::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 कोर्से 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
	V2/8/EA2/RAJ/2016	**29/ADC/PV/2015-16**	**29.01.2016**

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

RAJ-EXCUS-000-APP-132 -2017-18

आदेश का दिनांक / Date of Order: **01.12.2017** जारी करने की तारीख / Date of issue: **05.12.2017**

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. Gujarat Sales & Products, B-14, Nirman Complex,, Opp : Havmor Restaurant,B/h Navranpura Bust Stop,Ahmedabad 380 009 (New Address)

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 अलावा वित्त अधिनियम 1994 की धारा 86 के अन्तर्गत निम्नलिखित जगह की जा सकती है ।

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

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पाद 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 अपील सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन, असावी अहमदाबाद- 380016 को की जानी चाहिए ।
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above.

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील दायर करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अन्तर्गत निर्धारित किए गई प्रपत्र EA-3 की चार प्रतियों में दर्ज किया जाना चाहिए । इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की माँग अथवा की माँग अथवा 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 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 अन्तर्गत सेवाकर नियमावली, 1994, के नियम 9(1) में बताए 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 अथवा की माँग अथवा 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-धारा(2) एवं (2A) के अन्तर्गत दायर 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 प्रतियों संलग्न की जानी चाहिए(इनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दायर 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 Fw 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) वीस लाख केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के पीठ अपील के समक्ष से केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अन्तर्गत, जो वित्त विधेयक, 1994 की धारा 83 के अन्तर्गत सेवाकर को भी लागू की गई है, इस आदेश के पति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवाकर कर आज 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 अन्तर्गत जमा किए जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अन्तर्गत 'जमा किए गए शुल्क' से निम्न शामिल है
(i) धारा 11 डी के अन्तर्गत रकम
(ii) सेनवैट जमा की ली गई गलत राशि
(iii) सेनवैट जमा नियमावली के नियम 6 के अन्तर्गत 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 निम्ननिर्दिष्ट मामले में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अन्तर्गत वित्त 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, जब नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या 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 भंडारण के दौरान 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 दे माल के विनिर्माण में उपयुक्त कच्चे माल पर अदा की 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) अन्तिम उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो कुटौती 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 दिनांक को गई अपील अथवा समाधिसूचि 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 अन्तर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 मास के अन्तर्गत की जानी चाहिए । उपरोक्त आवेदनों के साथ मूल अपील 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 सहायकी के संबंध में जैसे 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 निम्ननिर्दिष्ट निर्धारित शुल्क की अदायगी की जानी चाहिए ।
जहाँ संलग्न रकम एक लाख रुपये या उससे कम है तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा है 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 से किया जाना चाहिये। इस तथ्य के होते हुए भी कि एक ही अपील या एक ही पुनरीक्षण आवेदन केन्द्रीय सरकार 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) वित्तसचिव, 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 समिलित 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 सम्बन्धित 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 ::

The Principal Commissioner, Central Excise and Service Tax, Rajkot (*hereinafter referred to as* "the department") filed present appeal against the Order-in-Original No. 29/ADC/PV/2015-16 dated 29.01.2016 (*hereinafter referred to as* **"the impugned order"**), passed by the Additional Commissioner, Central Excise & Service Tax Rajkot (*hereinafter referred to as* "the lower adjudicating authority") in the matter of M/s. Gujarat Sales & Products, Plot No. 486, Vishal Chowk, GIDC Phase-II, Dared, Jamnagar (*hereinafter referred to as* "the Respondent").

2. The facts of the case are that the respondent, a registered central excise assessee availed Cenvat credit on the inputs for manufacturing their final products Brass Electrical Switching Parts and Brass Electrical Wiring Accessories falling under Chapter 85 of the first schedule to the Central Excise Tariff Act,1985 and in manufacturing process of their final excisable goods, brass scrap is generated. The respondent is also using imported Brass Scrap and sending the imported brass scrap as well as generated brass scrap for converting into extruded Brass Rod through job workers. The imported brass scrap was being sent under Job work challan under Notification No. 214/86 dated 25.03.1986 without payment of Central Excise duty to the job worker after undertaking to follow the procedure and conditions as prescribed under the said notification for movement of raw material/ semi-finished goods to and from under the cover of job-work challans. Job-workers returned the extruded Brass Rods by paying Central Excise duty on the value of raw materials & conversion charges and issued invoices under Rule 11 of Central Excise Rules, 2002. The respondent availed Cenvat credit on the basis of invoices issued by the job-workers and utilized the same towards payment of Central Excise duty on their final products. The SCN alleged that the job-worker was not required to pay central excise duty and hence the payment can not be treated as duty and no credit was available to the Respondent. The respondent was issued with the show cause Notice dated 20.12.2010 under Rule 14 of Cenvat Credit Rules, 2004 (hereinafter referred to as 'the CCR') for recovery of Cenvat Credit availed in contravention of Rule 3(1) of the CCR, as the job- worker was not required to pay duty on job-worked goods under notification and hence respondent had wrongly availed the duty paid by the job-worker. The said notice was decided by the adjudicating authority vide impugned order, wherein he dropped the proceedings initiated vide aforesaid Show Cause Notice dated 20.12.2010.

