::आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE,
द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,
राजकोट / Rajkot – 360 001
Tele Fax No. 0281 – 2477952/2441142 Email: cexappealsrajkot@gmail.com

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/4/EA2/RAJ/2017 6932 & 6933 204 & 205	03 to 06/SUPDT/KCK/C.Ex. AR-II/2016-17	29.12.2016

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

RAJ-EXCUS-000-APP-194 -2017-18

आदेश का दिनांक / Date of Order: **22.01.2018** जारी करने की तारीख / Date of issue: **25.01.2018**

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. D. N. Engineers, 27 Dharamjivan Industrial Estate, B/H. S.T. Workshop,Rajkot,

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके से उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है:/
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way

(A) सीमा शुल्क ,केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम ,1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित 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- ३८००१६ को की जानी चाहिए :/
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at. 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये उपर 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 रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा :/

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

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमावली, 1994, के नियम 9(1) के तहत निर्धारित फार्म S.T.-5 की चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उसमें से एक प्रति प्रमाणित होनी चाहिए) और इसमें 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 रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा :/

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

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(i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत 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 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 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 For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

(ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवैट जमा की ली गई गलत राशि
(iii) सेनवैट 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 अर्ज़ी एवं अपील को लागू नहीं होंगे।/
For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,
Under Central Excise and Service Tax, "Duty Demanded" shall include :
(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(C) **भारत सरकार को पुनरीक्षण आवेदन :**
Revision application to Government of India:
इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंज़िल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid.

(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में।/
In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse

(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर अदा 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) निर्मित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इयूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा तत्पश्चात तिथि पर या बाद में पारित किए गए है।/
Credit of any duty allowed so 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, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है । /
In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

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

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

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

:: ORDER-IN-APPEAL ::

The Principal Commissioner, Central Excise and Service Tax, Rajkot (*hereinafter referred to as* "the appellant department") filed present appeal against the Orders-in-Original No. 03 to 06/SUPDT/KCK/C.EX.ARII/2016-17 dated 29.12.2016 (*hereinafter referred to as* "the impugned order") passed by the Superintendent, Central Excise Assessment Range – II, Division – I, Rajkot (*hereinafter referred to as* "the lower adjudicating authority") in the matter of M/s. D. N. Engineers, 27 – Dharamjivan Industrial Estate, Behind S. T. Workshop, Rajkot (*hereinafter referred to as* "the respondent").

2. The facts of the case in brief are that the respondent had availed cenvat credit of service tax paid on outward transportation services used for transportation of their finished goods during the period from June, 2007 to March, 2012. SCN was issued to the respondent on 10.07.2012 for recovery of cenvat credit of service tax along with interest and for imposing penalty under Cenvat Credit Rules, 2004 read with Central Excise Act, 1944 (hereinafter referred to as "the Act"). Thereafter, four periodical SCNs were issued on 04.05.2013; 07.05.2014; 16.04.2015 and 21.01.2016 for the period from April, 2012 to March, 2013; April, 2013 to March, 2014; April, 2014 to March, 2015 and April, 2015 to December, 2015 respectively demanding wrongly availed cenvat credit of Rs. 86,461/-; Rs. 81,762/-; Rs. 95,841/- and Rs. 89,836/- respectively (totally amounting to Rs. 3,53,900/-) and interest under Rule 14 of the Cenvat Credit Rules, 2004 (hereinafter referred to as "the CCR, 2004") read with Section 11A(1) and Section 11AA of the Act and to impose penalty under Rule 15 of the CCR, 2004 read with Section 11AC of the Act. The lower adjudicating authority decided four show cause notices vide impugned order wherein he dropped demand of Rs. 3,53,900/- and also proposal of recovery of interest and imposition of penalty.

