::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

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील फाइल संख्या / Appeal File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/39/RAJ/2017	**01/AR-I/MRV/2016-17**	**16.12.2016**

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

RAJ-EXCUS-000-APP-125-2017-18

आदेश का दिनांक / Date of Order: **01.12.2017** जारी करने की तारीख / Date of issue: **04.12.2017**

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. Rikon Clock Manufacturing Co., Morbi-RajkotHighway, Near Lajai Village,Morbi.Dist : Rajkot

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके से 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+त 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 उत्पाटन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक न 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 असावा 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 माँग ,ब्याज की माँग 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 रजिस्ट्रार 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 माँग ,ब्याज की माँग 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 रजिस्ट्रार 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/-

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(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 "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
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होंगे।/
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 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 अदा 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 क्रेडीट 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 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 ।
जहां 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, उपरोक्त ढंग में 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 filed 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 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 को देख सकते है । /
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 ::

M/s. Rikon Clock Manufacturing Company, Morbi-Rajkot Road, Nr. Lajai Village, Morbi, District – Rajkot (hereinafter referred to as "the appellant") has filed present appeal against Order-In-Original No. 01/AR-I/MRV/2016-17 dated 16.12.2016 (hereinafter referred to as "the impugned order"), issued by the Superintendent, Central Excise, AR-I, Morbi (hereinafter referred to as "the lower adjudicating authority").

2. The facts of the case are that it was found that the appellant had availed the cenvat credit of service tax paid on outward transportation services used for transportation of their finished goods from their factory, which was not proper in view of the definition of "input service" as given at Rule 2(l) of the Cenvat Credit Rules, 2004 (hereinafter referred to as "the CCR, 2004") and the appellant had declared their factory gate as "place of removal" and therefore, any services availed by the appellant after clearance of finished goods from the place of removal is not an input service.

2.1 The demand of recovery of wrongly availed cenvat credit along with interest proposed for the periodical Show Cause Notice bearing No. MRV/Demand/Rikon/AR-447/10-11 dated 08.06.2016 covering period from July, 2015 to December, 2015 was confirmed by the lower adjudicating authority vide impugned order along with interest under Rule 14 of the CCR, 2004 read with Section 11A/Section 11AA of the Central Excise Act, 1944 and imposed penalty under Rule 15 of the CCR, 2004 read with Section 11 AC of the Act.

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

(i) The demand has been confirmed on the ground that cenvat credit of service tax paid on outward transportation charges is not available as the transactions of the appellant are not on F.O.R. basis. The lower adjudicating authority erred in confirming the demand on the ground that in terms of the agreement with the distributor, the transactions cannot be termed as F.O.R.

(ii) The observation of the lower adjudicating authority in para 19 is improper and unjustified in as much as while interpreting the relevant clause,

the lower adjudicating authority has observed pick and choose system. The agreement is required to be read in toto and not in piecemeal.

(iii) The lower adjudicating authority has erred in confirming the demand ignoring the fact that the goods were chargeable to duty under the provisions of Section 4A of the Central Excise Act, and therefore in terms of the definition of "retail sale price" as referred in the said Section, all the charges upto the delivery to the ultimate customer are recovered in the assessable value and consequently the transactions can very well be said to be covered under the term "FOR".

(iv) The lower adjudicating authority has erred by relying on the provisions of Section 39 of the Sale of Goods Act, 1930 in as much as the delivery of goods to the transporter where the transportation charges are borne by the applicant, the transporter becomes the agent of the person who bears the transportation charges. Therefore, the transactions can be termed as F.O.R. and consequently the credit as claimed is allowable.

(v) The lower adjudicating authority has erred in confirming the demand ignoring the fact that the SCN dated 08.06.2016, invoking extended period of limitation is bad in law in as much as the department had knowledge of the fact that the appellant is availing cenvat credit of service tax paid on outward transportation charges.

(vi) The lower adjudicating authority has erred in imposing penalty. The ground raised for withdrawal of demand may be treated as part of the ground raised for setting aside the penalty. The issue involves interpretation of relevant clause and therefore no penalty is liable to be imposed under Rule 15 of the CCR, 2004.