3. Aggrieved by the impugned order, the department filed the present appeal on the grounds as under: -

(i) The respondent i.e. M/s. Gujarat Sales & Products has availed Cenvat credit on Imported brass scrap; that they cleared the imported brass scrap to job-worker M/s. Senor Metals Pvt Ltd for converting it into Brass Rods and availed benefit of exemption under Notification No.214/86 CE dated 25.03.1986 and undertook to follow and comply with the

procedure and conditions prescribed therein; that on conversion of the brass scrap into semi-finished goods i.e. Brass Rods, the job-workers, namely, M/s. Senor Metal P Ltd, M/s. Mahalaxmi Extrusions, M/s. Madhav Extrusions, M/s. Super Impex, etc. was required to clear the brass Rods to the respondent on the counterpart of the challans, without payment of Central Excise duty whereas the job-worker prepared invoices under Rule 11 of Central Excise Rules, 2002 and paid Central Excise duty.

(ii) The respondent availed Cenvat credit on the invoices issued by the job-workers, though they had cleared the brass scrap to the job workers without payment of Central Excise duty; that the sample copies of challans, under which the respondent has sent the brass scrap to the job-workers with corresponding invoices issued by the job workers have been submitted along with the appeal memorandum.

(iii) The respondent vide Challan No. 17 dated 06.05.2007 has cleared Brass scrap of 1000 Kgs. to the job-worker M/s. Senor Metals Pvt. Ltd. and M/s. Senor Metals Pvt. Ltd., after conversion of brass scrap, returned the Brass rods of 950 kgs. (after deducting burning loss of 31.800 Kgs.) on the following invoices and the respondent- principal manufacturer, M/s Gujarat Sales & Products took credit of Central Excise duty paid as under –

Invoice No.	*Brass rods/Bars received*	*Cenvat Credit availed of Rs.*
463/09.06.2007	*526 Kgs*	*29,493*
473/10.06.2007	*442.200 Kgs*	*23,530*

(iv) That the respondent has unauthorizedly availed the Cenvat credit on the invoices issued by the job-worker which resulted into availment of Cenvat credit twice on recycling of generated brass scrap and was not in accordance with the provisions of Cenvat Credit Rules, 2004, which can be explained from the following illustration-

- The illustration is based on the invoice No. 473 dated 10.06.2007 under which the respondent- principal manufacturer has received 442.200 kgs. of Brass rods. The purchase cost of the Brass Rods were Rs. 321.05 per kgs. The ratio of generating of the scrap is appx. 55% (which has been obtained from the ER-1 filed for the month of March, 2008, by the respondent-principal manufacturer, wherein, 201.500 kgs. of brass electrical switching parts, 16237.750 kgs. of brass electrical wiring accessories & 10460.900 kgs. of brass generated scrap has been shown as manufactured. Thus, ratio of scrap generated is appx. 63%, however, for illustration purposes, it is taken as 55% for calculation of recycling. (Exhibit –C Page 3 to 8).

- Thus, taking the above ratio on use of 442.200 kgs. of Brass rods, the respondent-principal manufacturer has availed Cenvat credit of Rs. 24,781/- and as per the ratio arrived, the generated scrap will be 243 Kgs. On further use of the said brass scrap of 243 kgs. and sending it to the job worker, the job-worker has to pay the duty and the

respondent- principal manufacturer has to avail the Cenvat Credit on subsequent transactions as under -

Brass scrap generated	Value Rs.	Total Value	Burning Loss @5% (in kgs.)	Brass Rods/ Bars produced at job-worker's end kgs.	Labour Charges @ Rs.25/- per Kg.	Central Excise duty rate	value arrived at the Job-worker's end	Cenvat available at the end of Principal Manufacturer Rs.
243	321	78047	12	231	4620	16.48	82667	13624
(Brass scrap will again be generated @55% of the Brass rods/bars 231x55%=127 Kgs.)								
127	321	40767	6	121	2420	16.48	43187	7117
(Brass scrap will again be generated @55% of the Brass rods/bars 121x55%=67 Kgs.)								
67	321	21507	3	64	1280	16.48	22787	3755
(Brass scrap will again be generated @55% of the Brass rods/bars 64x55%=35 Kgs.)								
35	321	11235	2	33	660	16.48	11895	1960
(Brass scrap will again be generated @55% of the Brass rods/bars 33x55%= 21 Kgs.)								
21	321	6741	1	20	400	16.48	7141	1177
(Brass scrap will again be generated @55% of the Brass rods/bars 21x55%= 11 Kgs.)								
11	321	3531	1	10	200	16.48	3731	615
(Brass scrap will again be generated @55% of the Brass rods/bars 11x55%=6 Kgs.)								
6	321	1926	0	6	120	16.48	2046	337
Total								**Rs. 28,585/-**

- Thus, in addition to the Cenvat credit of Rs. 24,781/- availed initially by the respondent- principal manufacturer, he will avail Cenvat credit of Rs. 28,585/- on subsequent recycling of brass scarp and conversion thereof to Brass Rods/Bars.

