



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



द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan,

रेस कोर्स रिंग रोड, / Race Course Ring Road,

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रजिस्टर्ड डाक ए. डी. द्वारा :-

क अपील / फाइल संख्या /

Appeal / File No.

V2/54 / RAJ/2017

मूल आदेश सं /

O.I.O. No.

109/ADC/PV/2016-17

दिनांक /

Date

26.12.2016

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

RAJ-EXCUS-000-APP-192-2017-18

आदेश का दिनांक /
Date of Order:

18.01.2018

जारी करने की तारीख /
Date of issue:

25.01.2018

Passed by **Dr. Balbir Singh, Additional Director General (Taxpayer Services), Ahmedabad Zonal Unit, Ahmedabad.**

अधिसूचना संख्या 26/2017-के.उ.शु. (एन.टी.) दिनांक 18.10.2017 के साथ पट्टे बोर्ड ऑफिस आदेश सं. 05/2017-एस.टी. दिनांक 16.11.2017 के अनुसरण में, डॉ. बलबीर सिंह, अपर महानिदेशक करदाता सेवाएँ, अहमदाबाद जोनल यूनिट को वित्त अधिनियम 1994 की धारा 86, केंद्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35 के अंतर्गत दर्ज की गई अपीलों के सन्दर्भ में आदेश पारित करने के उद्देश्य से अपील प्राधिकारी के रूप में नियुक्त किया गया है।

In pursuance to Board's Notification No. 26/2017-C.Ex.(NT) dated 17.10.2017 read with Board's Order No. 05/2017-ST dated 16.11.2017, Dr. Balbir Singh, Additional Director General of Taxpayer Services, Ahmedabad Zonal Unit, Ahmedabad has been appointed as Appellate Authority for the purpose of passing orders in respect of appeals filed under Section 35 of Central Excise Act, 1944 and Section 85 of the Finance Act, 1994.

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 Appellants & Respondent :-**

M/s Shree Digvijay Cement Co. Ltd., Digvijaygram - 361 140,, Jamnagar. ,,

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। /

Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

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

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

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए। /

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असावा 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 प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।

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

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

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

- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र 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.

- (iii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टैट) के प्रति अपील 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

- धारा 11 डी के अंतर्गत रकम
- सेनवेट जमा की ली गई गलत राशि
- 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 होगा।

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

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

- amount determined under Section 11 D;
- amount of erroneous Cenvat Credit taken;
- 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 ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /

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

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

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

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

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

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

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

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

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

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

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।

जहाँ संलग्न रकम एक लाख 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 से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पेटी 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, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

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

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

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

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

ORDER IN APPEAL

M/s. Shree Digvijay Cement Co. Ltd. Sikka, Dist. Jamnagar (hereinafter referred to as "the appellant") having Central Excise Registration No. AADCS0957JXM002 as manufacturer of excisable goods viz. Cement falling under Chapter 25 of the First Schedule of Central Excise Tariff Act, 1985 availing CENVAT Credit on inputs and input services under CENVAT Credit Rules, 2004, has filed this appeal against the OIO No. 109/ADC/PV/2016-17 dated 26.12.2016 (hereinafter referred to as "the impugned order") passed by the Additional Commissioner, Central Excise and Service Tax, Rajkot (hereinafter referred to as "the adjudicating authority").

2/- Briefly stated, the facts are that a Show Cause Notice dated 19.10.2016 was issued to the appellant alleging that they have wrongly availed and utilised ineligible CENVAT Credit to the tune of Rs. 84,07,468/- for the period from October 2015 to February 2016 and Rs. 14,50,894/- for the month of March 2016 in respect of Service Tax paid (Primary / Secondary Freight) on Outward Transportation Services beyond the place of removal. The Notice therefore, *inter-alia* demanded CENVAT Credit wrongly availed and utilised along with interest and further proposed penalty from the appellant.

3/- This Notice was adjudicated vide OIO No. 109/ADC/PV/2016-17 dated 26.12.2016 by the Additional Commissioner, Central Excise and Service Tax, Rajkot wherein the Adjudicating Authority disallowed the inadmissible CENVAT Credit amounting to Rs. 84,07,468/- and Rs. 14,50,894/- (totalling to Rs. 98,58,362/-) and confirmed the same under Section 11A / 11A(10) of the Central Excise Act, 1944 read with Rule 14 of CENVAT Credit Rules, 2004 along with interest under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11AA of Central Excise Act, 1944 and imposed penalty under Rule 15(2) of the CENVAT Credit Rules, 2004 read with Section 11AC of Central Excise Act, 1944 on the appellant.

4/- Feeling aggrieved, the appellant filed Appeal on the following grounds.