(vii) The lower adjudicating authority has also erred in confirming the interest under the relevant provisions in as much as cenvat credit is clearly allowable and no part of amount is liable to be recovered.

4. Personal hearing in the matter was attended by Shri Paresh Sheth, Advocate, who reiterated the grounds of appeal and submitted that sale is on

FOR basis; that the invoices have general note for loss which can't override purchase oders; that transportation cost is incurred by them and not separately recovered from their customers; that in similar case OIA dated 25.09.2017 has been decided by Commissioner (Appeals).

4.1 Shri S. K. Acharya, Superintendent, Morbi – I Division attended personal hearing on behalf of the Department and submitted that in an earlier order dated 28.11.2016 the then Commissioner (Appeals) had decided in favour of Department and against the appellant. However, Shri Sheth submitted that they had gone in appeal against that order dated 28.11.2016 and CESTAT has remanded case back to adjudicating authority to ascertain place of removal form the condition of sale of the goods.

Findings:-

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

6. It is a fact that the appellant had availed cenvat credit of service tax paid on outward transportation services used for transportation of finished goods from factory gate treating outward transportation service as input service. Definition of "input service" as provided under Rule 2(l) of the CCR, 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, activities relating to business, such as

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;".

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6.1 I find 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. 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 find that the Board 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)

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 above Circulars issued by CBEC on 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 say 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.

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 buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

(Emphasis supplied)

6.6 In view of the above provisions of the Sale of Goods Act, 1930, it is clear that the title of the goods passes from seller to the buyer at such time as the parties to the contract intend it to be transferred. The Intention is to be ascertained with reference to the terms of the contract, the conduct of the parties and the circumstances of the case. In the present case, the appellant has produced sample invoices issued to their buyers, corresponding purchase orders placed by the buyers, lorry receipts, etc. to substantiate their claim that the transactions were on F.O.R. basis and that they have satisfied the conditions stipulated under the provisions of the Act. The scanned image of sample purchase order dated 03.10.2015 placed by a buyer M/s. Bonding Moment

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Creators Pvt. Ltd., Navi Mumbai, is re-produced as under: -

000018

Bonding Moment
Creators Pvt. Ltd.
Events & Gifting Co.

Date: 03.10.2015

To,
Mr. Deepak Mehta
RIKON CLOCK MFG. COMPANY
MORBI-RAJKOT ROAD
LAJAI-VILLAGE, MORBI-363641

Sub: Purchase order Wall Clocks – Model No. 1751

Dear Mr. Deepak,

We are glad to confirm the order of 1000 nos of Wall clocks (model no 1751), details of the same are as below specifications

S.No.	Particulars	Rate	Quantity	Amount
1.	Wall Clocks with battery (as per refs image and artwork shared)	185.00	1000	185000.00

30% payment advance with Purchase Order and balances before delivery

TERMS & CONDITIONS:-

- The above price is including dial printing, battery, 12.50% Central Excise and 2% CST (against C-form).
- Delivery of 300 nos by 10th October 2015 and remaining 700 by 15th October 2015.
- Hands of all the clocks to be delivered separately by 6th October 2015
- F.O.R. Navi Mumbai