(v) The adjudicating authority has not appreciated the facts narrated in the statement dated 08.02.2010 of Shri Arvind Oza, Authorized representative of the respondent, wherein, he had, inter-alia, categorically deposed that they used to send the brass scrap under job-work challans, without payment of duty and received back the job worked goods under duty paid invoices from the job-worker and availed Cenvat credit of Central Excise duty paid. Central Excise duty paid on the semi-finished goods at the job-workers end, is not admissible, when they opted for availment of Exemption under Notification No. 214/86- C.E. dated 25.03.1986 and removed the goods under job-work challans where no Central Excise duty was paid at the time of sending the brass scrap for conversion of same into Brass Rods; that the job-worker has also given consent to the respondent to attend the job-work under notification 214/86-CE ibid; that the Job-worker has paid Central Excise duty on the value of the goods

inclusive of labour charges per kilogram. Thus, it was in the knowledge of the respondent that they had been clearing the goods under job-work challans, without payment of duty and receiving the processed goods back then the job worker has no authority to pay central excise duty when the movement of goods are covered under Notification 214/86-CE for exemption and hence Cenvat credit availed by the Respondent is in contravention of Central Excise Law.

(vi) The respondent was well aware of these facts right from the receipt of imported brass scrap, receipt of the intermediate goods and dispatch of final manufactured goods, that the ownership of the goods always remained with the respondent only, since the imported brass scrap were not sold/ cleared on invoices. In spite of this factual position, the job-worker had issued invoices and Respondent has availed Cenvat credit, which was not legal and proper since, the job-worker was required to charge job charges only and not required to discharge Central Excise duty on the value of job-worked goods. Further, while preparing the invoices, the job-worker, M/s. Senor Metals P Ltd. did not charge any VAT / Sales Tax, as such the transactions entered into between the job-worker, and the respondent are not at arm's length and they have prepared invoices only for transfer of Cenvat credit, which remained unutilized and accumulated at the end of the job-worker.

(vii) The adjudicating authority, without appreciating the facts narrated in the Show Cause Notice, dropped the charges levelled against the respondent by merely stating that they cannot be made responsible for contravention of statutory or procedural requirements by a job-worker and there is no dispute that the duty has been paid at the Job-worker's end; that the assessment cannot be re-opened at the recipient end. The decisions relied upon by the lower adjudicating authority in the cases of M/s. Rohan Dyes and Intermediates Ltd. Reported as 2012 (284) E.L.T. 484 (Guj.) and M/s. Ruptex Mineral water Pvt Ltd reported as 2008(228) ELT440(Tri-Del) are not applicable in the present case. The issue involved in the case of M/s. Rohan Dyes, was that the department had demanded reversal of Cenvat credit on the clearances of duty paid raw materials to the job-worker, whereas, the present case is entirely different and the department has demanded wrongly availed Cenvat credit (by the Respondent) of duty paid on invoices issued by the job-worker.

(viii) The respondent has filed declaration and has undertaken to follow all the statutory and procedural requirements; availed benefit of exemption Notification No. 214/86-C.E. dated 25.03.1986 and not paid any Central Excise duty on imported brass scrap cleared to the job-worker's premises. Thus, once the respondent in the present case opted for the said Notification, they have barred themselves to avail Cenvat credit of the duty paid by the job-worker and Central Excise duty paid by the job-worker was required to be deposited with the Government under the provisions of Section 11D of the Central Excise Act, 1944. The respondent in-spite of knowing these facts, has wrongly availed the Cenvat credit of the Central Excise duty, incorrectly paid by the job-worker, in contravention of the provisions of Cenvat Credit Rules, 2004. CBEC Circular No. 940/1/2011-CX dated 14.01.2011, issued on

application of provisions of Section 5A(1A) of the Central Excise Act, 1944 is very specific and bars Cenvat credit availed by the downstream units, when the Central Excise duty has been paid on the exempted goods.

(ix) Exemption Notification No. 214/86-CE dated 25.03.1986 has been issued under Section 5A of the Central Excise Act, 1944. As per sub Section (1A) of Section 5A clarifies that "where an exemption under sub-section (1) in respect of any excisable goods from the whole of the duty of excise leviable thereon has been granted absolutely, the manufacturer of such excisable goods shall not pay the duty of excise".