- that they have included the Outward Freight in the assessable value of the finished goods, i.e. Cement and have paid Central Excise Duty on the value of goods which includes the cost of outward freight.
- that as the outward freight was included in the assessable value of the excisable goods, clarification contained in the CBEC's Circular No.97/8/2007-ST dated 23.08.2007 would apply and hence are eligible to Cenvat Credit on Service Tax paid on outward freight.
- that when finished excisable goods are cleared for Home Consumption and the value of freight has not been recovered separately by the manufacturer from the buyer of the excisable goods but the said element of freight has been paid by the manufacturer to the Goods Transport Agency and Service Tax payable thereon also being paid off, the CENVAT Credit of Service Tax paid on outward freight is admissible as the place of removal of excisable goods is the destination of the customer.

5/- Further they relied on the following Case Laws.

- Ultratech Cement Ltd. V/s CCE & ST Rohtak - (2014-TIOL 1934-CESTAT DEL)
- Oriental Containers Ltd. V/s CCE Thane - (2012(28) STR 397 (Tri. Mumbai))
- LG Electronics (I) Pvt. Ltd. V/s CCE NOIDA - (2010(19) STR 340 (Tri. Del.))
- Cauvery Stones Impex Pvt. Ltd. V/s CCE Salem - (2010(257) ELT 151 (Tri. Chennai))
- CCE Madurai V/s Stangl Pickles & Preserves - (2011(22) STR 396 (Tri. Chennai))

6/- The appeal was filed before the Commissioner (Appeals), Rajkot. The undersigned has been nominated as Commissioner (Appeals) / Appellate Authority as

[Signature]

regards to the case of appellant vide Board's Order No. 05/2017-Service Tax dated 16.11.2017 issued by the Under Secretary (Service Tax), G.O.J. M.O.F. Deptt of Revenue, CBEC, Service Tax Wing on the basis of **Board's Circular No. 208/6/2017-Service Tax dated 17.10.2017.**

7/- Personal hearing was granted to the appellant on 16.01.2018 vide letter dated 19.12.2017. However, the appellant vide letter dated 27.12.2017 has communicated that they have already submitted their representation, available on record, which may be taken as final submission for favourable consideration.

8/- I have carefully gone through the facts of case, the grounds mentioned in the appeals and the submissions made by the appellant. The question to be decided in the appeal is whether the appellant is eligible for the CENVAT Credit availed by them in respect of charges paid for outward transportation of goods beyond the place of removal or otherwise.

9/- The adjudicating authority in his finding has observed that the appellant had availed and utilised CENVAT Credit of Service Tax paid on transportation charges incurred in connection with transport of their finished goods from the factory gate to the premises of their customers. He found that the same is not in accordance with the definition of 'input service' as defined in Rule 2(1) of the CCR, 2004 which is relevant for the period from October 2015 to March 2016. The adjudicating authority has observed that it is clear that input service means any service, used by a provider of taxable service for providing an output service, or used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products **up to the place of removal.** The definition also includes outward transportation up to the place of removal. For ease of reference the relevant portion of Rule 2 (1) of the CENVAT Credit Rules, 2004 is reproduced below.

(1) "Input service" means any service:-

(i) used by a provider of taxable service for providing an output service; or

used by the manufacturer, whether directly or indirectly, in or in relation to the
(ii) manufacture of final products and clearance of final products up to 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 up to 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 up to the place of removal.

10/- Further "Place of Removal" has been defined under Explanation (c) to Section 4 (3) of the Central Excise Act, 1944 as given below:

(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 deposited 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;

Asseattle

With regard to the Board's Circular dated 27.08.2007 relied upon by the appellant the adjudicating authority has further observed that the said Circular has the position with reference to the definition of input service under Rule 2(1) of 2004 as it existed prior to 01.04.2008 however after the amendment in the said effect from 01.04.2008, the input service used in or in relation to the clearance of goods have been restricted up to the place of removal only. Therefore, reliance on the above Circular dated 27.08.2007 is misplaced.

From the foregoing it is evident that the adjudicating authority has correctly allowed CENVAT Credit of Service Tax availed in respect of Service Tax paid on transportation of goods beyond the place of removal is not admissible to the appellant.

The appellant has relied upon five Case Laws viz. Ultratech Cement Ltd. v. Oriental Containers Ltd. V/s CCE Thane, LG Electronics (I) Pvt. Ltd. v. Auvery Stones Impex Pvt. Ltd. V/s CCE Salem, CCE Madurai V/s Serves to put forth that they were eligible for the said CENVAT Credit in Outward transportation charges.

Although 3 out of the 5 Judgements viz. LG Electronics (I) Pvt. Ltd. V/s Auvery Stones Impex Pvt. Ltd. V/s CCE Salem, CCE Madurai V/s Serves are not found to be having relevance in the instant case in the said Judgements is prior to 01.04.2008. The definition of 2(1) of the CCR, 2004 as it existed prior to 01.04.2008 was "inputs from the place of removal" in clause (iii) of Rule 2(1) of No. 10/2008-CEN dated 01.03.2008 to the extent that the place of removal of final products upto the place of

Oriental Containers Ltd.
revised

11/- With regard to the Board's Circular dated 27.08.2007 relied upon by the appellant, if the adjudicating authority has further observed that the said Circular has approved the position with reference to the definition of input service under Rule 2(i) of the CCR, 2004 as it existed prior to 01.04.2008 however after the amendment in the said the CCR, 2004 effect from 01.04.2008, the input service used in or in relation to the clearance of final products have been restricted up to the place of removal only. Therefore, reliance placed by the appellant on the above Circular dated 27.08.2007 is misplaced.

