligation under Factories Act and Worker's compensation Act and that there is no allegation that the services are used for personal use by the employee. I find that insurance policies taken under obligation of Factories Act basically provide indemnity against legal liability of the appellant as employer for compensation to the employees in case of any accidental injury. Therefore, these insurance policies can not be excluded as "Input Services" in terms of Rule 2(1)(ii)(C) of the CCR, 2004. The admissibility of input services of such insurance also draws ample force in view of various decisions of the Hon'ble CESTAT.

*[Handwritten signature]*

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8. I find that the Hon'ble CESTAT in the case of M/s FIEM Industries Ltd reported as 2016 (43) STR 470 (Tri-Chennai) has observed as under:-

"Exclusion of insurance service in certain events has been incorporated into the law with effect from 1-4-2011. That is only in respect of the insurance coverage given to employees during journey availing leave travel concession. But that had not taken away welfare of workers under the Factories Act, from its fold if insurance service is availed to overcome difficulties under Workmen Compensation Act, in case of hazard. Accordingly, appellant's claim of Cenvat credit on the Service Tax paid to avail insurance service for employees employed in factory is permissible."

**(Emphasis supplied)**

8.1 I also find that Hon'ble CESTAT in the case of M/s. Hydus Technologies India Pvt Ltd has held that the benefit bestowed by one legislations cannot be taken away or made highly difficult and impractical to be adhered to by another field of law. Relevant portion of the decision is reproduced below:-

"7. Strong objections were put forward by the Id. AR with regard to the refund of service tax in respect of Group Gratuity Insurance, employees deposit linked insurance and employee health insurance. He submitted that these services are excluded in the definition of input service and therefore the appellant is not eligible for refund. Though the Id. AR has put forward strong objections there is no document before me to establish that the said services are availed for personal use or personal consumption of the employee. The Id. Counsel for appellant explained that the group gratuity scheme is a gratuity policy for the employees of the company taken under Section 4A of the Payment of Gratuity Act, 1972. As per this Act gratuity is payable if an employee has rendered minimum 5 years of service at the time of exit. The principal concern of the company is to safeguard the availability of sufficient funds to meet the company's obligation for statutory gratuity payments. The Employees Deposit Linked Insurance is a part of provident fund scheme and provides maximum payment to the insured person's nominated beneficiary in the event of death due to natural cause, accident or illness. That the employees of the organization are not covered under the Employees Provident Fund Act and hence it makes obligatory to provide the provident fund to the employees for which appellants has taken the insurance policy. Though in the definition of input services it is mentioned that life insurance, health insurance, etc., are excluded it is subject to the condition that such services are primarily for personal use or consumption of employee. None of the above insurance services can be said to be used primarily for personal use or consumption of employee. The services stated in clause (c) can be excluded only when such services are used primarily for personal use or consumption of any employee. All the above insurance services are availed under various Labour Legislations enacted for the welfare of employees/workers. The benefit bestowed by one legislation cannot be taken away or made highly difficult and impractical to be adhered to by another field of law. The Tribunal in the case of M/s. Fiem Industries Ltd. (supra) has discussed the said issue and held that the assessee is eligible for credit/refund. From the following discussions and also relying on the judgments placed by the appellant, I hold that the appellant is eligible for refund. The impugned order is set aside. The appeal is allowed with consequential reliefs, if any."

**(Emphasis supplied)**

8.2 Similarly, Hon'ble CESTAT in the case of M/s. Sundaram Fasteners Ltd reported as 2016 (43) STR 454 (Tri-Chennai) has held as under:-

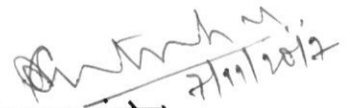
*"4. So far as the Cenvat credit on insurance service is claimed, the exclusion of such service in certain events has been incorporated into the law with effect from 1-4-2011. That is only in respect of the insurance coverage given to employees during journey availing leave travel concession. But that had not taken away welfare of workers under the Factories Act, from its fold if insurance service is availed to overcome difficulties under Workmen's Compensation Act, in case of hazard. Accordingly, appellant's claim of Cenvat credit on the service tax paid to avail insurance service for employees employed in factory is permissible."*

**(Emphasis supplied)**

9. In light of above settled position of law, it is evident that w.e.f. 01.04.2011, health insurance service has been excluded if benefits extended to employees in on vacation such as leave or home travel concession, where such services are used primarily for personal use or consumption of any employee. However, in the instant case, the appellant has taken insurance of their employees under legal obligation to cover any untoward incidence/happenings during work in the factory etc. I, therefore, hold that the appellant is eligible to avail CENVAT credit of service tax paid against the said insurance policies. Once CENVAT credit is admissible, demand of interest and imposition of penalty cannot survive. Accordingly, I set aside the impugned order and allow the appeal.

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

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

  
(कुमार सतोष)  
आयुक्त (अपील्स)

By R.P.A.D.

To

M/s. Bhavani Industries, Ganjiwada, Bhavanagar Road, Rajkot	मेसर्स भवानी इंडस्ट्रिस गंजीवाड़ा, भावनगर रोड, राजकोट
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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.