



मुख्य प्रमुख अधिकारी (मुख्य प्रमुख) का कार्यालय
 EXCISE PRINCIPAL (COMMISSIONER (PRINCIPAL)) GST & CENTRAL EXCISE



12, नेशनल हाइवे, एच. एच. एच. रोड, बंगलूर
 केरल के. पी. 560 002, केरल के. पी. 560 002

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आदेश का विवरण -

क्र. सं.	आदेश संख्या Apparition No.	दिनांक Date	विवरण Name
1	150/2019, 151/2019, 152/2019, 153/2019	27/06/2019	27/06/2019
2	154/2019, 155/2019, 156/2019	27/06/2019	27/06/2019
3	157/2019, 158/2019, 159/2019	27/06/2019	27/06/2019
4	160/2019, 161/2019, 162/2019	27/06/2019	27/06/2019
5	163/2019, 164/2019, 165/2019	27/06/2019	27/06/2019
6	166/2019, 167/2019, 168/2019	27/06/2019	27/06/2019
7	169/2019, 170/2019, 171/2019	27/06/2019	27/06/2019
8	172/2019, 173/2019, 174/2019	27/06/2019	27/06/2019
9	177/2019, 178/2019, 179/2019	27/06/2019	27/06/2019
10	180/2019, 181/2019, 182/2019	27/06/2019	27/06/2019
11	183/2019, 184/2019, 185/2019	27/06/2019	27/06/2019
12	186/2019, 187/2019, 188/2019	27/06/2019	27/06/2019
13	189/2019, 190/2019, 191/2019	27/06/2019	27/06/2019
14	192/2019, 193/2019, 194/2019	27/06/2019	27/06/2019
15	195/2019, 196/2019, 197/2019	27/06/2019	27/06/2019
16	198/2019, 199/2019, 200/2019	27/06/2019	27/06/2019
17	201/2019, 202/2019, 203/2019	27/06/2019	27/06/2019
18	204/2019, 205/2019, 206/2019	27/06/2019	27/06/2019
19	207/2019, 208/2019, 209/2019	27/06/2019	27/06/2019
20	210/2019, 211/2019, 212/2019	27/06/2019	27/06/2019
21	213/2019, 214/2019, 215/2019	27/06/2019	27/06/2019
22	216/2019, 217/2019, 218/2019	27/06/2019	27/06/2019
23	219/2019, 220/2019, 221/2019	27/06/2019	27/06/2019
24	222/2019, 223/2019, 224/2019	27/06/2019	27/06/2019
25	225/2019, 226/2019, 227/2019	27/06/2019	27/06/2019
26	228/2019, 229/2019, 230/2019	27/06/2019	27/06/2019
27	231/2019, 232/2019, 233/2019	27/06/2019	27/06/2019
28	234/2019, 235/2019, 236/2019	27/06/2019	27/06/2019
29	237/2019, 238/2019, 239/2019	27/06/2019	27/06/2019
30	240/2019, 241/2019, 242/2019	27/06/2019	27/06/2019
31	243/2019, 244/2019, 245/2019	27/06/2019	27/06/2019
32	246/2019, 247/2019, 248/2019	27/06/2019	27/06/2019
33	249/2019, 250/2019, 251/2019	27/06/2019	27/06/2019
34	252/2019, 253/2019, 254/2019	27/06/2019	27/06/2019
35	255/2019, 256/2019, 257/2019	27/06/2019	27/06/2019
36	258/2019, 259/2019, 260/2019	27/06/2019	27/06/2019
37	261/2019, 262/2019, 263/2019	27/06/2019	27/06/2019
38	264/2019, 265/2019, 266/2019	27/06/2019	27/06/2019
39	267/2019, 268/2019, 269/2019	27/06/2019	27/06/2019
40	270/2019, 271/2019, 272/2019	27/06/2019	27/06/2019
41	273/2019, 274/2019, 275/2019	27/06/2019	27/06/2019
42	276/2019, 277/2019, 278/2019	27/06/2019	27/06/2019
43	279/2019, 280/2019, 281/2019	27/06/2019	27/06/2019
44	282/2019, 283/2019, 284/2019	27/06/2019	27/06/2019
45	285/2019, 286/2019, 287/2019	27/06/2019	27/06/2019
46	288/2019, 289/2019, 290/2019	27/06/2019	27/06/2019
47	291/2019, 292/2019, 293/2019	27/06/2019	27/06/2019
48	294/2019, 295/2019, 296/2019	27/06/2019	27/06/2019
49	297/2019, 298/2019, 299/2019	27/06/2019	27/06/2019
50	300/2019, 301/2019, 302/2019	27/06/2019	27/06/2019