Thanks & Regards

Sneha Chopraa
Director
Bonding Moment Creators Pvt Ltd

Bonding Moment Creators Pvt. Ltd. Mumbai

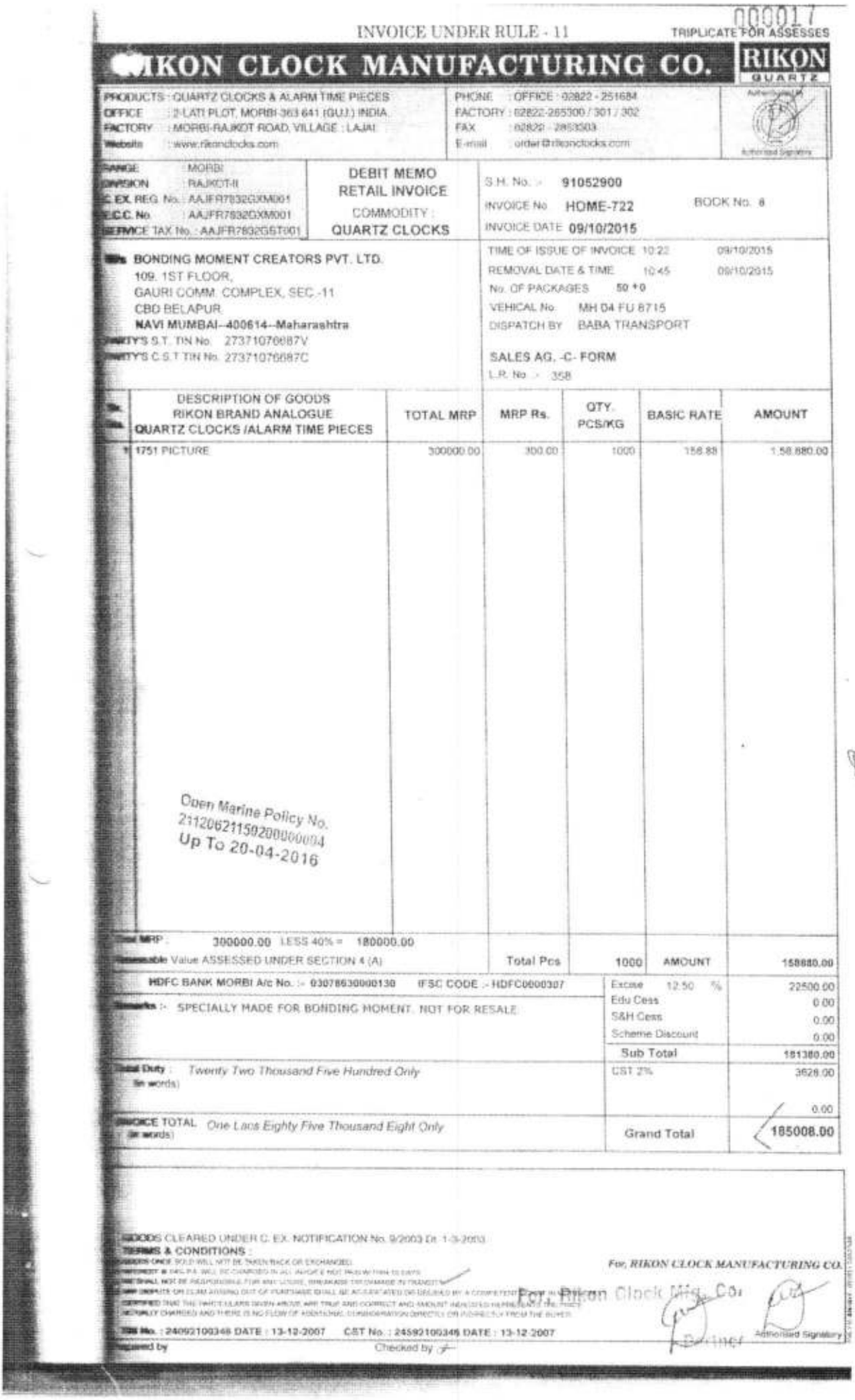
For, Rikon Clock Mfg. Co.

Partner

109, Gaon Complex, Sector - 11, CBD Belapur, Navi Mumbai - 400 614
www.bondingmoment.com | Tel - 022-27565084

120

The Scanned image of Invoice No. HOME-722 dated 09.10.2015 issued by the appellant to M/s. Bonding Moment Creators Pvt. Ltd., Navi Mumbai is also reproduced as under: -



INVOICE UNDER RULE - 11 — 000017 — TRIPLICATE FOR ASSESSES

RIKON CLOCK MANUFACTURING CO. — RIKON QUARTZ

PRODUCTS : QUARTZ CLOCKS & ALARM TIME PIECES
OFFICE : 2-LATI PLOT, MORBI-363 641 (GUJ.) INDIA.
FACTORY : MORBI-RAJKOT ROAD, VILLAGE : LAJAI.
Website : www.rikonclocks.com

