



**आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::**  
**O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE,**

द्वितीय तल, जी एस टी भवन / 2<sup>nd</sup> Floor, GST Bhavan,  
 रेस कोर्स रिंग रोड, / Race Course Ring Road,  
 राजकोट / Rajkot - 360 001

Tele Fax No. 0281 - 2477952/2441142      Email: cexappealsrajkot@gmail.com



सत्यमेव जयते

**रजिस्टर्ड डाक ए. डी. द्वारा :-**

क	अपील / फाइल संख्या Appeal / File No.	मूल आदेश सं / O.O. No.	दिनांक / Date
	V2/221/RAJ/2016	09/D/2016-17	21.07.2016

6348 & 6349  
+2442

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

RAJ-EXCUS-000-APP-137-2017-18

आदेश का दिनांक / Date of Order:	11.12.2017	जारी करने की तारीख / Date of issue:	11.12.2017
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**कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /**  
**Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot**

ग अवर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जमनगर / गन्धीधम। द्वारा उपरलिखित जारी मूल आदेश से सृजित /  
 Arising out of above mentioned O/O 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 Appellants & Respondent :-**  
**M/s. Mital Copper Industries SIDC Road, Veraval(Shapar),Rajkot-360004**

इस आदेश(अपील) से स्वयंसेवक कोड़े व्यक्ति निम्नलिखित तरीके से उपरोक्त प्राधिकारी / अधिकारियों के द्वारा 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 अपील विभाग, केन्द्रीय उत्पाद शुल्क अपील विभाग, 1944 की धारा 35B के अन्तर्गत एवं किला अपील विभाग, 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) सर्वोच्च न्यायालय से सम्बन्धित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील विभाग 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 अपील के अलावा वेच सभी अपील सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील विभाग (सिस्टम) की विशेष क्षेत्रीय पीठिका, द्वितीय तल, बहामली भवन असावा अहमदाबाद, 380016 को की जानी चाहिए। /  
 To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> Floor, Bhaumali Bhawan, Asawa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपील न्यायाधिकरण के द्वारा अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवली, 2001, के नियम 6 के अन्तर्गत निर्धारित किए गये फॉर्म EA-3 को चार प्रतियों में दर्जे किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की सीमा अथवा सेवा कर अथवा सेवा कर, 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 अपील न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सर्वजनिक 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 अपील न्यायाधिकरण की शाखा स्थित है। स्वयंसेवक (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) अपील न्यायाधिकरण के द्वारा अपील, किला अपील विभाग, 1994 की धारा 86(1) के अन्तर्गत सेवाकर नियमवली, 1994, के नियम 9(1) के तहत निर्धारित फॉर्म S.T.-5 में चार प्रतियों में की जा सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उपरोक्त में एक प्रति प्रस्तावित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की सीमा अथवा सेवा कर अथवा सेवा कर, 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 अपील न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सर्वजनिक 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 अपील न्यायाधिकरण की शाखा स्थित है। स्वयंसेवक (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

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

(i) किरा अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दंडों की राशी अपील, सेवाकर नियमावली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित फॉर्म S.T.-7 में की जा सकती है। उसके साथ आवृत्त, केन्द्रीय उत्पाद शुल्क अध्यादेश अध्यादेश (अपील), केन्द्रीय उत्पाद शुल्क अध्यादेश अध्यादेश की प्रतियाँ संलग्न करें (उम्मीद से एक प्रति प्रमाणित होनी चाहिए) और आवृत्त दंडों सहित आवृत्त अध्यादेश अध्यादेश, केन्द्रीय उत्पाद शुल्क अध्यादेश, को अपीलार्थी न्यायाधिकरण को आवेदन करने के लिए देना चाहिए।  
The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

(ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलार्थी न्यायाधिकरण (सेवेट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1994 की धारा 35एफ के अंतर्गत, जो की किरा अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस अध्यादेश के प्रति अपीलार्थी न्यायाधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मूल्य के 10 प्रतिशत (10%), जब मूल्य एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का अग्रिम किरा जमा, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अधिकतम देय राशि इस संघेद तथा से अधिक न हो।

- (i) केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मूल किरा" एवं "शुल्क" में विभक्त राशि है।
  - (ii) धारा 11 डी के अंतर्गत रकम
  - (iii) सेवेट जमा की गई राशि राशि
  - (iv) सेवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्त यह कि इस धारा के अंतर्गत किरा (स. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलार्थी न्यायाधिकरण के संलग्न विचारार्थी न्यायाधिकरण अर्थात् अपील को लागू नहीं होगी।