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

(i) The impugned order is not proper and legally correct as the lower adjudicating authority has dropped demands by observing that sale has taken at buyers' place as possession of goods were transferred at buyers' premises in terms of Section 2(h) of the Act. The lower adjudicating authority has held that the sale made by the respondent was on 'FOR' basis and not on 'Ex-Factory' basis and concluded that the place of removal was buyers' premises in light of the Board Circular dated 23.08.2007.

(ii) The lower adjudicating authority has ignored that period involved in the present SCNs is after 01.04.2008. Prior to amendment in Rule 2(l) of the CCR, 2004, which defines "input service", vide Notification No. 10/2008-CE(NT) dated 01.03.2008, which came into force w.e.f. 01.04.2008, the definition of "input service" included the services used in or in relation to the clearance of final products 'from the place of removal'. However, after the amendment in the said Rule 2(l) w.e.f. 01.04.2008, the definition of input service has been amended and the same now reads as under:

"Rule 2(l) "input service" means any service,-

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

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

and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal;"

(Emphasis supplied)

(iii) As per above amendment, the cenvat credit in respect of outward transportation service after 01.04.2008 has been restricted, in relation to the clearance of final products, "upto the place of removal" only. Therefore, the reliance placed by the respondent on the Circular dated 23.08.2007, as amended is totally misplaced as this Circular clarifies the legal position in respect of input services on "outward transportation" for the period prior to 01.04.2008 only.

(iv) The lower adjudicating authority has wrongly relied on Board Circular No. 999/6/2015-CX, dated 28.02.2015 which clarify place of removal, since the same is not relevant to the present case, since as per paragraph 2 of the said circular, the same was issued to meet the demand of trade for a clarification regarding place of removal for the purpose of cenvat credit of input services, in the case of exports.

(v) Para 4 of the said Circular dated 28.02.2015 has clarified that in most of the

cases, handing over of the goods to the carrier/transporter for further delivery of the goods to the buyer, with the seller not reserving the right of disposal of the goods, would lead to passing on of the property in goods from the seller to the buyer and it is the factory gate or the warehouse or the depot of the manufacturer which would be the place of removal since it is here that the goods are handed over to the transporter for the purpose of transmission to the buyer.

(vi) Para 7 of the said Circular dated 28.02.2015 states that in most of the cases, place of removal would be the factory gate since it is here that the goods are unconditionally appropriated to the contract.

(vii) The definition of 'place of removal' is inserted vide Rule 2(qa) of the CCR, 2004 which makes it clear that place of removal means 'a factory or any other place of premises of production or manufacture of the excisable goods' or 'a warehouse or any other place or premises wherein the excisable goods have been permitted to be stored without payment of duty' or 'a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory, from where such goods are removed'. They relied on judgment of the Hon'ble High Court of Karnataka in the case of ABB Limited, reported as 2011 (23) S.T.R. 97 (Kar.), wherein the Hon'ble High Court has upheld the decision of the Larger Bench of the Tribunal that the services availed by a manufacturer for outward transportation of final products from the place of removal should be treated as input services in terms of Rule 2(l) (ii) of the CCR, 2004 and hence, the manufacturers shall be eligible to avail credit of the service tax paid on the value of such services. The Hon'ble High Court, however, while upholding the said order of the Tribunal, has clearly held in para 34 of their judgment that the said interpretation is valid till 01.04.2008. The Hon'ble High Court, in its order has clearly held that the substitution of the words 'clearance of final products from the place of removal' by way of amendment in Rule 2(l) of the CCR, 2004, by Notification No. 10/2008-CE(NT) dated 01.03.2008, substituting the word 'from' in the said phrase in place of 'upto' makes it clear that transportation charges were included in the phrase 'clearance from the place of removal' upto the date of the said substitution and it cannot be included thereafter. The appellant further relied on case law of Vesuvious India Ltd. reported as 2014 (34) S.T.R. 26 (Cal.) wherein held that:

> *"13. By the amendment made with effect from 1st April, 2008 substituting the word 'from' by the word 'upto' all that has been done is to clarify the issue. Neither the services rendered to the customer for the purpose of delivering the goods at the destination was covered*

by the definition of input service prior to 1st April, 2008, nor is the same covered after 1st April, 2008. If the definition provided in Section 2(l)(ii) is read a whole, if would appear that outward transportation charges or taxes paid in regard thereto is claimable only with regard to those transports which were from one place of removal to another place of removal."

