

(ii)

#### ::प्रधानआयुक्त (अपील्स) का कार्यालय,वस्तु एवं सेवा करऔर केन्द्रीय उत्पाद शल्क:: 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

<u>राजकोट / Rajkot - 360 001</u>

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



रजिस्टर्ड डाक ए.डी.द्वारा :-क अपील / फाइलसंख्या/ 0 Appeal /File No. V2/165/BVR/2018-19 (c)

अपीलआदेशसंख्या(Order-In-Appeal No.):

मूल आदेश सं / O.I.O. No.

दिनांक/

02/SUPDT/CGST/AR-II/JND/2018-19

Date: 28/6/2018

EG 70699 1798 IN

# BHV-EXCUS-000-APP-116-2019

आदेश का दिनांक / Date of Order:

15.05.2019

जारी करने की तारीख / Date of issue:

16.05.2019

श्री 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 एवंसेवाकर, 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:

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

M/s Austin Engineering Co. Ltd., Village-Patla, Taluka-Bhesan Village-Ranpur Sorath, Distt: Junagadh.

इम आदेश(अपीन) से व्यथित कोई व्यक्ति निम्नलिखित तरीक में उपयुक्त प्राधिकारा / 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.

- 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:-(A)
- वर्गीकरणमूल्यांकनसेसम्बन्धितसभीमामलेसीमाशुल्क,केन्द्रीयउत्पादनशुल्कएवंसेवाकरअपीलीयन्यायाधिकरणकीविशेषपीठ,वेस्टब्लॉकनं2,आर॰के॰पुरम,नईदि ल्ली,कोकीजानीचाहिए।/ 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. (i)
  - उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुन्क केंद्रीय उत्पाद शुन्क एवं सेवाकर अपीलीय न्यायाधिकरण (मिस्टेट)की पश्चिम क्षेत्रीय पीठिका,,द्वितीय तल, बहुमाली भवन असार्वा अहमदाबाद- ३८००१६को की जानी चाहिए।/ To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016in case of appeals other than as mentioned in para- 1(a) above
- अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील)नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए । इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की माँग ,व्याज की माँग और लगाया गया (iii) 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 रजिस्टार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित वैंक 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 dutydemand/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/-.

अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम,1994की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित (B) प्रपत्र S.T.-5में 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 माँग ,व्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम,5 लाख रुपए यो 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 महायक रजिस्टार के नाम से किसी भी सार्वजिनक 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

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/

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

(ii)

Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ़ 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, वशर्त कि इस धारा के अंतर्गत जमा कि जान वाली अपेक्षित देय राशि दस करोड़ रुएए 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) सेनवेट जमा की ली गई गलत राशि

(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- वशर्त यह कि इस धारा के प्रावधान विचीय (मं॰ 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थान अर्जी एवं अपील को लागू नहीं होगे।

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.

\*\*Putat स्थार कोप्यूनरीकण अवेदन:

भारत सरकार कीपुनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलो में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपूरंतुक के अंतर्गतअवर मचिव,
भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया
जाना चाहिए। (C) 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 subsection (1) of Section-35B ibid:

पदि माल के किसी नुक्सान के मामले में, जहां नुकसान किसी माल को किसी कारखाने में अंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक अंडार गृह से दूसरे अंडार गृह पारगमन के दौरान, या किसी अंडार गृह में या अंडारण में माल के प्रसंकरण के दौरान, किसी कारखाने या किसी अंडार गृह में या के तुक्सान 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 (i)

भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिवेट) 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. (ii)

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. (iii)

स्निश्चित 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 (न॰ 2),1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए हैं।) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998. (iv)

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। / (v) नाहण। / 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.

पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये मे 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. (vi)

यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का सुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थित अपीलीय नयाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers variousnumbers 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. (D)

यथामंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुमूची-I के अनुमार 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. (E)

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

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. (G)

# :: ORDER-IN-APPEAL ::

M/s Austin Engineering Co. Ltd, Junagadh having Central Excise Registration No. AABCA8189NXM001 (hereinafter referred to as "Appellant") filed Appeal No. V2/165/BVR/2018-19 against Order-in-Original No. 2/Supdt/CGST/AR-II/JND/2018-19 dated 28.6.2018 (hereinafter referred to as 'impugned order') passed by the Superintendent, CGST Junagadh-II Range, Bhavnagar Commissionerate (hereinafter referred to as "lower adjudicating authority").