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

- Under Central Excise and Service Tax, "Duty Demanded" shall include :
- (i) amount determined under Section 11 D;
  - (ii) amount of erroneous Cenvat Credit taken;
  - (iii) amount payable under Rule 6 of the Cenvat Credit Rules
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(C) **भारत सरकार को पुनरीक्षण आवेदन :**  
**Revision application to Government of India:**  
इस अध्यादेश की पुनरीक्षण अधिकृत निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम पराग के अंतर्गत अपील लिये, भारत सरकार, पुनरीक्षण आवेदन इकाई, किरा मंत्रालय, राजस्व विभाग, चौथी मंजिल, जयन्त टॉप भवन, सराद जन्म, नई दिल्ली-110001, को किया जाता है।  
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 में अंतर गृह के परिवहन के दौरान या किसी अन्य कारखाने या फिर किसी एक अंतर गृह से दूसरे अंतर गृह परिवहन के दौरान, या किसी अंतर गृह में या अंतर गृह में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी अंतर 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 विभिन्न देशों में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गई 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 अग्रिम किरा 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) मुनिश्चित उत्पाद के उत्पादन शुल्क के अग्रिम के लिए जो इच्छा की गई इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मजबूती की गई है और ऐसे अध्यादेश जो आवृत्त (अपील) के द्वारा किरा अधिनियम (स. 2), 1998 की धारा 109 के द्वारा नियत की गई लागू अध्यादेश अध्यादेश पर या बट में परिलिखित किया गया 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 प्रतियाँ फॉर्म संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत निर्दिष्ट है, इस अध्यादेश के संकेतन के 3 महीने के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल अध्यादेश व अपील अध्यादेश की दो प्रतियाँ संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अद्ययगी के संकेतन 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 O/O and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Chalan 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 अद्ययगी की जानी चाहिए।  
जहाँ संलग्न रकम एक लाख रुपये या उससे कम है तो रुपये 200/- का अग्रिम किरा जमा और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का अग्रिम किरा जमा।  
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved is Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

(D) यदि इस अध्यादेश में कई मूल अध्यादेशों का समावेश है तो प्रत्येक मूल अध्यादेश के लिए शुल्क का अग्रिम, उपरोक्त दंड से किया जाता है। इस तथ्य के होते हुए भी की निम्नलिखित कार्य से बचने के लिए प्रमाणित अपीलार्थी न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।  
In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if existing Rs. 1 lakh fee of Rs. 100/- for each.

(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल अध्यादेश एवं स्थगन अध्यादेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट लगा होना चाहिए।  
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलार्थी न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्बन्धित करने वाले नियमों की और भी ध्यान आकर्षित किया जाता है।  
Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

(G) उच्च अपीलार्थी न्यायाधिकरण को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी न्यायाधिकरण वेबसाइट [www.cbec.gov.in](http://www.cbec.gov.in) को देख सकते हैं।  
For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website [www.cbec.gov.in](http://www.cbec.gov.in)

SM

:: ORDER-IN-APPEAL ::

M/s. Mital Copper Industries, SIDC Road, Veraval (Shaper), Rajkot (hereinafter referred to as "the appellant") filed the present appeal against Order-in-Original No. 09/D/2016-17 dated 21.07.2016 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central Excise Division – II, Rajkot (hereinafter referred to as "the lower adjudicating authority").

2. The facts of the case are that the appellant had availed cenvat credit on the basis of supplementary invoice issued by a Second Stage Dealer M/s. Fairdeal Commodity Solution, Rajkot which is not a prescribed document for availment of cenvat credit in terms of provisions contained in Rule 9(1)(b) of the Cenvat Credit Rules, 2004 (hereinafter referred to as "the CCR"). Show Cause Notice No. IV/03-09/D/2015-16 dated 28.03.2016 was issued proposing recovery of Rs. 3,65,928/- under Rule 14 of the CCR read with Section 11A(5) of the Central Excise Act, 1944 and interest under Section 11AA of the Central Excise Act, 1944 and imposition of penalty under Rule 15(2) of the CCR read with Section 11AC of the Central Excise Act, 1944. The lower adjudicating authority vide impugned order disallowed cenvat credit of Rs. 3,65,928/- under Rule 14 of the CCR read with Section 11A(5) of the Central Excise Act, 1944, ordered recovery of interest under Rule 14 of the CCR read with Section 11AA of the Central Excise Act, 1944 and imposed penalty of Rs. 3,65,928/- under Rule 15(2) of the CCR read with Section 11AC of the Central Excise Act, 1944.