(viii) In view of the above facts and the statutory provisions, as discussed above, the lower adjudicating authority has erred in dropping the proceedings initiated against the respondents vide four SCNs.

4. The respondent vide letter dated 16.05.2017 has submitted Memorandum of Cross-Objections, interalia, submitted as under:

4.1 Board vide Circular No. 97/8/2007 dated 23.08.2007 clarified that when good are cleared from factory but transportation paid by manufacturer then the goods are being delivered on FOR basis and the goods are in custody of the manufacturer till the goods delivered to the customer and in such circumstances the place of removal shall be the place of delivery in hands of the customer and not the factory gate; that in present case the goods cleared for home consumption on FOR prices for all cases and possession of the goods remained with the manufacturer till the goods delivered to the customer's place; that they submitted copies of Purchase Order in support of FOR transactions, which shows freight not charged from customers and hence they are eligible for cenvat credit of service tax paid for outward transportation.

4.2 The respondent has availed cenvat credit of service tax paid on outward transportation as per Rule 3(1)(ix) of the CCR, 2004 wherein clearly mentioned that the manufacturer as well as the producer of final product shall be allowed to take the credit of the service tax leviable under Section 66 of the Finance Act.

4.3 The respondent has availed cenvat credit of service tax paid on outward transportation with reference to definition of the 'input service' as laid down under Rule 2(l) of the CCR, 2004 and the explanation thereof, which specify that the input service means the service used by the manufacturer in or in relation to manufacture of final product and clearance of final product; that therefore, the service received from GTA for receiving raw material or clearance of final product i.e. outward transportation shall be considered as 'input service'; that Notification No. 10/2008–CE (NT) dated 01.03.2008 also clarified that the 'input service' includes services used in relation to outward transportation upto the place of removal; that vide Notification No. 21/2014–

CE (NT) dated 11.07.2014 sub-rule (qa) has been inserted in Rule 2 of the CCR, 2004 wherein clarified the phrase 'place of removal'; that Board vide Circular No. 988/12/2014-CX dated 20.10.2014 has clarified that 'the place where property in goods passes on to the buyer is relevant to determine "place of removal" and the place where sale has taken place is the place where the transfer in property of goods takes place from the seller to the buyer'; that they relied on following case laws:

(i) Man Trucks India Pvt. Ltd. reported as 2016-TIOL-163-CESTAT-DEL;

(ii) T K Warana SSK Ltd. reported as 2015 (37) STR 499 (Tri.Mum.);

(iii) P & H High Court's decision in case of Ambuja Cement Ltd.;

(iv) ABB Ltd. reported as 2011 (23) STR 97 (Kar);

(v) Parth Poly Wooven Pvt. Ltd. reported as 2012 (25) STR 4 (Guj).

5. Personal hearing in the matter was attended to by Shri H. G. Tanna, Superintendent on behalf of the appellant who reiterated Grounds of Appeal and submitted that the order passed is not legal and proper in view of the grounds of appeal. The respondent vide letter dated 21.11.2017 waived personal hearing.

Findings:

6. I have carefully gone through the facts of the case, the impugned order, the appeal memorandum, the memorandum of cross objections and written as well as oral submission made during the personal hearing. The issue to be decided in the present case is as to whether in the facts of the case, cenvat credit of service tax paid by the respondent on outward transportation is available to the respondent or not for the period from April, 2012 onwards.