PHONE : OFFICE : 02822 - 251684
FACTORY : 02822-285300 / 301 / 302
FAX : 02822 - 285303
E-mail : order@rikonclocks.com

RANGE : MORBI
DIVISION : RAJKOT-II
C. EX. REG. No. : AAJFR7832GXM001
E.C.C. No. : AAJFR7832GXM001
SERVICE TAX No. : AAJFR7832GST001

DEBIT MEMO
RETAIL INVOICE
COMMODITY : QUARTZ CLOCKS

S.H. No. :- 91052900
INVOICE No HOME-722 BOOK No. 8
INVOICE DATE 09/10/2015

M/s. BONDING MOMENT CREATORS PVT. LTD.
109, 1ST FLOOR,
GAURI COMM. COMPLEX, SEC.-11
CBD BELAPUR
NAVI MUMBAI--400614--Maharashtra
PARTY'S S.T. TIN No. 27371076687V
PARTY'S C.S.T TIN No. 27371076687C

TIME OF ISSUE OF INVOICE 10:22 09/10/2015
REMOVAL DATE & TIME 10:45 09/10/2015
No. OF PACKAGES 50 + 0
VEHICAL No. MH 04 FU 8715
DISPATCH BY BABA TRANSPORT

SALES AG. -C- FORM
L.R. No :- 358

Sr. No.	DESCRIPTION OF GOODS RIKON BRAND ANALOGUE QUARTZ CLOCKS /ALARM TIME PIECES	TOTAL MRP	MRP Rs.	QTY. PCS/KG	BASIC RATE	AMOUNT
1	1751 PICTURE	300000.00	300.00	1000	158.88	1,58,880.00

Open Marine Policy No.
211206211592000000004
Up To 20-04-2016

Total MRP : 300000.00 LESS 40% = 180000.00
Assessable Value ASSESSED UNDER SECTION 4 (A) — Total Pcs 1000 — AMOUNT 158880.00

HDFC BANK MORBI A/c No. :- 03078630000130 IFSC CODE :- HDFC0000307

	Excise 12.50 %	22500.00
	Edu Cess	0.00
	S&H Cess	0.00
	Scheme Discount	0.00
	Sub Total	181380.00
	CST 2%	3628.00
		0.00
	Grand Total	185008.00

Remarks :- SPECIALLY MADE FOR BONDING MOMENT. NOT FOR RESALE

Total Duty : Twenty Two Thousand Five Hundred Only (in words)

INVOICE TOTAL One Lacs Eighty Five Thousand Eight Only (in words)

GOODS CLEARED UNDER C. EX. NOTIFICATION No. 9/2003 Dt. 1-3-2003

TERMS & CONDITIONS :

For, RIKON CLOCK MANUFACTURING CO.

For Rikon Clock Mfg. Co.

Authorised Signatory

I.E.C. No. : 2409210346 DATE : 13-12-2007 CST No. : 24592100346 DATE : 13-12-2007

Prepared by Checked by

6.7 The purchase order placed by the said buyer mentioned the terms "free on road (F.O.R.) Navi Mumbai'. It implies from the terms mentioned in the purchase order that freight upto the destination of the buyer i.e. Navi Mumbai is to be borne by the appellant and nothing else. From the said terms, it does not transpire that the ownership of the goods is transferred at the doorstep of the buyer. The invoices issued by the appellant after receipt of purchase orders clearly mentioned the term No. 3 i.e. "We shall not be responsible for any loose, breakage or damage in transit". It reveals from the said terms & condition that the goods sold by the appellant to the buyer at the factory gate only and therefore the place of removal in the instant case is "factory gate". Thus, I find that the sale of goods gets completed and the ownership of the goods is transferred at the factory gate and therefore the place of removal in the instant case is "factory gate" in terms of Section 19 of the Sale of Goods Act, 1930.