1. आदेश का विवरण (Details of Order)

GIV-EXCISE-1000-APP-002-11; GIN-2019

आदेश का दिनांक: 20/6/2019 जारी करने की तिथि: 20/6/2019
 Date of Order: 20/6/2019 Date of Issue: 20/6/2019

द्वारा जारी किया गया (Issued by): श्री. सुनील कुमार सांतोषी (Shri. Sunil Kumar Santoshi)
 Issued by: Shri. Sunil Kumar Santoshi, Principal Commissioner (Special), Excise

1. आदेश का विवरण (Details of Order):
 आदेश का दिनांक: 20/6/2019 जारी करने की तिथि: 20/6/2019
 Date of Order: 20/6/2019 Date of Issue: 20/6/2019

2. आदेश का विवरण (Details of Order):
 आदेश का दिनांक: 20/6/2019 जारी करने की तिथि: 20/6/2019
 Date of Order: 20/6/2019 Date of Issue: 20/6/2019

3. आदेश का विवरण (Details of Order):
 आदेश का दिनांक: 20/6/2019 जारी करने की तिथि: 20/6/2019
 Date of Order: 20/6/2019 Date of Issue: 20/6/2019

4. आदेश का विवरण (Details of Order):
 आदेश का दिनांक: 20/6/2019 जारी करने की तिथि: 20/6/2019
 Date of Order: 20/6/2019 Date of Issue: 20/6/2019

5. आदेश का विवरण (Details of Order):
 आदेश का दिनांक: 20/6/2019 जारी करने की तिथि: 20/6/2019
 Date of Order: 20/6/2019 Date of Issue: 20/6/2019

ORDER IN APPEAL

The present 7 appeals have been filed by M/s. Madhu Silpa Pvt. Ltd. having separate registration for different manufacturing units (hereinafter referred to as "Appellant") against the Orders-In-Original as mentioned below (hereinafter referred to as the impugned orders) passed by the Assistant Commissioner, CGST Division, Bhavnagar-1, Bhavnagar (hereinafter referred to as the lower adjudicating authority).

Table 'A'

Sr. No.	Unit of the Appellant	OIO No. & Date	Genrel Cr. Amount	Period Involved
1.	Plot No 21, GIDC, Chhara Bhavnagar	32/EXCISE/DEMAND/15-19 Dated 27.4.2018	2,39,656/-	Feb, 2016 to Jan, 2017
2.	(Reg. No. AADCM4361JXMD01)	32/EXCISE/DEMAND/15-19 Dated 27.4.2018	2,73,238/-	Jan, 2017 to May, 2017 (Credit Taken in subsequent months Feb 2017 to June, 2017)
3.	DU-I, Plot No. 54, 55, 56 A, D.153 & 1373, GIDC Chhara Bhavnagar	34/EXCISE/DEMAND/15-19 Dated 27.4.2018	18,97,752/-	Feb, 2016 to Jan, 2017
4.	(Reg. No. AADCM4361JXMD03)	34/EXCISE/DEMAND/15-19 Dated 27.5.2018	7,39,216/-	Jan, 2017 to May, 2017 (Credit Taken in subsequent months Feb 2017 to June, 2017)
5.	DU-II Plot No. 73/74, GIDC, Chhara Bhavnagar	35/EXCISE/DEMAND/15-19 Dated 27.4.2018	3,05,435/-	Feb, 2016 to Jan, 2017
6.	(Reg. No. AADCM4361JXMD05)	35/EXCISE/DEMAND/15-19 Dated 27.5.2018	2,71,289/-	Jan 2017 to May 2017 (Credit Taken in subsequent months Feb, 2017 to June, 2017)
7.	DU-III, Plot No 147, Vardha, Bhavnagar	36/EXCISE/DEMAND/15-19 Dated 31.5.2018	43,55,597/-	Apr 2016 to May 2017 (Credit Taken in subsequent months May, 2016 to June, 2017)

2. The brief facts of the case are that the appellant provided detailed information regarding availment and utilization of Genrel credit of Service Tax paid on outward transportation of goods on being asked by the Range Superintendent. The scrutiny of information revealed that the appellant during the period availed Genrel credit of service tax paid on outward transportation of the finished goods beyond the place of removal as per Table A above.