7. I find that definition of "input service", as provided under Rule 2(l) of the CCR, 2004, substituted by Notification No. 3/2011-CE(NT) dated 01.03.2011, w.e.f. 01.04.2011, reads as under:

"(l) "input service" means any service, -

(i) .....; or

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

and includes services used in relation to modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer

networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal;"

(Emphasis supplied)

7.1 From the above, it is evident that "input service" means any service used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of the final products and clearance thereof upto the place of removal 'outward transportation upto the place of removal'. It is, therefore, clear that the service should be used by the manufacturer which has direct or indirect relation with the manufacture of final products and clearance of final products upto the place of removal. As per Section 4(3)(c) of the Act and Rule 2(qa) of the CCR, 2004, "place of removal" means a factory or any other place or premises of production or manufacture of excisable goods; a warehouse or any other place of premises wherein the excisable goods have been permitted to be stored without payment of duty or a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold.

7.2 I also find that CBEC vide Circular No. 97/8/2007-ST dated 23.08.2007 had clarified the issue of admissibility of cenvat credit of service tax paid on goods transport by road. The relevant text reads as under:

"(c) ISSUE: Up to what stage a manufacturer/consignor can take credit on the service tax paid on goods transport by road?

COMMENTS: This issue has been examined in great detail by the CESTAT in the case of M/s. Gujarat Ambuja Cements Ltd. vs CCE, Ludhiana [2007 (006) STR 0249 Tri-D]. In this case, CESTAT has made the following observations: -

"the post sale transport of manufactured goods is not an input for the manufacturer/consignor. The two clauses in the definition of 'input services' take care to circumscribe input credit by stating that service used in relation to the clearance from the place of removal and service used for outward transportation upto the place of removal are to be treated as input service. The first clause does not mention transport service in particular. The second clause restricts transport service credit upto the place of removal. When these two clauses are read together, it becomes clear that transport service credit cannot go beyond transport upto the place of removal. The two clauses, the one dealing with general provision and other dealing with a specific item, are not to be read disjunctively so as to bring about conflict to defeat the laws' scheme. The purpose of interpretation is to find harmony and reconciliation among the various

provisions".

Similarly, in the case of M/s Ultratech Cements Ltd vs CCE Bhavnagar 2007-TOIL-429-CESTAT-AHM, it was held that after the final products are cleared from the place of removal, there will be no scope of subsequent use of service to be treated as input. The above observations and views explain the scope of the relevant provisions clearly, correctly and in accordance with the legal provisions. In conclusion, a manufacturer/ consignor can take credit on the service tax paid on outward transport of goods up to the place of removal and not beyond that.

8.2 In this connection, the phrase 'place of removal' needs determination taking into account the facts of an individual case and the applicable provisions. The phrase 'place of removal' has not been defined in CENVAT Credit Rules. In terms of sub-rule (t) of rule 2 of the said rules, if any words or expressions are used in the CENVAT Credit Rules, 2004 and are not defined therein but are defined in the Central Excise Act, 1944 or the finance Act, 1994, they shall have the same meaning for the CENVAT Credit Rules as assigned to them in those Acts. The phrase 'place of removal' is defined under section 4 of the Central Excise Act, 1944. It states that, -

"place of removal" means –

(i) a factory or any other place or premises of production or manufacture of the excisable goods;

(ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be stored without payment of duty;

(iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory; from where such goods are removed. It is, therefore, clear that for a manufacturer/consignor, the eligibility to avail credit of the service tax paid on the transportation during removal of excisable goods would depend upon the place of removal as per the definition. In case of a factory gate sale, sale from a non-duty paid warehouse, or from a duty paid depot (from where the excisable goods are sold, after their clearance from the factory), the determination of the 'place of removal' does not pose much problem. However, there may be situations where the manufacturer/consignor may claim that the sale has taken place at the destination point because in terms of the sale contract /agreement (i) the ownership of goods and the property in the goods remained with the seller of the goods till the delivery of the goods in

acceptable condition to the purchaser at his door step; (ii) the seller bore the risk of loss of or damage to the goods during transit to the destination; and (iii) the freight charges were an integral part of the price of goods. In such cases, the credit of the service tax paid on the transportation up to such place of sale would be admissible if it can be established by the claimant of such credit that the sale and the transfer of property in goods (in terms of the definition as under section 2 of the Central Excise Act, 1944 as also in terms of the provisions under the Sale of Goods Act, 1930) occurred at the said place."