6.8 The appellant has submitted a copy of order dated 24.08.2017 passed by Hon'ble CESTAT, Ahmedabad on their own similar issue, wherein also held that *"to ascertain the 'place of removal' from the condition of sale of the goods, so as to be eligible to CENVAT credit on the service tax paid on out ward freight (GTA Service)".*

7. The lower adjudicating authority, in the impugned order, has categorically held that supportive documents do not prove the test of admissibility of cenvat credit beyond factory gate in accordance with law and I also hold the same. I find that the terms & conditions mentioned in the sample copies of invoices issued to customers, make clear that the transfer of excisable goods is taking place at factory gate only and the appellant has not provided any other cogent evidences to ascertain that the sale and transfer of excisable goods is occurred at the premises of the buyer. On the contrary, it transpires from the terms and conditions that the ownership of excisable goods is transferred from seller to buyer at factory gate of the appellant only and therefore the "place of removal" is the factory gate.

8. On the basis of the above documentary evidences and in light of situations described in para 5 of the Board's Circular No. 988 / 12 / 2014 – CX dated 20.10.2014, it is amply clear that the appellant has not taken the responsibility of the goods till it gets delivered at buyer's end. Thus, the appellant has failed to comply with regard to the determination of "place of

removal" and nature of sale as envisaged in terms of the provisions of the Central Excise Act, 1944 and in terms of the provisions of the Sale of Goods Act, 1930. It has also been clarified under CBEC Circular No. 988/12/ 2014 – CX dated 20.10.2014 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.

8.1 In view of above, I find that the only claim of the appellant that their sales are on F.O.R. destination basis is without any rational evidence produced by them. In the absence of any evidence, the appellant's claim that their sales were on F.O.R. basis cannot be accepted. In view of this, cenvat credit of service tax paid on outward transportation would not be admissible. In support of my above views, I place reliance on the following case-laws.

- Swastik Industries - 2010 (19) S.T.R. 220 (Tri. - Del.)
- Vesuvious India Ltd. - 2014 (34) S.T.R. 26 (Cal.)

8.2 I also rely on the judgment of Hon'ble Supreme Court in the case of Ispat Industries Limited reported as 2015 (324) ELT 670 (S.C.) wherein it has been held that *with effect from the Amendment Act of 28.09.1996, the place of removal only has reference to places from which the manufacturer is to sell goods manufactured by him, and can, in no circumstances, have reference to the place of delivery which may, on facts, be the buyer's premises.*

8.3 As regard to the argument that the extended period of limitation is not applicable in the case department had knowledge of the fact that the appellant is availing cenvat credit of service tax paid on outward transportation charges. I find that the lower adjudicating authority has properly and correctly confirmed the demand under Rule 14 of the CCR, 2004 read with Section 11A of the Central Excise Act, 1944 treating it a normal case rather than invoking suppression of facts.

9. Regarding levy of interest, I find that since the demand of recovery of wrongly availed cenvat credit is upheld, the interest is mandatory and automatically attracted; hence, I don't find any reason to interfere with the impugned order for payment of interest. Regarding imposition of penalty, the appellant has argued that the issue involves interpretation and therefore, no penalty can be imposed. It is a fact that the appellant has not complied with the

conditions of Rule 2(l) of the CCR and also in CBEC Circulars dated 23.08.2007 and dated 20.10.2014 but even then continuously availed wrong cenvat credit for last 6-7 years without providing any cogent evidence with regard to sale and transfer of goods. Therefore, the appellant has grossly contravened the provisions of Cenvat Credit Rules, 2004 and is liable for mandatory penalty under Rule 15 of CCR. I am, therefore, in complete agreement with the views of the lower adjudicating authority and uphold the penalty.

9.1 In view of the above, I reject the appeal and uphold the impugned order.

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

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

(कुमार संतोष)
आयुक्त (अपील्स)

By Regd. Post AD.

To,

M/s. Rikon Clock Manufacturing Company, Morbi-Rajkot Road, Nr. Lajai Village, Morbi.	मे. रिकोन क्लॉक मैनुफेक्चुरिंग कंपनी, मोरबी – राजकोट रोड, लजाई गाँव के पास, मोरबी.

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, Morbi Division, Rajkot.
4. Guard File.