(x) It was incumbent upon the Respondent under Rule 9(5) and Rule 9(6) of the Cenvat Credit Rules, 2004 to verify its genuineness of payment of duty, before taking such Cenvat credit.

(xi) The respondent has acted in contravention of the provisions of Notification No. 214/86-CE dated 25.03.1986 and availed Cenvat credit wrongly in violation of the provisions of Cenvat Credit Rules, 2004. Therefore, Respondent was liable to pay/reverse Cenvat credit wrongly availed along with interest thereon as provided under Rule 14 of Cenvat Credit Rules, 2004, read with Section11A of the Act and were also liable for penal actions as proposed in the Show Cause Notice dated 29.06.2011.

4. Personal hearing in the matter was attended to by Shri Gunjan Shah, Chartered Accountant and Shri Sunil Joisar, Proprietor who submitted Memorandum of Cross Objections. He submitted that earlier SCN was issued to their job workers for not paying Central Excise duty on job work; that because of that job workers started paying central excise duty and collected from them; that they took cenvat credit of duty paid only by job worker; that they rely on decision of Rohan Dyes & Intermediates Ltd. reported as 2012 (204) ELT 484 (Guj.) and other case law; that they would also submit a detailed written P.H. submissions within 7 days; that double duty was never point of SCN; that the demand is time barred as SCN was issued on 20.12.2010 for the period May, 2007 to March, 2008; that there was no suppression on their part. No one appeared from the department despite P.H. notices issued to them.

4.1 The respondent filed Memorandum of Cross Objections, *interalia*, on the following grounds: -

(i) There was no allegation in the SCN that the respondent was taking cenvat credit twice on the same goods. Therefore, the basic fundamental basis of which the present appeal has been filed by the department is not sustainable. It is a trite of law that no authority can surpass the jurisdiction of SCN and no authority has power to proceed against an assessee for taking any action which is beyond the scope of SCN.

(ii) The second paragraph of SCN has stated that the respondent was purchasing imported brass scrap on high sea sales basis under Advance Licence Scheme. It is a point to be grasped that any imports which are made under Advance License are duty free imports and when no duty has been paid on the imports, there could be no question of taking any cenvat credit of duty. Hence, the present appeal has been filed on mis-conception of the facts.

(iii) There is no bar on the job worker clearing the goods on payment of duty. There is no such provision shown in the SCN. Hence, there is absolute error in the allegation of the department that the goods were exempted and duty has been paid on our own volition. The respondent has not paid duty, they have received duty as input credit. The job worker has paid duty under Central Excise invoice. The SCN only referred to Rule 16A of Central Excise Rules, 2002 which does not envisage any condition that the job worker is also required to follow procedure of sending the job worked goods without payment of duty. If the manufacturer sends inputs to job worker under challan prescribed by the law, the manufacturer has followed the procedure, the manufacturer would not have any control over the job worker to force the job worker for sending the job worked goods without payment of duty to the respondent.

(iv) There is no crux in the ground raised in the department appeal that there was any ill-intention on the part of the respondent to wrongly avail cenvat credit which was lying unutilized with the job worker. The job worker has taken intrinsic value of the material and paid duty on the job worked goods.

(v) The department has erred in observing that the respondent has taken cenvat credit twice on the recycling of generated brass scrap. The department has given example showing chain of events when the brass scrap keeps on generating and manufacturer eligible to take cenvat credit. This is a highly imaginary and contemplated situation which is far from the facts. It is also not the fact that the job worker has recycled the brass scrap. After the job work of the inputs sent by the respondent, the job worker has converted the brass scrap into brass rods which is semi-finished product for the respondent. There was no such allegation in the SCN that the respondent has taken any such cenvat credit on re-cycled generated brass scrap. The department has proceeded on hypothetical situation.

(vi) The department has contended that the job workers have paid duty on the value including job charges which is factually incorrect. The element of job work charges is not included in excise duty paid by job worker which is clear from the invoices issued by the job worker. The department has filed the present appeal without verification of the facts.

(vii) The department has failed to show where is the restriction under the law that if the inputs ae sent under job work challan by the principal manufacturer, the job worker cannot

pay duty and clear the jobbed goods to the principal manufacturer, even if the ownership of the goods remained with the principal manufacturer.

(viii) The department has tried to distinguish the judgment of Hon'ble High Court in the case of Rohan Dyes & Intermediates reported as 2012 (284) ELT 484 (Guj.) by alleging that in the present case department has demanded cenvat credit wrongly availed twice by the respondent, however the respondent have stated that the imported inputs were procured duty free under Advance License, hence question of taking cenvat credit at the time of receipt of inputs did not arise.