3. Being aggrieved with the impugned order, the appellant filed the present appeal, *interalia*, on the following grounds: -

3.1 The impugned order disallowing cenvat credit and imposing penalty is illegal, improper and invalid, inasmuch as the same has been issued without taking submissions made by the appellant. The lower adjudicating authority has also ignored the decisions in case of Britannia Industries Ltd. reported as 2010(251) ELT 385(Tri. Del.) and Navkar Wires (P) Ltd. reported as 2006(205) ELT 308(Tri. Del.), wherein it has been held that *invoices as well as supplementary invoices of dealer need to be construed as having been issued under Rule 11 of the Central Excise Rules, 2002.*

3.2 It is settled legal position that the lower adjudicating authority is bound to follow the decision of higher forum and in support relied on following decisions:

- (i) Ruchi Soya Industries Ltd. - 2015 (318) ELT 309 (Tri. Del.);
- (ii) Inductotherm (India) Pvt. Ltd. - 2010 (251) ELT 494 (Guj.);
- (iii) Topland Engines Pvt. Ltd. - 2006 (199) ELT 209 (Guj.);
- (iv) Indian Oil Corporation Ltd. - 2003 (152) ELT 128 (Tri. Del.);



3.3 The appellant pleaded that cenvat credit has been availed on the strength of supplementary invoice issued by a second stage dealer that the invoice was issued by the second stage dealer in terms of Rule 11 of the Central Excise Rules, 2002 on which cenvat credit was availed; that second stage dealer is covered by the Central Excise Rules, 2002 and hence cenvat credit availed on the same cannot be denied as it is document prescribed under Rule 9(1)(a)(iv) of the CCR and relied on case law of Britannia Industries Ltd. reported as 2010(251) ELT 385(Tri. Del.); that there is no doubt that duty has been paid by the second stage dealer and goods have been received by the appellant and so denial of cenvat credit is unwarranted as per case law of Navkar Wires (P) Ltd. reported as 2006(205) ELT 308(Tri. Del.).

3.4 The appellant submitted that they received duty paid goods in their premises on which they paid consideration by way of rate difference and hence they are correctly entitled to get cenvat credit as duty paid character is identified, goods already received, properly accounted for and also used for manufacture of excisable goods.

4. Personal hearing in the matter was attended by Shri Rahul Gajera, Advocate, who reiterated the grounds of appeal and submitted that the impugned SCN has not doubted payment of central excise duty but has only alleged that supplementary invoice issued by 2<sup>nd</sup> stage dealer is not a valid document for taking cenvat credit; that there have been rate difference and duty has been paid subsequently by the manufacturer as is evident from invoice and 3 pages list attached with it; that since duty has been paid, cenvat credit needs to be allowed as has been held by CESTAT in many cases including in the cases of Navkar Wires (P) Ltd. reported as 2006(205) ELT 308(Tri. Del.) and Britannia Industries Ltd. reported as 2010(251) ELT 385(Tri. Del.).

**Findings:-**

5. I have carefully gone through the facts of the case, the impugned order, appeal memorandum and the submissions made by the appellant.

6. The issue to be decided in the present appeal is as to whether the appellant is eligible for cenvat credit availed on supplementary invoice issued by the second stage dealer or not.

7. I find that the appellant has received duty paid goods in their premises from second stage dealer, who issued supplementary invoice for rate difference on the basis of supplementary invoice received from first stage dealer M/s. Hindalco Industries

Ltd., Ranoli (Vadodara) for the said goods. I find that rate difference has occurred and differential central excise duty has been paid by the manufacturer of the goods on account of rate difference and this has not been disputed by the department. The lower adjudicating authority disallowed cenvat credit only on the ground that the supplementary invoice issued by second stage dealer was not a prescribed document for availment of cenvat credit in terms of Rule 9(1)(b) of the CCR. Let's examine this rule, which is reproduced as under: -

*"Rule 9. Documents and accounts. -*

*(1) The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely:-*

*(a) an invoice issued by-*

*(i) a manufacturer for clearance of -*

*(I) .....;*

*(II) .....;*

*(ii) .....;*

*(iii) .....;*

*(iv) a first stage dealer or a second stage dealer, as the case may be, in terms of the provisions of Central Excise Rules, 2002; or*