2.1 Snow Cement Mafra was allowed to file appeal for their units for recovery of wrongly assessed Service tax with interest under Rule 14 of the Central Excise Rules 2004 (hereinafter referred to as 'the CCR,2004') read with Section 14 of the Central Excise Act, 1944 (hereinafter referred to as 'the Act'). The demands of wrongly assessed Service tax were confirmed along with interest and penalty was also imposed under Rule 17(c) of the CCR,2004 read with Section 11A(c) of the Act by the lower adjudicating authority vide the impugned orders.

2. Being aggrieved, the Appellant preferred appeal, specially on the grounds that the lower adjudicating authority has not considered the order dated 15.2.2018 of the Honble High Court of Gujarat in the case of M/s. Gujarat Guardian Ltd that no interest was payable in appeal; that penalty imposed relying on the judgment of the Honble Supreme Court in the case of M/s. Dharmendra Tropic Processors & Others reported in 2008 (257) EIT (SC) and in the case of M/s. Rajasthan Spinning & Weaving Mills reported in 2009 (258) EIT 3 (SC) are not applicable in these cases; that they had declared the amount in their Central Excise account and hence, it was not their intention to evade payment of duty; that appellant relies upon the judgment of the Honble High Court of Gujarat in the case of M/s. Hari Om Silks Mills reported as 2019 (257) EIT 464 (Guj).

4. Person appearing in the matter was attended by Shri R. R. Dave, Consultant, who reiterated the grounds of Appeal and submitted that Honble CESTAT in the case of M/s. Ultrafast Cement Ltd vide Order dated 20.2.2019 has allowed the Central Credit of outward transportation; that he also submitted written synopsis.

4.1 Appellant in order synopsis submitted that judgment of the Honble Supreme Court in the case of M/s. Ultrafast Cement Ltd reported as 2018 (8) GSTL 357 (SC) was given by interpreting the term 'up to place of removal' in different manner; that the word 'from' is no factor for starting point, hence, the word 'up to' is final point i.e. the place where the UTA outward transportation service completes the transport journey, that on one hand being a consignee, the credit of Service Tax or STA received is not accessible but if Service Tax paid by consignee on UTA outward service then it is available as credit which is dual point and needs to be examined.

FINDINGS :-

5. I have carefully gone through the facts of the case impugned orders, grounds of appeal and submissions made by Appellant during the persons

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hearing. The issue to be decided in these appeals is that whether the impugned orders passed by the lower adjudicating authority disallowing Carvat credit of Service Tax paid on outward transportation is correct, legal and proper or not.

6. I find that definition of 'input service' as provided under Rule 2(f) of Carvat Credit Rules, 2004 reads as under:-

"(f) Input service means any service -

- (i) provided 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, identification, installation or repairs of a factory, premises or provider of output service or an office building in a factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement or inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registers and security, financial manipulation of inputs or capital goods and current manipulation upto the place of removal."

6.1 From above, it is observed that "input service" means any service used by the manufacturer, whether directly or indirectly, in or in relation to manufacture of final products and clearance of final products upto the place of removal, with the inclusion of outward transportation upto the place of removal. It is therefore evident that as per plain clause - 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 and the proviso clause restricts the outward transportation upto the place of removal. The place of removal has been defined under Section 4 of the Act. As per Section 4(3)(c) of the Act, '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 consignee agent or any other place or premises from where the excisable goods are to be sold.