(ix) It has been contended that the respondent has helped job workers in utilizing cenvat credit lying unutilized with job workers, which has no legal basis neither it has been proved by department in filing the present appeal.

(x) Section 11D is applicable to any person who has collected any amount representing Central Excise duty. In the present case, these provisions would be applicable to job worker who has collected duty from the respondent and so far as the act of taking cenvat credit is concerned, once the central excise duty is paid by job worker, the recipient of goods is legally bound to take credit of such duty and if the respondent do not take credit of such duty, there would be double incidence of duty on the jobbed goods. When the manufacturer has sufferance the incidence of duty, he is required to take credit of such duty to remove cascading effect on the valuation of the final product. Without challenging the assessment of job worker, the cenvat credit availed by the respondent on the basis of appropriate duty paying documents cannot be denied.

(xi) The CBEC Circular No. 940/1/2011-CX dated 14.01.2011 or provisions of Section 5A(1A) of the Act were not cited in the SCN, therefore, the matter is beyond scope of SCN. Moreover, these provisions are also applicable to the job worker in this case and not to the recipient. The respondent relied on decision of Hon'ble CESTAT, Bangalore in the case of Neuland Laboratories Limited reported as 2015 (317) ELT 705 (Tri. -Bang.) wherein it is held that the said CBEC Circular has been issued blindly. The said decision has been affirmed by Hon'ble High Court of Andhra Pradesh in a case reported as 2015 (319) ELT A181 (A.P.).

(xii) The entire demand is not legally sustainable being time barred. The proviso to Section 11A (1) of the Act cannot be invoked in the present case in view of fact that the respondent had filed ER-1 returns for the period May, 2007 to March, 2008 in time. It is submitted that demand in terms of proviso to Section 11A (1) of the Act can be raised only if short payment is by reason of fraud, collusion or any willful mist-statement or suppression of facts or contravention of any of the provisions of the Act with intent to evade payment of duty. Since it is an undisputed fact that the respondent has filed all returns in time disclosing all facts required to be disclosed as per prescribed format of the returns, the fact that cenvat credit was being availed and utilized by the respondent during the period under dispute was within

the knowledge of the department and hence extended period of limitation cannot be available in this case. There is no requirement to disclosed the nature of cenvat credit beyond what is prescribed in the return formats. Having prescribed the formats, the assessee cannot be expected to make any further disclosure that what is required in the formats. If the department had any doubt at the time of scrutiny of returns the department should have asked for details of cenvat credit availment under Rule 12(3) of Central Excise Rules, 2002. The respondent relied on following case laws.

- Chemphar Drugs & Liniments – 1989 (40) ELT 276 (SC)
- Pushp Enterprises – 2011-TIOL-297-CESTAT-DEL.
- Vijayshree Instaprint Machinery – 2005 (190) ELT 27 (Tri. - Chennai)
- Flex Industries Ltd. – 2006 (201) ELT 479 (Tri. -Delhi)

(xiii) The exercise proposed under the subject SCN is revenue neutral in character. It is an admitted fact that the goods manufactured on job work basis were cleared on payment of duty by the job workers and respondent has availed cenvat credit of such duty paid by the job worker. It is against the tone and tenor of the cenvat credit scheme which seeks to levy duty of Central Excise only on the value of goods and not on duty paid on such goods at different stages of manufacture, if the respondent is required to pay Central Excise duty on their finished products manufactured from the goods received from the job workers, without extending the benefit of duty paid by the job workers on such goods. Such payment of duty by them on their finished goods would lead to cascading effect of duty on duty, as the inflated value of finished goods on which duty is discharged would be inclusive of the amount of duty paid by the job worker. If the cenvat credit is denied, it will amount to double payment of duty on the same goods and such a demand for levy of duty twice on the same goods is not permissible under the law. The object of cenvat credit scheme was spelt out by the Hon'ble Supreme Court in the cases of Ichakaranji Machine Centre Pvt. Ltd. reported as 2004 (174) ELT 417 (SC) and Eicher Motors Ltd. reported as 1999 (106) ELT 3 (SC). The respondent also relied on following case laws: -

- Jainsons Wool Combers Ltd. – 2011 (268) ELT 360 (P&H)
- Narmada Chematur Pharmaceuticals Ltd. – 2005 (179) ELT 276 (SC)
- Narayan Polyplast – 2005 (179) ELT 20 (SC)
- Coco-Cola India Pvt. Ltd. – 2007 (213) ELT 490 (SC)
- Textile Corporation Marathwada Ltd. – 2008 (231) ELT 195 (SC)
- Jamshedpur Beverages – 2007 (214) ELT 321 (SC)