*(b) a supplementary invoice, issued by a manufacturer or importer of inputs or capital goods in terms of the provisions of Central Excise Rules, 2002 from his factory or depot or from the premises of the consignment agent of the said manufacturer or importer or from any other premises from where the goods are sold by, or on behalf of, the said manufacturer or importer, in case additional amount of excise duties or additional duty leviable under section 3 of the Customs Tariff Act, has been paid, except where the additional amount of duty became recoverable from the manufacturer or importer of inputs or capital goods on account of any non-levy or short-levy by reason of fraud, collusion or any wilful misstatement or suppression of facts or contravention of any provisions of the Excise Act, or of the Customs Act, 1962 (52 of 1962) or the rules made there under with intent to evade payment of duty.*

*Explanation.- For removal of doubts, it is clarified that supplementary invoice shall also include challan or any other similar*

*document evidencing payment of additional amount of additional duty leviable under section 3 of the Customs Tariff Act; or*

*(Emphasis supplied)*

7.1 The appellant contends that the invoice was issued by the second stage dealer in terms of Rule 11 of the Central Excise Rules, 2002 on which they availed cenvat credit. Rule 11 of the Central Excise Rules, 2002 is reproduced as under:

***"Rule 11. Goods to be removed on invoice. -***

*(1) No excisable goods shall be removed from a factory or a warehouse except under an invoice signed by the owner of the factory or his authorized agent and in the case of cigarettes, each such invoice shall also be countersigned by the Inspector of Central Excise or the Superintendent of Central Excise before the cigarettes are removed from the factory:*

*Provided that .....*

*Provided further that .....*

*.....*

*Explanation. - For the purposes of this rule, "first stage dealer" and "second stage dealer" shall have the meanings assigned to them in CENVAT Credit Rules, 2002.*

*(Emphasis supplied)*

7.2 From the above, I find that the invoices issued by the second stage dealer get covered under Rule 9 of the CCR and supplementary invoice is part and parcel of the main invoice as excise duty paid through supplementary invoice is duty paid on the inputs initially supplied by the manufacturer. Hence, I am of considered view that supplementary invoice issued under Rule 11 of the Central Excise Rules, 2002 by the second stage dealer has to be treated as valid document to avail cenvat credit and cenvat credit availed on the basis of valid supplementary invoice cannot be denied when there is no dispute regarding duty payment character of the goods and its receipt and use for manufacture of the final products. Therefore, the supplementary invoice issued by second stage dealer on the basis of invoice of first stage dealer, which has been issued on the basis of supplementary invoice issued by the manufacturer, has to be treated as covered under Rule 9 of the CCR and a valid document for taking cenvat credit.

7.3 I find that the appellant has received supplementary invoices from the second stage dealer, who has received supplementary invoices from the first stage dealer. This case is not a case that the manufacturer has raised supplementary invoice

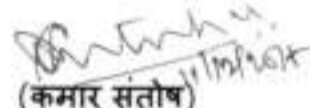
*[Handwritten signature]*

and paid differential Central Excise duty by reason of suppression of facts, willful mis-statement or mis-declaration. In Cenvat Credit regime, the cenvat credit of duty paid by the manufacturer or 1<sup>st</sup> stage dealer, as the case may be, can be availed as cenvat credit by the 2<sup>nd</sup> stage dealer and so on to ultimate buyer to prevent cascading effect. It would not be justified if duty paid by the manufacturer on excisable goods is not allowed as cenvat credit to actual user of the goods. The appellant has legitimate right to avail benefit of credit of the duty paid second time by the manufacturer and hence, cenvat credit was rightly availed by the appellant. Accordingly, I have no option but to set aside the impugned order. Since availment of cenvat credit is found to be in order, recovery of interest and imposition of penalty do not arise in this case.

8. In view of above factual and legal position, I set aside the impugned order and allow the appeal filed by the appellant.

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

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

  
(कुमार संतोष)  
आयुक्त (अपील्स)

By Regd. Post A.D.

To,

M/s. Mital Copper Industries, SIDC Road, Veraval (Shaper), Rajkot	मे. मितल कॉपर इंडस्ट्रीज़, एसआईडीसी रोड, वेरावल (शापर), राजकोट.
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Copy for information and necessary action to:

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad for kind information please.
- 2) The Commissioner, GST & Central Excise Commissionerate, Rajkot.
- 3) The Assistant Commissioner, GST & Central Excise Division-II, Rajkot.
- 4) Guard File.