(Emphasis supplied)

7.3 CBEC vide Circular No. 988/12/2014-CX dated 20.10.2014 further clarified that -

"4) Instances have come to notice of the Board, where on the basis of the claims of the manufacturer regarding freight charges or who bore the risk of insurance, the place of removal was decided without ascertaining the place where transfer of property in goods has taken place. This is a deviation from the Board's circular and is also contrary to the legal position on the subject.

5) It may be noted that there are very well laid rules regarding the time when property in goods is transferred from the buyer to the seller in the Sale of Goods Act, 1930 which has been referred at paragraph 17 of the Associated Strips Case (supra) reproduced below for ease of reference –

"17. Now we are to consider the facts of the present case as to find out when did the transfer of possession of the goods to the buyer occur or when did the property in the goods pass from the seller to the buyer. Is it at the factory gate as claimed by the appellant or is it at the place of the buyer as alleged by the Revenue? In this connection it is necessary to refer to certain provisions of the Sale of Goods Act, 1930. Section 19 of the Sale of Goods Act provides that where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred. Intention of the parties are to be ascertained with reference to the terms of the contract, the conduct of the parties and the circumstances of the case. Unless a different intention appears; the rules contained in Sections 20 to 24 are provisions for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer. Section 23 provides that where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to

the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be expressed or implied and may be given either before or after the appropriation is made. Sub-section (2) of Section 23 further provides that where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purposes of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract."

6) It is reiterated that the place of removal needs to be ascertained in term of provisions of Central Excise Act, 1944 read with provisions of the Sale of Goods Act, 1930. Payment of transport, inclusion of transport charges in value, payment of insurance or who bears the risk are not the relevant considerations to ascertain the place of removal. The place where sale has taken place or when the property in goods passes from the seller to the buyer is the relevant consideration to determine the place of removal."

(Emphasis supplied)

7.4 I find that Circulars issued by CBEC clarify that cenvat credit in respect of service tax paid on outward transportation charges would be admissible only if the claimant establishes that the sale and the transfer of property in goods (in terms of the definition under Section 2 of the Act as also in terms of the provisions under the Sale of Goods Act, 1930) occurred at the said place. It also clarifies that payment of transport, inclusion of transport charges in value, payment of insurance or who bears the risk are not the relevant considerations. The Circulars very categorically stipulate that the place where sale has taken place or when the property in goods passes from the seller to the buyer is the relevant consideration to determine the place of removal.

7.5 I find that Section 19(1) of the Sale of Goods Act, 1930 would be relevant to ascertain the place where sale has taken place or when the property in goods passes from the seller to the buyer. The provisions of Section 19(1) of the Sale of Goods Act, is reproduced as under: -

"19. Property passes when intended top -

(1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred."

(Emphasis supplied)

7.6 In view of the above provisions of the Sale of Goods Act, 1930, it is clear that the title of the goods passes from seller to the buyer at such time as the parties to the contract intend it to be transferred. The intention is to be ascertained with reference to the terms of the contract, the conduct of the parties and the circumstances of the case. In the present case, the lower adjudicating authority held as under:-

"27. In the submissions dated 09.11.2016, M/s. D. N. Engineers has submitted few Purchase Orders for financial year 2012-13 (two numbers); 2013-14 (six numbers); 2014-15 (six numbers) and for the period from April, 2015 to December, 2015 (two numbers) which has been verified. These purchase orders are covering major period of the show cause notices. All the documents are scanned copies/computer generated and goods have been supplied as per the same. Invoices does not reveal and mention about extra transportation charges and all contracts submitted mentions are FOR terms. Delivery destination is at the buyers premises in all the contracts.