- 2. The brief facts of the case are that the Appellant was engaged in manufacture of Bearing and parts thereof falling under Chapter sub-Heading No. 848200 of the Central Excise Tariff Act, 1985 and had availed Cenvat credit of service tax of Rs. 5,77,917/- paid on Clearing & Forwarding Service during the period from April, 2017 to June,2017. It appeared to the jurisdictional Range Superintendent that said services were used after clearance of final product from factory and not used in relation to manufacture of final products and hence, not covered under definition of input service in terms of Rule 2(l) of the Cenvat Credit Rules, 2004 (hereinafter referred to as 'CCR,2004') and the Appellant is not eligible to avail Cenvat credit.
- 2.1 Show Cause Notice No. AR-II/JND/SCN/C&F/2017-18 dated 23.3.2018 was issued to the Appellant calling them to show cause as to why Cenvat credit of 5,77,917/- should not be disallowed and recovered from them under Rule 14 of CCR,2004 read with Section 11A of the Central Excise Act, 1944 (hereinafter referred to as "Act") along with interest under Rule 14 ibid read with Section 11AA of the Act and proposing imposition of penalty under Rule 15(1) of CCR,2004.
- 2.2 The above Show Cause Notice was adjudicated vide the impugned order which disallowed Cenvat credit of Rs. 5,77,917/- and ordered for its recovery along with interest under Rule 14 of CCR,2004 and also imposed penalty of Rs. 57,800/- under Rule 15(1) of CCR,2004 on them.
- 3. Being aggrieved with the impugned order, the Appellant has preferred appeal on various grounds, *inter alia*, as below:-

- (i) The adjudicating authority has failed to consider submission made by them; they had relied upon case law of Manglam Cement Ltd-2018 (9) GSTL 17 in support of their contention but the adjudicating authority ignored it and did not discuss it and hence, the impugned order deserves to be set aside.
- (ii) The issue is no more res-integra in view of judgement passed by the Hon'ble Rajasthan High Court in the case of Manglam Cement Ltd-2018 (9) GSTL 17 holding that Cenvat credit of service tax paid on Clearing & Forwarding agent service is admissible. Hence, they have correctly availed Cenvat credit and impugned order may be set aside.
- (iii) The adjudicating authority failed to give detailed findings as to how penalty under Rule 15(1) of CCR, 2014 is imposable upon them and just relied upon case law of Goodyear India Ltd.
- 4. In Personal Hearing, Shri D.K. Trivedi, Advocate and Shri Ajay Malhotra, Manager(Export) appeared on behalf of the Appellant and reiterated the grounds of appeal and submitted that Cenvat credit of service tax paid to C & F agent has been allowed by the Hon'ble Apex court in the case of Manglam Cement-2018(16) GSTL J168(SC) and also by the Hon'ble Gujarat High Court in Cadila Healthcare Ltd-2013 (30) STR 3 (Guj.)- Para 5.4 of the order; that agreements between them and three C & F agents shall be submitted within a week to establish that their C & F agents also stock their goods and then clear to their customers; that all goods in question have been exported through ports; that appeal may be allowed in view of above judgements.
- 4.1 The Appellant vide their letter F.No. ADM/CGST/Appeal/2019 dated 8.5.20 19 furnished copies of agreement dated 26.3.2017 entered into with their C & F agents.

### Findings:

5. I find that the Appellant has complied with the provisions of Section 35F of the Act by depositing Rs. 43,345/- @7.5% of Rs. 5,77,917/- vide

Challan No. 00002 dated 12.8.2018, as declared by them in Appeal Memorandum.