(xiv) Rule 3(1) of the CCR, 2004 allows the manufacturer to take credit of excise duty paid by the job worker on the inputs used by him even if he is working under Notification No. 214/86-CE dated 25.03.86. This Notification exempts job worker from paying duty on goods manufactured on job-work basis, but at the same time do not prohibit job workers from opting to pay duty on such goods. The principal manufacturer is not a registered manufacturer, the provisions permit the job-worker to pay central excise duty on goods manufactured on job

work. The respondent relied on following case law: -

- International Auto Ltd. - 2005 (183) ELT 239 (SC)
- Sundram Auto Components Ltd. – 2011 (267) ELT 377 (Tri. -Chennai)
- Aries Dyechem Industries – 2011 (257) ELT 113 (Tri. – Ahmd.)
- Abhishek Auto Industries Ltd. – 2004 (175) ELT 407 (Tri. – Del.)
- Crocodile (India) Pvt. Ltd. – 2006 (205) ELT419 (Tri. – Chennai)
- Ranbaxy Labs Ltd. – 2006 (203) ELT 213 (P&H)
- Maruti Udyog Ltd. – 1999 (114) ELT 608 (Tribunal)
- Contech Instruments Ltd. – 2010 (262) ELT 671 (Tri. – Mumbai)

(xv) The practice adopted by the respondent was being followed by all brass parts manufacturers and hence the allegation of suppression or malafide intention or culpable mental state cannot survive. The respondent relied on decision in the case of Alok Industries Ltd. reported as 2009 (240) ELT 552 (Tri. – Mumbai) wherein Hon'ble CESTAT, Mumbai has held that if activity is as per commercial trade practice, the assessee cannot be held guilty of any suppression.

(xvi) Even if the activity undertaken by the job workers during the impugned period does not attract duty liability, it is an undisputed fact that the principal manufacturer has on receipt of such goods from the job worker used the same in their manufacturing process and cleared the finished goods on payment of duty. Therefore, the said payment of duty may be treated as reversal of cenvat credit. In support of this contention, the respondent relied on decisions in cases of Singh Scrap Processors Ltd. – 2002 (143) ELT 619 (Tri. – Mumbai), Vickers Systems International Ltd. – 2008 (10) STR 378 (Tri. – Mumbai), Deioners Specialty Chemicals (P) Ltd. – 1997 (96) ELT 659 (Tribunal) and Narmada Chematur Pharmaceuticals Ltd. – 2005 (179) ELT 276 (SC).

(xvii) The cenvat credit availed by the receiver of input cannot be denied or recovered from them on the ground that the supplier of input was not required to discharge duty liability thereof or on the ground that the supplier of input have varied the duty paid thereon subsequent to clearance of goods or payment of duty. The receiver of input cannot be compelled to reverse cenvat credit availed on their inputs being cenvat credit of duty paid by the input manufacturers/suppliers and covered by the statutory invoices issued by them. The quantum of duty already determined by the jurisdictional officers of job workers cannot be contested or challenged by the officers having jurisdiction over the respondent/receiver's unit, without having challenged the assessment of duty of the job workers before the appropriate authority after following the required procedure. The respondent relied on decisions in the case of Cipla Ltd. – 2011 (273) ELT 391 (Tri. – Mumbai), MDS Switchgear Ltd. – 2008 (229) ELT 485 (SC), M.P. Telelinks – 2004 (178) ELT 167 (Tri. - Del.) and Ralson India Ltd. – 2006 (202) ELT 759 (P&H).

4.2 The respondent submitted written P.H. submissions wherein the contentions made in Memorandum of Cross Objections have been reiterated.

FINDINGS:

5. I have carefully gone through the facts of the case, impugned order, grounds of appeal made by the department and submissions made by the respondent during the personal hearing. The issues involved in the present appeal is as to whether Cenvat Credit of duty paid by the job worker on the goods sent under Notification No. 214/86-CE dated 25.03.1986 can be availed by the Respondent assessee or otherwise.

6. I find that the department has raised the issue of movement of goods for job work under Notification 214/86-CE dated 25.03.1986 stating that once opted the exemption by the Respondent, the availment of Cenvat credit on the invoices issued by the job-worker resulted into wrong availment of Cenvat credit on recycling of generated brass scrap and was not in accordance with the provisions of Cenvat Credit Rules, 2004 It is argued that by adopting such methodology of paying duty by Job worker and claiming Credit is an un-authorized way to utilize accumulated Cenvat Credit of inputs which were cleared by the respondent without payment of duty and had availed Cenvat credit initially. The unchallenged facts remain that at one hand, each time inputs cleared by the respondent do not bear any duty and on the other hand it returns with duty payment. The department has raised very valid point that the purpose of payment of duty by job worker was/is to pass on Cenvat credit accumulated at the end of job worker and evading payment of central excise duty by wrong availment and utilization at Respondent end as much as the imported scrap is being sent by the Respondent for job work and not cleared on payment of duty. Copies of the invoices and challans available in the appeal papers suggest that the job worker has paid duty whereas it was a case of job work and hence job-worker was not required to pay duty as decided by Hon'ble Tribunal in the case of M/s. Vako Seals Pvt Ltd reported as 2016 (344) ELT 482 (Tri-Mumbai). Relevant portion of the decision is reproduced below: -