12/- In view of the foregoing it is evident that the adjudicating authority has correctly held that the CENVAT Credit of Service Tax availed in respect of Service Tax paid on outward transportation of goods beyond the place of removal is not admissible to the appellant.

13/- Further the appellant has relied upon five Case Laws viz. Ultratech Cement Ltd. V/s CCE & ST Rahtak, Oriental Containers Ltd. V/s CCE Thane, LG Electronics (I) Pvt. Ltd. V/s CCE & ST Rahtak, Cauvery Stones Impex Pvt. Ltd. V/s CCE Salem, CCE Madurai V/s CCE NOIDA, C Stangl Pickles & Preserves to put forth that they were eligible for the said CENVAT Credit of Service Tax paid on Outward Transportation charges.

14/- On going through 3 out of the 5 Judgements viz. LG Electronics (I) Pvt. Ltd. V/s CCE NOIDA, Cauvery Stones Impex Pvt. Ltd. V/s CCE Salem, CCE Madurai V/s Stangl Pickles & Preserves the same are not found to be having relevance in the instant case as the period of dispute in the said Judgements is prior to 01.04.2008. The definition of input service under Rule 2(i) of the CCR, 2004 as it existed prior to 01.04.2008 was amended vide Notification No.10/2008BCE(NT) dated 01.03.2008 to the extent that the words "clearance of final products from the place of removal" in clause (iii) of Rule 2(i) were substituted with the words "clearance of final products upto the place of removal".

15/- In the Tribunal Mumbai's Judgement in the case of M/s Oriental Containers Ltd. V/s CCE Thane, the Appellant had availed Service Tax Credit on GTA Service utilised for transportation of goods from the factory to the port of shipment to service export orders that were on FOB / CIF basis. However, in the instant case the appellant has not provided any evidence to show the term of the contract with the buyers. Hence, the appellant's reliance on this Judgement is not relevant. Lastly, in case of M/s Cement Ltd. V/s CCE & ST Rahtak, the adjudicating authority has discussed the issue at length as cited at para 25 (v) and 26 of the OIO dated 08.12.2016 to which I am in full agreement and the issue does not need further elaboration.

16/- Since the dispute revolves around the applicability of CENVAT Credit Rules, 2004, I find that the availment and utilisation of CENVAT Credit in respect of GTA Services for Outward Transportation beyond the place of removal is not seen to be under the purview of the definition of "input service" after 31.03.2008 and therefore, the appellant is liable for reversal / payment of CENVAT Credit of Rs.84,07,468/- and Rs.14,50,894/- (totalling to **Rs.98,58,362/-** from Oct. 2015 to Mar. 2016) along with applicable Interest under the provisions of Rule 14 of the CCR, 2004 read with Section 11AA of CEA, 1944 and Penalty under the provisions of Section 11AC of CEA, 1944 read with Rule 15(2) of the CCR, 2004.

17/- In this regard, I rely upon following case laws.

- In case of Roop Polymers Ltd. V/s. Commissioner of Central Excise, Delhi-III, Furgaon, reported at 2011 (21) STR (74) (Tri-Delhi), Cestat, New Delhi while rejecting party's appeal on merits has observed that transportation from factory gate to buyer's premises does not become input service merely on inclusion of certain items in assessable value and thus disallowed cenvat credit.

Asarath

- In case of Balaje Structural (India) P. Ltd. v/s. Commissioner of Central Excise & ST, Raipur, reported at 2015 (40) STR (74) (Tri-Delhi), Cestat, New Delhi while dismissing party's appeal has observed that appellant is not entitled to take Cenvat Credit or outward transportation services for the period post 01.04.2008.

18/- In view of the foregoing discussion, the **OIO is upheld** and the Appeal filed by the Appellant stands disposed.

Dr. Balbir Singh

(Dr. Balbir Singh)

Additional Director General (DGS),

Ahmedabad.

18/01/18

Date: 18/01/2018

F.No. V2/54/RAJ/2017

BY RPAD,

To:

M/s. Shree Digvijay Cement Co. Ltd.

Digvijay Gram 361140

District: Jamnagar

Copy to: *

1. The Chief Commissioner, CGST & Central Excise, Ahmedabad Zone.
2. The Commissioner, CGST & Central Excise, Rajkot/ Commissioner (Appeals), Rajkot.
3. Assistant Commissioner, Division-II, Rajkot.
4. The Jt/Addl Commissioner, Systems, CGST, Rajkot.
5. Guard File.