7. I find that the issue is no more res integra and the Hon'ble Supreme Court vide judgment dated 01.02.2018 in the case of L. Jaleel Cement Ltd. reported as 2018-110 L 42 SC 08 has held as under:-

1. As provided above, the question is involved in taxing and clearing of goods. It is supposed to pay the service tax on the outward services. At the same time, it is allowed to avail the benefit of Carvat Credit in respect of any input service tax paid in the instant case. Input service tax was also paid on the outward transportation of the goods from factory to the customers premises of which the assessee claimed the credit. The question is as to whether it can be treated as input service.

2. Input service is defined in Rule 2(f) of the Rules, 2004 which reads as under:-

"(f) Input service means any service:

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

(6) based by the receipt of goods or services individually or in relation to the manufacture of final products and transfer of final products onto the place of removal and transfer services used in relation to delivery of intermediate production or repair of a factory, transfer of material of output across an office relating to said factory or transfer of materials to other premises, transfer research storage onto the place of removal, production or repair activities relating to business, use for essential activities, marketing, maintenance and quality control, scientific and technical, computer networking, credit rating, energy supply, and security, transfer of material of input to social goods and cultural presentation onto the place of removal;

6. It is so admitted as well that the original use does not fall in such change of use and use is to be accepted as the expenditure of purchase (6). Result of the advanced procedure makes it clear that final services are included which are used by the manufacturer, whether directly or indirectly, in an in relation to the manufacture of final products and transfer of final products onto the place of removal.

7. It may be relevant to point out here that the original definition of input services contained in Article 219 of the Code 2004 uses the expression from the place of removal. As pointed out earlier, as revised only by his modification of language of final products from the place of removal to the purchased manufacturer's plant etc., was eligible for Goods Credit. This change finally decided in the Appeal No. 12715 of 2015 (Commissioner of Central Excise Bangalore vs. M/s. Lakshminarayana Murthy & Co), was judgment given January 17, 2018. However, this amendment came out in the amended form in the year 2008, which became effective from March 1, 2008, but was finally completed by the year 2011. This is only step for place of removal has changed from the place of removal. This amendment has changed the entire meaning. The benefit was to advantage even beyond the place of removal now goes to wherever is the place of removal and does not the credit of input tax paid goes to such as the place. This would mean that therefore it becomes clear from the bare reading of this amended Code, which applies to the period in question, that the Code's Transport Services were used for the purpose of advanced freight charges of goods, i.e. from the factory to externally premises or not covered within the ambit of Rule 219 of June, 2004. Whereas the word "from" is the indicator of starting point, the expression "upon" signifies the terminating point, which is not to be taken as covered. It is therefore, not just the Adjunctive Subjects as stated in paragraph Rule 219 of the existing chapter.

8. The input services are either needed to meet any service used by the manufacturer, whether directly or indirectly and also includes indirect services used in relation to forward transportation of inputs or output goods and onward transportation onto the place of removal. The two clauses in the definition of input services' have use to discriminate input credit by stating that services used in relation to the movement from the place of removal and services used for onward transportation onto the place of removal are to be treated as input services. The first clause does not mention transport services in particular. The second clause requires transport services credit into the place of removal. When these two clauses are read together, it becomes clear that transport services credit should go to the manager onto the place of removal. The two clauses, the one dealing with general services and other dealing with a specific item, are not to be read alternatively so as to bring about conflict to defeat the law's object. The purpose of interpretation is to find uniformly service provided entirely for the business.

15. Credit available to transporter (10) The credit covers the use of final products as raw or for raw or services, used in an in relation to the manufacture of the final product. The final products manufactured by the assessee is final, being complete and since the final products are fully manufactured and cleared from the factory premises, the question of utilization of service does not arise as such services cannot be considered as goods or material to the manufacturer of the final product. Therefore, extending the credit beyond the point of removal of the final product, payment of tax would be contrary to the

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services to transport goods (here). The main thrust of the definition states that the service in regard to road transport is sought, should be used in or in relation to clearance of the final products from the place of removal. The definition of road services should be read as a whole and should not be fragmented in order to read multiple credit lines. Once the clearance has taken place, the question of granting road services credit does not arise. Transportation is an integral element of manufacturing and its position remains settled by the judgment of Accounting Supreme Court in the cases of Sunday Type International 1955 (14) E.T - 2002-TIOI-374-SC-CX-LD, India Oxygen Co 1982 (35) E.T - 728 SC - 2002-TIOI-488-SC-CX and Beaula Electric Motors 1997 (54) E.T - 2002-TIOI-453-SC-CX. It is the general principle of manufacturing goods is not an input for the manufacturer. Similarly, in the case of M/s. Ultratech Cement Ltd. v. CCE, Bangalore 2007 (16) E.T 364 (15) - 2007-TIOI-421-CESTAT-ALM, it was held that after the final products are cleared for 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 relevant provisions clearly, correctly and in accordance with the legal provisions.