> *"As regard the dispute raised by the Revenue that the value of machines body supplied by the principle should be added in the assessable value of the job work goods, we are of the view that activity over and above of manufacture of rubber product, i.e., rubber bonding in the machine body is purely job work activity. It is undisputed fact that machine bodies are supplied by the principle under Rule 57F(3) of the Central Excise Rules, 1944 and Rule 4(5)(a) of Cenvat Credit Rules, 2004 read with Notification No. 214/86-C.E. The appellant also filed declaration to this effect to the Jurisdictional Asstt Commissioner in compliance of condition of the Notification No. 214/86-C.E. which clearly provides exemption from payment of excise duty on the job work activity subject to condition the principle supplier of raw material discharging the excise duty on their final product wherein job work goods is used. This fact is also not under dispute, in view of declaration filed by the principle supplier of the machine bodies. In the given fact, we are of the view that the job work activity since clearly covered under job work provisions, no duty is required to be paid on the job work activity in terms of Notification No. 214/86-C.E. Accordingly value of machine bodies supplied by the principle manufacturer need not to be added or same should not be levied with excise duty."*
>
> *(Emphasis supplied)*

6.1 It is not in dispute that inputs (brass scrap) were being sent to job worker without payment of duty by Respondent. Therefore, by availing Cenvat credit again on intermediate stage goods (manufactured out of same input), credit was being claimed by the respondent twice and 2nd time more than that of initially availed by them and hence basic

principle of value added tax is defeated. In other words, if inputs were "**cleared"** on payment of duty i.e. not **sent for job work** without payment of duty, then the credit of inputs was to be initially passed on to the job-worker under normal business transaction and Respondent would reclaim the Cenvat Credit of 'value added' tax on receipt of intermediate goods. Further, it is not a case countered by the respondent that the payment of duty was made by the job worker in cash. Thus, job-worker has utilized the Credit of Inputs he had accumulated while manufacturing other finished goods. It is a fact that the job worker neither owned inputs of the respondent nor finished goods. Thus, basic principle of availing and utilizing Cenvat credit on inputs put into use for manufacturing of finished goods stands violated by the method adopted by job worker and appellant together. The key point missed by the adjudicating authority is that the goods are under "movement for job work" and not the clearance at either end. Thus, duty paid by the job worker is nothing but a mere debit entry in their account which cannot be treated as duty paid on the goods manufactured after job work. If the contention of the Respondent is believed, then the very concept of job work vis-à-vis input tax credit and value added tax gets defeated. The fact that credit taken by the respondent of duty paid by the job worker is only true on the face but unanswered question remains that duty is not payable by job worker from his account but only on behalf of the Principal manufacturer in case job worked goods are not returned to the Principal manufacturer. The job workers cannot be allowed to pay duty from their Cenvat Credit account to allow availment of Cenvat credit by the Principal manufacturer. I do not find the argument valid, legal and proper that job worker is free to pay central excise duty, even if the goods are supplied by the Principal manufacturer for a job work without payment of duty to allow the principal manufacturer to avail the credit of duty payment by the job worker. This issue has been clarified by the Board vide Circular No. 940/1/2011-Cx dated14.01.2011 text of which is reproduced below for ease of reference: -

> "Attention is invited to Board's Circular No. 937/27/2010-CX., dated 26-*11-10 issued from F. No. 52/1/2009-CX1 (Pt.) [2010 (260) E.L.T. T3], wherein based on the opinion of the Law Ministry, it was clarified that in view of the specific bar provided under sub-section (1A) of Section 5A of the Central Excise Act, 1944, the manufacturer cannot opt to pay the duty in respect of unconditionally fully exempted goods and he cannot avail the CENVAT credit of the duty paid on inputs.*
>
> 2. *It is further clarified that in case the assessee pays any amount as Excise duty on such exempted goods, the same cannot be allowed as "CENVAT Credit" to the downstream units, as the amount paid by the assessee cannot be termed as "duty of excise" under Rule 3 of the CENVAT Credit Rules, 2004.*
>
> 3. *The amount so paid by the assessee on exempted goods and collected from the buyers by representing it as "duty of excise" will have to be deposited with the Central Government in terms of Section 11D of the Central Excise Act, 1944. Moreover, the CENVAT Credit of such amount utilized by downstream units also needs to be recovered in terms of the Rule 14 of the CENVAT Credit Rules, 2004.*
>
> 4. *Trade & Industry as well as field formations may be suitably informed.*
>
> 5. *Receipt of this circular may kindly be acknowledged.*
>
> 6. *Hindi version will follow."*
>
> *(Emphasis supplied)*

6.1.1 Therefore, the goods sent to job work by the Principal manufacturer is exempted, if the goods are received back by the said principal manufacturer from the job worker. I find merit in department's plea to claim that the invoices were used only for transfer of Cenvat Credit which remained unutilized and accumulated at the job worker's end. This fact has not been challenged by the Respondent at any stage.

