:: प्रधान आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::
O/O THE PRINCIPAL 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

सत्यमेव जयते

रजिस्टर्ड डाक ए.डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date:
	V2/514 /BVR/2017	41/Excise/Demand/2017-18	27-11-2017

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

BHV-EXCUS-000-APP-001-2019

आदेश का दिनांक / Date of Order:	21.01.2019	जारी करने की तारीख / Date of issue:	22.01.2019

कुमार संतोष, प्रधान आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri Kumar Santosh, Principal Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं 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/ST / GST, Rajkot / Jamnagar / Gandhidham :

घ अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name & Address of the Appellants & Respondent :-

M/s G.P. Mangalani Foods Pvt. Ltd., Plot No. 1, Block No. 104, Opp. Tagadi Road, Ghoga Budhel Road,Tagdi, Bhavnagar-364002.

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 प्रपत्र EA-3 को चार प्रतियों में दर्ज कियी जाना चाहिए । इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की माँग ,ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमश: 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 आधीनयम, 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 क्रमश: 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/-.

(i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमावली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकती एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (इनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। /
The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

(ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए में अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की ली गई गलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं॰ 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन 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 मामलो में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत् अवर सचिव, भारत् सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

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

(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /
In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं॰ 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समयावधि पर या बाद में पारित किए गए है।/
Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, की 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 रूपये या उससे कम हों तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 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 filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

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

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

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

M/s G.P. Manglani Foods (P) Ltd, Plot No. 1, Block No. 104, Budhel-Ghogha Road, Ghogha, Bhavnagar (*hereinafter referred to as* "Appellant") has filed Appeal No. V2/514/BVR/2017 against Order-in-Original No. 41/Excise/Demand/2017-18 dated 27.11.2017 (*hereinafter referred to as* 'impugned order') passed by the Asst. Commissioner, Central Excise & GST, Bhavnagar-1 Division, Bhavnagar (*hereinafter referred to as* 'lower adjudicating authority').

2. The brief facts of the case are that the Appellant having Registration No. AAACG787LXM001 was engaged in the manufacture of Sugar Boiled Confectionary falling under Chapter sub-Heading No. 17049020 of the Central Excise Tariff Act, 1985 and was availing Cenvat credit under the Cenvat Credit Rules, 2004 (*hereinafter referred to as "CCR, 2004"*), on behalf of M/s Parle Biscuits (P) Ltd (*hereinafter referred to as "M/s Parle"*) on job work basis and clearing the same on payment of Central Excise duty.

2.1 During the course of Audit, it was observed that the Appellant had availed Cenvat credit of Rs. 10,04,381/- during the period from 25.10.2012 to 28.01.2015 on the basis of invoices issued by M/s Parle who had transferred said Cenvat credit to the Appellant as Input Service Distributor on the ground that M/s Parle were not office of the Appellant and hence, not covered within the definition of 'Input Service Distributer' under Rule 2(m) of CCR, 2004 and Cenvat credit availed by the Appellant on the basis of invoices issued by M/s Parle was improper and inadmissible.

2.2 Show Cause Notice No. V.ST/15-45/Audit-III/ADC-31/15-16 dated 2.2.2016 was issued to the Appellant calling them to show cause as to why Cenvat credit of Rs. 10,04,381/- wrongly availed and utilized should not be recovered from them under Rule 14 of CCR,2004 read with Section 11A(4) of the Central Excise Act, 1944 (*hereinafter referred to as "Act"*) along with interest under Rule 14 and proposing imposition of penalty under Rule 15(2) of CCR,2004 read with Section 11AC of the Act.

2.2 The above Show Cause Notice was adjudicated vide the impugned

order which held that the Appellant was not a unit of M/s Parle but was doing jobwork for them and therefore availment of Cenvat credit by the Appellant on the basis of invoices issued by M/s Parle as input service distributor is improper and inadmissible in terms of Rule 7 of the CCR, 2004. The impugned order disallowed Cenvat credit of Rs. 10,04,381/- wrongly availed and utilized by the Appellant and ordered for its recovery along with interest under Rule 14 of CCR,2004. The impugned order imposed penalty of Rs. 10,04,381/- under Rule 15(2) of CCR,2004 read with Section 11AC of the Act upon the Appellant.