28. On perusal of the agreements submitted by the party, I find that as per the agreement entered into between the noticee and their buyer, the goods had been delivered on FOR basis at the premises/site of the buyers and charges including the transportation and central excise duty are integrated in the assessable value, and as per invoice central excise duty liability has been discharged by the noticee on this integrated assessable value.

29. .....

30. .....

31. .....

32. Thus, the invoices submitted by the assessee are required to be examined with regard to the facts when the property in goods are passing from the seller to the buyers. In the present case, the assessee has produced documents to substantiate their claim that the transactions were on FOR basis and that they have satisfied the conditions stipulated under the provisions of the Act, Rules framed thereunder and instructions issued in this behalf. For ease of understanding, analysis of one invoice is made hereunder:

(i) Copy of invoice: On perusal of sample copy of invoice no. 305 dated 10.09.2012, it is observed that various excisable goods have been sold to M/s. Crompton Greaves Ltd. They have mentioned P. O. No. & date in the

relevant invoice, item code etc. It is seen that the Terms & Conditions of Supply have been mentioned as under:

1. *Delivery Terms: INCO Terms 2012/As per Your Purchase Order*
2. *Interest @24% will be charged on unpaid balance after due date*
3. *Until the full amount of this bill received by us, we shall have lien (unpaid vendor's lien) on the goods of the goods of the amount payable to us.*
4. *All terms of business are subject to RAJKOT jurisdiction only.*

32.1 On perusal of copy of relevant P.O./contracts 5500053850 and 5500063011, it has been specified as to at which plant, the delivery has to be given by the supplier. Further, it has been specifically mentioned that:
DELIVERY AT OUR AHMEDNAGAR WORKS.
TRANSPORT IS TO BE ARRANGED BY YOU AND MATERIAL TO BE DESPATCHED ON FREIGHT PAID BASIS. FREIGHT TERMS AND CONDITIONS ATTACHED, APPLY TO THIS PURCHASE ORDER.

32.2 para 9 of the terms and conditions (Annexure to Purchase Order) reads as under:

8. *Transfer or Ownership and Risks:*
   Ownership of and risks related to, the goods, shall be transferred from the Supplier to the Buyer, only upon written acceptance by the Buyer of delivered Goods, at the delivery point stipulated in this PO.

32.3 para 11 of the terms and conditions reads as under:

9. *Acceptance of Goods*
   (b) In case no objection is raised in writing, by the Buyer, regarding acceptance of Goods within 15 days from the date of delivery, unless an extended time duration is mutually agreed, the actual delivery date of the Goods shall be deemed as the date of acceptance.

32.4 Para 23 of the terms and conditions viz. Enforcement of rights reads as under:

(b) To enforce their respective rights under this PO, the parties will also be entitled to take legal action. Transactions contained in this PO will

be deemed to have taken place at the address of the Buyer, and accordingly the jurisdiction will be the Buyer's location."

7.7 The lower adjudicating authority has, taken reliance on the certificate dated 09.11.2016 of Shri Dharmendra V. Joshi, Chartered Accountant, M. No. 47310 wherein it is certified that the sale value of the goods is on FOR basis; that responsibility of the transportation is on the respondent as per terms and conditions of Purchase Order of various buyers as per the list attached therewith and that the respondent is responsible to deliver all the goods at business premises of the buyers; that the transportation cost is included in the sale value and borne by the respondent and that as per the sale policy of the respondent, lien on the goods will remain with them till the receipt of the full payment.

7.8 In view of above, I find that the lower adjudicating authority has critically examined the Terms & Conditions of the sale specified in Agreement and invoices issued for removal of excisable goods and has correctly held that sale of goods completed when the goods reached at the premises of buyers, who took delivery at their door step.