, ('

- 6. I have carefully gone through the facts of the case, the impugned order and grounds of appeal submitted by the appellant in the memorandum of appeal. The issue to be decided is whether the Appellant is eligible to avail Cenvat credit of Rs. 5,77,917/- of service tax paid on Clearing & Forwarding service or not.
- 7. On going through the records, I find that the Appellant availed Cenvat credit of Rs. 5,77,917/- paid on Clearing & Forwarding Service during the period from April, 2017 to June, 2017. The lower adjudicating authority disallowed Cenvat credit on the ground that Clearing & Forwarding service was used after clearance of final product from factory and not used in relation to manufacture of final products and hence, not covered under definition of 'input service' in terms of Rule 2(l) of 'CCR,2004'. The Appellant has contested that C & F agents stocked their goods and then cleared to their customers; that all goods in question have been exported through ports; that Cenvat credit of service tax paid to C & F agent has been allowed by the Hon'ble High Courts in the case of Manglam Cement Ltd and Cadila Healthcare Ltd.
- 7.1 I find that term 'input service' has been defined under Rule 2(l) of CCR, 2004 as under:
  - "(1) 'input service' means any service, -
    - (i) used by a provider of output service for providing an output service; or
    - (ii) used by a 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 modernisation, 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, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal;"

7.2 The term 'place of removal' is defined under Section 4(3)(c) of the Act as under:

"(c) '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 deposited without payment of duty;
- (iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory;

from where such goods are removed;"

(Emphasis supplied)

- 7.3 I have also gone through the agreements submitted by the Appellant. I find that the Appellant entered into agreements with Clearing & Forwarding agents, *inter alia*, for storage of goods manufactured by them and transferred to their Clearing & Forwarding agents for subsequent dispatch to the ports of export. The relevant portion of the agreements is reproduced as under:
  - "2. Appointment of the party of second part.
  - 2.1 Subject to the terms and conditions of this agreement, the party of first part hereby appoints the party of second part, on a non exclusive basis to provide the services, as Clearing and Forwarding Agent. This contract is particularly for the goods which are manufactured by the party of the first part for being exported. Therefore the goods will be stock transferred at premises of party of second part and the party of second Part will have to store them, as the goods are stock transferred to the party of the second part. The party of the second part would store said goods and subsequently dispatch them for the port of export as instructed by the party of the first part. As per the terms of sales in between the party of the first part and the foreign buyers (CIF bases), the party of the first part is required to deliver goods at the port of export. Thus the party of second part is required to deliver the goods to said port of export on behalf of the party of the first part.

#### (Emphasis supplied)

- & MO
- 7.4 After taking into consideration the agreements entered with the Clearing & Forwarding Agents, it is clear that the Appellant manufactured and cleared their manufactured goods to C & F agents for storage and subsequent export and hence, in such circumstances factory gate is not 'place of removal' but port of exports is 'place of removal' as clarified by the Central Board of Excise and Customs vide Circular No. 999/6/2015-CX, dated 28-2-2015 issued from F.No. 267/13/2015-CX.8, which is reproduced as under:
  - "5. Clearance of goods for exports from a factory can be of two types. The goods may be exported by the manufacturer directly to his foreign buyer or the goods may be cleared from the factory for export by a merchant-exporter.

Page 6 of 7

6. In the case of clearance of goods for export by manufacturer exporter, shipping bill is filed by the manufacturer exporter and goods are handed over to the shipping line. After Let Export Order is issued, it is the responsibility of the shipping line to ship the goods to the foreign buyer with the exporter having no control over the goods. In such a situation, transfer of property can be said to have taken place at the port where the shipping bill is filed by the manufacturer exporter and place of removal would be this Port/ICD/CFS. Needless to say, eligibility to CENVAT Credit shall be determined accordingly."

## (Emphasis supplied)

- 8. In view of above, I hold that Clearing & Forwarding Service would fall within Rule 2(l) of CCR, 2004 and the Appellant is eligible to avail Cenvat credit of service tax paid on Clearing & Forwarding Service. I, therefore, set aside the impugned order and allow the appeal.
- 9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
- 9. The appeal filed by the Appellant is disposed off as above.

सत्यापित ,

(कुमार संतोष) प्रधान आयुक्त (अपील्स)

By R.P.A.D.

विपुत शाह अधीक्षक (अपील्स)

То,	सेवा में,
M/s Austin Engineering Co. Ltd At Patla,	मे ऑस्टिन इंजीन्यरिंग कंपनी लिमिटेड
Taluka:Bhesan,	पाटला, तालुका भेंसाण,
District Junagadh.	जिल्ला जूनागढ़।

### प्रति :-

- 1) प्रधान मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र,अहमदाबाद को जानकारी हेत्।
- 2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
- 3) अधिक्षक, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, जूनागढ़-॥ रेंज को आवश्यक कार्यवाही हेत्।
- **्र**4) गार्ड फ़ाइल।