6.2. Further, when clearance is made by the respondent by opting exemption under Notification No. 214/86 CE, the respondent has knowledge that the goods would return to them under Job work challan and not under duty paying documents and hence duty paid by the job worker at his own volition is not the duty for the purpose of claiming Cenvat credit by the Respondent as explained by CBEC vide above Circular dated 14.01.2011. The respondents failed to comply with Rule 9 (5) of the Cenvat Credit Rules, 2004. It is obvious that the assessment under Notification 214/86-CE involves the Principal manufacturer as well as the job workers and cannot be seen in isolation for convenience at either end. Consent of the Job worker is given at the time of opting for the movement of inputs cleared by the Respondent. Assessment of clearance under Notification 214/86-CE can be finalized only after job-worked goods return to the supplier unit/Principal manufacturer end. Therefore, question of reopening of assessment does not arise and I do not agree to the views expressed by the adjudicating authority in the impugned order.

7. I further find that the appellant department has rightly pointed out that the issue involved in the case of M/s. Rohan Dyes and Intermediates Ltd (212(284) ELT 484(Guj) is not applicable in the instant case as much as issue involved in the said matter was that Principal Manufacturer was asked to reverse the Cenvat Credit initially availed on the inputs cleared as such by them for job work. Whereas in the present case Respondents have cleared imported brass scrap, an excisable goods cleared under Notification 214/86-CE dated 25.03.1986 and credit of duty paid by the job worker is denied. In that case Hon'ble High Court was not considering a situation where excisable goods were cleared under Notification 214/86. Further, the said decision of Hon'ble High Court was given in different backdrop and had relied upon a Supreme Court's decision in the case of International Auto Ltd (2005(183) ELT 23((SC) which is in relation to inclusion of value of free supply of inputs received by the job worker. The decision by the Hon'ble High Court was given with regard to credit on inputs sent for job work. To better appreciate the facts, relevant portion of the decision of Hon'ble High Court in the case of M/s. Rohan Dyes and Intermediates supra is reproduced below: -

'13. If we apply the aforesaid principle to the facts of the present case, there is no dispute that according to the modvat scheme, it is the modvat of such final product which would have to include the cost of the inputs and in respect of which Modvat credit could be taken at the time of clearance of the final product and thus, in the facts of the present case, the Tribunal rightly rejected the contention of the Revenue that the respondents should have reversed the Cenvat credit taken before sending the goods to the job worker since the job worker had not followed the procedure of job work. It may not be out of place to mention here that that what was earlier provision contained in Rule

57F(2)(b) is exactly the present provision of Rule 4(5A) of the Cenvat Credit Rules, 2004."

(Emphasis supplied)

7.1 Thus, the above decision of Hon'ble High Court's was given in a different set of facts and in different context and cannot be made applicable in the present case on hand. Similarly, decision in the case of M/s. Aries Dyechem Industries reported as 2010 (257) ELT 113 (Tri-Ahd) relied upon by the Respondent, is in respect of double benefit accrued to the principal manufacture and hence reversal of credit claimed at initial stage by the principal manufacture (and not duty paid by job worker) unlike the facts of the present case where credit of duty paid by the job worker is denied. Therefore, I find the case law relied upon by the Respondent does not help them.

8. In light of the above discussion, I hold that the Respondent is not eligible to avail Cenvat Credit claimed by them and liable to pay demand of Rs.34,17,756/- under Rule 14 of the Rules readwith Section 11A of the Act along with interest and they are also liable to penalty of Rs.34,17,756/- under Rule 15(2) of the Rules read with Section 11AC of the Act. I, therefore, set aside the impugned order and allow the appeal filed by the department.

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

8.1 The appeal filed by the department stands disposed off in above terms.

(कुमार संतोष) 11/12/2017

आयुक्त (अपील्स)

By R.P.A.D.

To,

1	The Commissioner GST & Central Excise, Rajkot Commisisonerate, GST Bhavan, Race Course Ring Road, Rajkot	आयुक्त जीएसटी एवं के उ.शु., जीएसटी भवन रेस कोर्स रिंग रोड, राजकोट
2	M/s. Gujarat Sales & Products, Plot No. 486, Vishal Chowk, GIDC Phase-II, Dared, Jamnagar	मे गुजरात सेल्स एवं प्रोडक्टस, प्लॉट नं ४८६, विशाल चौक, जी आई डी सी फेझ -II दरेड - जामनगर

Copy to:

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