3. Being aggrieved with the impugned order, the Appellant has preferred appeal on various grounds, *inter alia*, as below :-

(i) That they manufacture 'Parle' brand biscuits as a contract manufacturing unit under clause (ii) of Notification No. 36/2001-CE(NT) dated 26.6.2001 and hence they are 'manufacturing unit' of service distributor i.e. M/s Parle as specified under Rule 7 of CCR, 2004. The credit of tax paid in respect of goods manufactured by such 'manufacturing units on behalf of M/s Parle where the input services are used in manufacture of final products, the credit would not be deniable. In light of provisions of Notification No. 36/2001-CE(NT), the credit taken on ISD invoices is merely accounted by Appellants in terms of obligation casted upon them as 'manufacturing unit on behalf of' principal as envisaged under clause (ii) of notification supra. Thus, credit accounting and its utilization on Parle branded final products in terms of clause(ii) is permissible and allowed as per Rule 7 of CCR,2004.

(ii) That biscuits manufactured on behalf of the principal manufacturer M/s Parle are cleared from the factory under invoice which is Appellant's name A/c of M/s Parle and entire manufacturing activities are supervised and controlled by the officers of M/s Parle. Further, the duty is paid on Retail Sale Price declared by the Principal on the package of biscuit. These facts establish that manufacturing is on behalf of principal in terms of clause (ii) of Notification *supra*. Thus, denial of credit on the grounds that the Appellant is not manufacturing unit of M/s Parle is not sustainable.

(iii) That the SCN was issued on 2.2.2016 for the period 25.10.2012 to 28.1.2015 is barred by limitation; that availment of Cenvat credit on ISD

invoices was declared in ER-1 return hence availment of credit was within the knowledge of the Department and therefore findings of suppression / mis-statement are incorrect and baseless; that they have paid Rs. 27,380/- along with interest pertaining to Cenvat credit availed during normal period of limitation.

(iv) That they were under bonafide belief that they were manufacturing unit of M/s Parle and hence, eligible to avail Cenvat credit on the basis of invoices issued by input service distributor. There was no intent to evade payment of duty and hence, penalty should not be imposed upon them and relied upon the judgement of the Hon'ble Supreme Court passed in the case of Hindustan Steel Ltd-1978 (2) ELT 159 (SC).

4. Notices were served to the Appellant for Personal Hearing scheduled on 31.10.2018, 8.11.2018, 27.11.2018 and 14.12.2018. However, the Appellant did not appear on any of the four dates nor requested for adjournment. I, therefore, proceed to decide the appeal on the basis of the records available including memorandum of Appeal.

Findings:

5. I have carefully gone through the facts of the case and the submissions of the appellant in the memorandum of appeal. The issue to be decided is whether the Appellant as job worker has rightly availed Cenvat credit distributed by M/s Parle Biscuits (P) Ltd as Input Service Distributor or not.

6. I find that the lower adjudicating authority has disallowed Cenvat credit availed by the Appellant on the ground that the Appellant was not a unit of M/s Parle but was doing jobwork for them and therefore, availment of Cenvat credit by the Appellant on the basis of invoices issued by M/s Parle as input service distributor is improper and inadmissible in terms of Rule 7 of CCR, 2004. On the other hand the Appellant has contended that they manufacture 'Parle' brand biscuits as a contract manufacturing unit under clause (ii) of Notification No. 36/2001-CE(NT) dated 26.6.2001 and hence they are 'manufacturing unit' of service distributor i.e. M/s Parle as specified under Rule 7 of CCR, 2004; that the SCN is barred by limitation of time since availment of credit was within the knowledge of the Department.

6.1 I would like to examine the definition of 'Input Service Distributor' under Rule 2(m) of CCR,2004, as it existed during period under reference, which reads as under:

> " 'input service distributor' means an office of the manufacturer or producer of final products or provider of output service, which receives invoices issued under rule 4A of the Service Tax Rules, 1994 towards purchases of input services and issues invoice, bill or, as the case may be, challan for the purposes of distributing the credit of service tax paid on the said services to such manufacturer or producer or provider, as the case may be;"

6.2 I find that the provisions relating to distribution of credit by input service distributor are governed by Rule 7 of CCR, 2004 which are reproduced as under as it existed during the period under reference:

> **RULE 7. Manner of distribution of credit by input service distributor.** — The input service distributor may distribute the CENVAT credit in respect of the service tax paid on the input service to its manufacturing units or units providing output service, subject to the following conditions, namely :—
>
> (a) the credit distributed against a document referred to in rule 9 does not exceed the amount of service tax paid thereon;
> (b) credit of service tax attributable to service used by one or more units exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be distributed;
> (c) credit of service tax attributable to service used wholly by a unit shall be distributed only to that unit; and
> (d) credit of service tax attributable to service used by more than one unit shall be distributed pro rata on the basis of turnover of such units during the relevant period to the total turnover of all its units, which are operational the current year, during the said relevant period;

6.3 The above provisions clearly state that the input service distributor may distribute the Cenvat credit in respect of service tax paid on the input service to its manufacturing units or units providing output service. In the present case, M/s Parle has distributed Cenvat credit to the Appellant as input service distributor under Rule 7 of CCR, 2004. However, the Appellant is not manufacturing unit of M/s Parle since both, M/s Parle and the Appellant, are separate legal entities. Hence, M/s Parle cannot be considered as an office of the Appellant and consequently Cenvat credit distributed by M/s Parle to the Appellant under Rule 7 of CCR, 2004 is improper. Accordingly, I am of the view that the Appellant is not eligible to avail Cenvat credit on the strength of invoices issued by M/s Parle as input service distributor.

6.4 I rely on the order passed by the Hon'ble CESTAT, Mumbai in the case of Sunbell Alloys Co. of India Ltd. reported as 2014 (34) S.T.R. 597 (Tri. - Mumbai), wherein it has been held that,

> "5.7 ... ... As per Rule 2(m) of the CCR, 2004 'input service distributor' means an office of the manufacturer or producer of output service. In this case, the distributor is M/s. Merck Specialties Ltd. whereas the manufacturers are the appellants. Since these are separate legal entities, office of M/s. Merck cannot be considered as an office of the manufacturer and hence Merck cannot be considered as an 'input service distributor' as defined under Rule 2(m) of the CCR, 2004. Further, as per Rule 7, the input service distributor has to distribute the credit to 'its manufacturing units'. The manufacturing units of the appellants are not that of M/s. Merck Specialties Ltd. and these units belong to the appellants and therefore, M/s. Merck cannot distribute Cenvat credit to the appellants under Rule 7 of CCR, 2004 as aforesaid. The expression 'its manufacturing unit' specified under Rule 7 has to be interpreted in terms of the ratio of the decision of the Tribunal in the case of *Panacea Biotec Ltd.* (cited supra). In that case, for availing the benefit of Notification 23/98-Cus., a condition was prescribed that the importer should utilise the imported bulk drugs in the manufacture of life saving drugs in his factory. A question arose whether 'his factory' would include factory of job-worker and it was held that job-workers' factory will not come within the purview of 'his factory' mentioned in the said notification. In the present case, the expression used is "its manufacturing unit". The said expression would mean that the manufacturing unit of the input service distributor and not that of the job-worker and, therefore, the contention of the appellants that they are eligible for the input service credit distributed by M/s. Merck Specialties Ltd. is not in accordance with the provisions of input service distribution scheme envisaged under CCR, 2004.
>
> 5.8 As regards the contention of the appellants that, if input service credit is denied, it would result in cascading effect of taxes and would militate against the broad principles enunciated by the Finance Minister in his budget speech, it is a settled position of law that law has to be interpreted as it is expressly worded. The Finance Minister's speech and the intentions are not relevant for interpreting the law so long as the wordings of the law are very clear. In the present case, the input service distributor scheme under CCR, 2004 envisages distribution of input service tax credit by an office of the manufacturer to its own manufacturing units. There is no ambiguity in the wordings of these provisions in the CCR, 2004. If that be so, we need not go into the purpose and object of the scheme or the Finance Minister's speech to ascertain the scope of the provisions. It would also be pertinent to note that input service distribution is a special scheme or a special facility made available subject to certain conditions. Normally, a manufacturer or producer receives the service in his own factory; input service distribution scheme provides for receipt of input services at the head office of the manufacturer so that credit can be distributed. And this is subject to the condition that the credit is distributed by the manufacturing unit's head office/office and the distribution has to be made among the various manufacturing units belonging to the same entity. The scheme does not envisage distribution of credit to manufacturing units belonging to others. In the present case, we have already seen that the distribution has been done by M/s. Merck Specialties Ltd. who cannot be considered as input service distributor at all as the appellants are job-workers, and the appellant's manufacturing units do not belong to M/s. Merck Specialties Ltd. Further, office of M/s. Merck Specialties cannot be considered as an office of the appellant. Therefore, the distribution of credit by M/s. Merck Specialties Ltd. to the appellants are contrary to the provisions of law and accordingly, they are not eligible for the input service credit distributed by Merck Specialties Ltd. and we hold accordingly."