7.9 I find that the respondent has produced sufficient documentary evidences to show that (i) sale of goods had taken place at the destination place; (ii) the ownership of goods and the property in the goods remained with the respondent till delivery of the goods in acceptable condition to the purchasers at their door step; (iii) the respondent bore the risk of loss of or damage to the goods during transit to the destination; (iv) the outward freight charges formed part of the price of goods on which central excise duty paid and (v) the sale and the transfer of property in goods occurred at the destination place and all these put together prove that the place of removal is the place of delivery of the buyers. Accordingly, I hold that the respondent is eligible to avail cenvat credit of service tax paid on outward transportation charges.

7.10 The above decision also finds support from the final order of the Hon'ble High Court of Karnataka in the case of Madras Cements Limited - 2015 (40) STR 645 (Kar.) wherein it has been held that:

"8. Having heard learned counsel for the parties and considering the facts and circumstances of this case, we are of the considered view that as long as the sale of the goods is finalized at the destination, which is at the doorstep of the buyer, the change in definition of 'input service' which came into effect from 1-4-2008 would not make any difference. A perusal of invoices makes it dear that the goods were to be delivered and sale

completed at the address of the buyer and no additional charge was levied by the assessee for such delivery. From these facts it is clear that the sale was completed only when the goods were received by the buyer. The Circular dated 20-10-2014 issued by the Central Board of Excise and Customs also, in paragraph-6 makes it clear that 'payment of transport, inclusion of transport charges in value, payment of insurance or who bears the risk are not the relevant considerations to ascertain the place of removal.'

9. As per the said Circular, the place of removal has to be ascertained in terms of Central Excise Act, 1944 read with the provisions of the Sale of Goods Act, 1930 which has been dealt with in detail in the said Circular. According to the provisions of the Sale of Goods Act, 1930, the intention of the parties as to the time when the property in goods has to pass to the buyer is of material consideration. The record clearly shows that the intention of the parties was that the sale would be complete only after goods are delivered by the seller at the address of the buyer. The assessing officer as well as the appellate authority have held that the assessee would not be entitled to the benefit merely because no documentary evidence has been adduced to establish the fact of insurance coverage by the assessee. In our view, who pays for insurance or bears the risk of goods in transit would not be a material consideration. The same has also been made clear by the Central Board of Excise and Customs, Department of Revenue, Ministry of finance, in its Circular dated 20-10-2014.

12. Since we are of the opinion that the sale had concluded only after the delivery of the goods was made at the address of the buyer, in the facts of the present case the appellant-assessee would be entitled to the benefit of Cenvat credit on Service Tax paid on outward transportation of goods by the assessee even after 1-4-2008. The appellant-assessee would thus be entitled to such benefit for the period 1-4-2008 to 31-7-2008 which has been denied to it by the authorities below."

(Emphasis supplied)

7.11 I also find that the above ratio has been followed by the Hon'ble High Court of Punjab & Haryana in the case of Ambuja Cement Ltd. reported as 2009 (236) ELT 431 (P&H) wherein it has been held that cenvat credit of service tax paid on outward transportation is admissible.

8. In view of the above, I find no reason to interfere with the findings of lower

adjudicating authority. Accordingly, I uphold the impugned order and reject the appeal filed by the department.

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

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

(कुमार संतोष)
आयुक्त (अपील्स)

By R.P.A.D.

To,

1	The Commissioner, CGST & Central Excise, Rajkot Commissionerate, GST Bhawan, Race Course Ring Road, Rajkot	आयुक्त, सीजीएसटी एवं के उ.शु., जीएसटी भवन, रेस कोर्स रिंग रोड, राजकोट
2	M/s. D. N. Engineers, 27 – Dharamjivan Industrial Estate, Behind S. T. Workshop, Rajkot.	मे. डी. एन. इंजीनीयर्स, २७-धरमजीवन इंडस्ट्रियल इस्टेट, एस. टी. वर्कशॉप के पीछे, राजकोट.

Copy for information and necessary action to:-

1. The Chief Commissioner, CGST & Central Excise, Ahmedabad Zone, Ahmedabad for kind information please.
2. The Assistant Commissioner, CGST & Central Excise Division-I, Rajkot.
3. Guard file