4. The affirmative order of the Manufacturing Authority was used by the Commissioner (Appeals) primarily for the ground that the Board in its Circular dated August 29, 2007 had clarified the definition of 'place of removal' and the three conditions contained therein should satisfactorily as the case of the respondent is concerned, (a) regarding consistency of the place of the delivery of the goods at the purchaser's door step; (b) after bearing the risk of or loss or damage to the goods during transit to the purchaser; and (c) major changes to be integral part of the price of the goods. This approach of the Commissioner (Appeals) has been approved by the CESTAT as well as by the High Court. This was the main argument advanced by the learned counsel for the respondent supporting the judgment of the High Court.

5. It is also stated that the affirmative approach of the Board below is clearly unwarranted for the following reasons:

19. In the final instance, it needs to be seen if Circular Board's Circular dated August 29, 2007 was issued in clarification of the definition of 'road services' as existed on that date i.e. it issued to amend/clarify definition. However, portion of the said circular is as under:

"With reference to what stage a manufacturer/processor can take credit on the services to and on goods transported by road?"

COMMENTS: The issue has been examined in great detail by the CESTAT in the case of M/s. Ultratech Cement Ltd. v. CCE, Bangalore (2007 (16) E.T 349 (15-5) - 2007-TIOI-421-CESTAT-ALM) in this case, CESTAT has made the following observations:-

The post exit transport or manufacturing goods is not an input for the manufacturer/processor. The post clearance in the definition of 'road services' will give no subsequent credit by stating that service used in relation to the clearance from the place of removal and service used for onward transportation upto the place of removal are to be treated as road services. This final order does not mention transport service in particular. The service clause covers transport service credit upto the place of removal. Hence, these two clauses are read together. It becomes clear that transport service credit cannot go beyond transport upto the stage of removal. For two clauses, the one dealing with general provision and other dealing with a specific term, are not to be read disjunctively as if in doing about service to defeat the law. Service of manufacturer is to the purchaser and manufacturer among the various provisions. Similarly, in the case of M/s. Ultratech Cement Ltd. v. CCE, Bangalore - 2007-TIOI-421-CESTAT-ALM, 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. It

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considered a warehouse for the goods in question, the removal tax paid on outward movement of goods will be a fixed amount and not beyond that.

As in this connection, the precise place of removal means specification taking into account the facts of an individual case and the appropriate provisions. The precise place of removal can be determined in certain limited cases. In cases of doubt, in view of the 2nd proviso, the words or expressions are used in the CENTRAL Goods Rules, 1955 and also in the said circular but are defined in the Central Goods Act, 1954 in the Finance Act, 1954, they shall have the same meaning for the 1954 Act as they have as assigned to them in these Acts. The precise place of removal in order to attract section 4 of the Central Goods Act, 1954 is as follows:-

(a) 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 where the excisable goods have been permitted to be stored under a licence or permit;

(iii) a place, warehouse and wharves and any other place or premises from which excisable goods are to be or are taken away or removed from the factory

from where such goods are removed.

It is therefore, clarified for a manufacturer or exporter, the liability to pay amount of the surcharge tax paid on the outward movement of excisable goods would depend upon the place of removal as per the definition. In case of a factory, place etc. said word or expression will have to be taken from a duly authorised place where the excisable goods are taken away or removed from the factory. The determination of the place of removal does not pose much problem. However, there may be situations where the manufacturer/exporter may claim that the said excisable goods at the date of their removal are in course of sale under contract Agreement of the ownership of goods and the property in the goods transferred to the purchaser at the date of the sale of the goods to purchaser. In such cases, the goods owned remain in the manufacturer, and by no means changes over an interest out of the place or place. In such cases, the place of the removal as per the interpretation up to such place or place works no, inasmuch that can be established by the shifting of such goods that the sale and the transfer of property in goods in terms of the definition as under section 2 of the Central Goods Act, 1954 as well in terms of the provisions under the Sale of Goods Act, 1930, occurred at the said place.