7. I find that the Appellant has vehemently argued that they manufactured 'Parle' brand biscuits as a contract manufacturing unit under clause (ii) of Notification No. 36/2001-CE(NT) dated 26.6.2001 and hence they are 'manufacturing unit' of service distributor i.e. M/s Parle as specified under Rule 7 of CCR, 2004. It is pertinent to examine clause(ii)

of Notification *supra* which is reproduced as under:

> (ii) every manufacturer who gets his goods manufactured on his account from any other person subject to the conditions that the said manufacturer authorises the person, who actually manufactures or fabricates the said goods to comply with all procedural formalities under the Central Excise Act, 1944 (1 of 1944) and the rules made thereunder, in respect of the goods manufactured on behalf of the said manufacturer and, in order to enable the determination of value of the said goods under section 4 or section 4A of the said Act, to furnish information including the price at which the said manufacturer is selling the said goods and the person so authorised agrees to discharge all liabilities under the Act and the rules made thereunder :

7.1 The above provisions mandates that the manufacturer who gets his goods manufactured on jobwork basis to furnish information, including the price at which the finished goods are sold, to the jobworker to enable him to determine value of the goods under Section 4 / 4A of the Act for the purpose of discharge of duty by the jobwoker. Thus, the said provisions are no way related to distribution of credit by input service distributor. The Appellant cannot take shelter of Clause(ii) of Notification No. 36/2001-CE(NT) when provisions of Rule 7 of CCR, 2004 are very clear and unambiguous as discussed in para *supra*. I, therefore, hold that this argument is devoid of merits.

8. The Appellant has contended that Show Cause Notice is barred by limitation; that availment of Cenvat credit on ISD invoices was declared in ER-1 return under column 'credit taken on input services' and hence, availment of credit was within the knowledge of the Department and therefore, allegation of suppression of facts is incorrect. I find that the Appellant had never intimated to the Department that they were availing Cenvat credit on the basis of invoices issued by M/s Parle in terms of Rule 7 of CCR, 2004. Merely mentioning consolidated figures of credit taken on input services in ER-1 returns would not enable the Department to acquire knowledge about availment of said improper Cenvat credit by the Appellant. I further find that as per Rule 9(5) of CCR, 2004, burden of proof regarding admissibility of the Cenvat credit is upon the manufacturer of the goods taking such credit. Hence, it was obligatory on the part of the Appellant to confirm admissibility of credit before taking the credit. In view of this deliberate suppression of facts on the part of the appellant, the invocation of extended period of limitation is totally justified and confirmation of demand is sustainable.

9. In view of above factual position, I hold that the Appellant is not eligible to avail Cenvat credit on the basis of invoices issued by M/s Parle as input service distributor. I, therefore, uphold the confirmation of demand of Rs. 10,04,381/-. Since, demand is confirmed, it is natural consequence that confirmed demand is to be paid along with interest.

10. I find that suppression of facts has been held to be correct in this case and hence, penalty under Rule 15(2) of CCR,2004 read with Section 11AC of the Act is mandatory. The Hon'ble Apex Court in the case of Dharamendra Textile Processors reported as 2008 (231) E.L.T. 3 (S.C.) has held that once there is suppression of facts, imposition of penalty is mandatory. The ratio of the said decision applies to the facts of the present case. I, therefore, uphold the equal penalty imposed on the Appellant under Section 11AC of the Act read with Rule 15(2) of CCR, 2004.

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

सत्यापित,

विपुल शाह
अधीक्षक (अपील्स)

21/1/2019
(कुमार संतोष)
प्रभारी आयुक्त(अपील्स)

By R.P.A.D.

To,
M/s G.P. Manglani Foods (P) Ltd,
Plot No. 1, Block No. 104,
Budhel-Ghogha Road,Ghogha,
Bhavnagar.

Copy to:-

1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone Ahmedabad for his kind information please.
2) The Commissioner, GST & Central Excise, Bhavnagar Commissionerate, Bhavnagar for necessary action.
3) The Asst Commissioner, GST & Central Excise, Bhavnagar-1 Division, Bhavnagar Commissionerate for necessary action in the matter.
4) Guard File.