14. As can be seen from the wording of the aforesaid portion of the circular, the issue was clarified after keeping in mind judgments of CESTAT in Gujarat Andhra Cement Ltd. and M/s. Anandach Cement Ltd. These judgments, collectively, deal with provisions Rule 21 of Rules, 1955. The three conditions which were mentioned applying to the place of removal as defined under Section 4 of the Act should be applied into this case. However, the important aspect of the matter is that Central Credit is permissible in course of usual course and not directly related to the intended terms. Therefore, it cannot be applied after amendment of the definition of usual course which would extend a wider scope. Thus, the definition of place of removal and the conditions which are to be applied have to be in the context of usual course of removal. It is this amendment which has made the entire difference. This aspect is not dealt with in the said Board's circular and it could be

17. However, if such a circular is issued applicable even in respect of post-constitutional cases, it may be referred to Rule 111 of Rules, 1955 and appropriate action should be contemplated.

18. The result of the aforesaid discussion, would be that the Central Credit on goods through agency should be available for removal of goods from place of removal to lower certificate was not applicable in the aforesaid. Accordingly, the appeal is allowed. Judgment of the High Court is not valid and the Circular-Original dated August 22, 1977 of the Assessing Officer is restored.

(Emphasis supplied)

9. In view of above legal position held by the Hon'ble Supreme Court, Cenvat Credit or CTA service availed by the appellant for outward transportation of goods from place of removal to buyers premises is not admissible w.e.f. 01.04.2008. The period involved in this case is from February 2013 to June 2017 and hence Cenvat credit of Service Tax paid on CTA for outward transportation of goods cannot be allowed. The reliance placed upon the judgment of Hon'ble High Court of Gujarat in the case of *M/s. Gujarat Guardian Ltd.* supra is not relevant and has to be considered to be judgment passed per incuriam in the light of judgment of the Hon'ble Apex Court in the case of *M/s. Ultratech Cement Ltd.* supra.

9.1 Regarding penalty imposed under Rule 15(1) of CCR, 2007 read with Section 11AC(1) of the Act, I find that all these cases are periodic demands and there is no case of suppression of fact with intent to evade payment of duty or fraudulent availing of Cenvat credit by the appellant as disputed Cenvat credit has been shown by them in their statutory returns filed with the Department. In my considered view, the issue involved in this case is of interpretation of the place of removal, therefore, do not see any reason to uphold penalty imposed upon the appellant and hence, penalty imposed is set aside. I rely on the judgment of the Hon'ble Supreme Court in the case of *CCE, Jaipur Vs. Shree Rajasthan Syntex Ltd.* reported as 2015 (313) ELT 525 (SC) wherein in similar set of facts of the case penalty has been set aside holding as under

14. We may state here that the period involved is November 1996 to July, 2007. Show cause notice in this behalf, as noted above, was issued on 25-11-2007. The nature of the excisable goods was in the form of Section 4 of the Central Excise Act, 1944. The said Section was amended in the year 2000 when amendment came into effect on 1-7-2000. The legal position relating to identical sales tax incentives Scheme which would cover it was of the unamended provision as well as amended provision, came up for consideration before this Court in Commissioner of Central Excise Jaipur v. Shree Syntex India Ltd. - 2014 (300) E.L.T. 273 (SC). This Court took the view, after analysing the provision of Section 4 which provided prior to the amendment, that the assessee would be entitled to claim deductions towards sales tax from the assessable value and sales tax incentive which is retained by the assessee namely 75% sales tax amount in this case. The Court also held that this position changed after the amendment in Section 4 with effect from 1-7-2000 and in coming into operation clause, the amount of 75% which was retained by the assessee, will be reduced. As per the assessee's objection, the assessee/respondent herein will not be liable to pay any excise duty on the sales tax amount which was retained under the Income Scheme up to 35% from 2000. However, this component of sales tax which was retained by the assessee after 1-7-2000 shall be included in coming of the assessable value and sales tax shall be paid thereon.

5. Insofar as the question of extended period of limitation is concerned, we have gone through the order of the Commissioner and one of the opinion that he has rightly held that the extended period of limitation as per

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The proviso of Section 15(1) of the Central Excise Act, 1944 would be applicable in the given circumstances.

6. However we are of the opinion that in a case like the present one where the legal position and interpretation is unambiguously settled and not in question under the amendments in the said provision with effect from 1-7-2003 and in a final state, it would not be appropriate to levy the penalty.

7. In the aforesaid circumstances the present appeals are allowed in part by sustaining the Commissioner's Order-in-Debt passed on 10-3-2003 insofar as it relates to the period from 1-7-2003 to July 2004 but the penalty is set aside. However, there shall be no order as to costs.


(Emphasis supplied)

10. In view of above, I uphold the impugned orders confirming the demand of wrongly availed Central Credit along with interest. However, penalty imposed under Rule 15(1) of CCR, 2004 is set aside and the appeals are allowed to the extent.

11. अधीनकर्ता द्वारा दिये गये सभी का निष्पत्ता स्पष्टीकृत तथ्यक संकेत प्राप्त है

12. The appeals filed by the appellant are disposed of in aforesaid terms.


जि.के. चक्रवर्ती
अधीक्षक (आयकर)


जि.के. चक्रवर्ती
अधीक्षक (आयकर)

पंजीकृत शक द्वारा

पते :

M/s Madhu Silica Pvt Ltd
Plot No.45
GIDC, Gheta,
Shavnagar
(Reg. No. AABGM/381JX/M01)

शे.स. नटु लिमिटेड पंजीकृत लिमिटेड
प्लॉट नं 45
जी आई डी सी
गिटा, शे.नगर

M/s Madhu Silica Pvt Ltd
DU-II Plot No. 03 B5 & 03A + B
191, 198 & 197
GIDC, Gheta,
Shavnagar
(Reg. No. AABGM/381JX/M03)

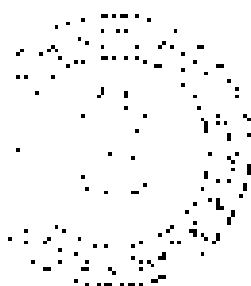
शे.स. नटु लिमिटेड पंजीकृत लिमिटेड
डी यू 03
प्लॉट नं 03A & 03B + B
जी आई डी सी,
गिटा, शे.नगर

M/s Madhu Silica Pvt Ltd
DU-II, Plot No. 7374
GIDC, Gheta, Shavnagar
(Reg. No. AABGM/381JX/M04)

शे.स. नटु लिमिटेड पंजीकृत लिमिटेड
डी यू 03
प्लॉट नं 7374,
जी आई डी सी,
गिटा, शे.नगर

M/s Madhu Silica Pvt Ltd
DU IV, Plot No 147,
Vartej, Dhavnagar
(Reg. No. AABGM/381JX/M05)

शे.स. नटु लिमिटेड पंजीकृत लिमिटेड
डी यू 04
प्लॉट नं 147
वार्तेज, शे.नगर



प्रति

१. श्री. मुख्य आयुक्त, केन्द्रीय वस्त्र एवं तान एवं उतं केन्द्रीय अहाद, शास्त्र नगरात और अहमदाबाद को जानकारी हेतु।
२. महकूम, केन्द्रीय वस्त्र एवं ताना वस्त्र एवं केन्द्रीय उतान, मुम्बई, भावनागर अहमदाबाद, भावनागर को आवश्यक कार्यवाही हेतु।
३. सहायक आयुक्त, केन्द्रीय वस्त्र एवं सेवा वस्त्र अहमदाबाद, भावनागर को ३ में आवश्यक कार्यवाही हेतु।

सर्वे फाइल

५. नमूना नं १२/१३/१४/२३/१३-१३
६. नमूना नं १२/१३/१४/२३/१३-१३
७. नमूना नं १२/१३/१४/२३/१३-१३
८. नमूना नं १२/१३/१४/२३/१३-१३
९. नमूना नं १२/१३/१४/२३/१३-१३
१०. नमूना नं १२/१३/१४/२३/१३-१३