::: O/O THE COMMISSIONER (APPEALS), CENTRAL GST & CENTRAL EXCISE :::

[illegible] 2nd Floor, GST Bhavan,

[illegible]

Tele Fax No. 0281 – 2477952/2441142 Email: [illegible]@gmail.com

[illegible]	[illegible] / Order No.	Date
[illegible]	BHV-EXCUS-000-ADC-010-2018-19	[illegible]-12-2018
	[illegible]	
	BHV-EXCUS-000-ADC-017-2018-19	
	[illegible]	

[illegible] (Order-In-Appeal No.):

BHV-EXCUS-000-APP-217-TO-220-2019

[illegible] / Date of Order:	27.06.2019	[illegible] / Date of issue:	25.08.2019

[illegible]

Passed by Shri Gopal Nath, Commissioner (Appeals), Rajkot

[illegible]

[illegible]

[illegible] Bhavnagar [illegible]

[illegible] / Name & Address of the Appellants & Respondent :-

M/s. [illegible] Cement Limited, Near Railway Station, PO [illegible], Porbandar-[illegible], Gujarat

[illegible]

[illegible]

...

(vii) For a place or premise to be termed as place of removal for the purpose of the Act, that place or premise should be the place or premise from where the excisable goods are to be sold which means that such goods are to be transferred by way of transfer of possession of goods by the seller to the buyer in the course of trade or business for a consideration, after their clearance from the factory. Hence, any interpretation of the term "place of removal" without factoring the definition of place of removal as contained in the CCR,2004 read with definition of sale would make that clause in the definition redundant and it is an accepted rule of interpretation that every word has to be given its own meaning and that legislature has not introduced any word without any objective and hence in terms of the decisions of Supreme Court as explained in the Board Circular of June 2018, the buyers premises would require to be treated as a place of removal, on satisfaction of the other terms and conditions as explained above. Thus, going by the CBEC Circular dated 8th June 2018 as well as definition of the term "Place of removal" in the CCR, 2004, it is clear that the law envisages a location even beyond factory gate or even depot, or any premises other than that of the manufacturer, to be considered as place of removal. The findings recorded in the impugned order being contrary to such settled legal position as well as the very definition of the term "input service" can not therefore be sustained and as such, the impugned order deserves to be quashed and set aside.

(viii) Since duty has been paid on freight component, even if place of removal is held to be factory gate for any reason, such duty payment must be treated as good as credit has already been reversed and denial of credit once again can not survive and relied upon case laws of (a) Tripura Containers P. Ltd.-2011(264) ELT 339(Gau) and (b) Ajinkya Enterprises 2013(294) ELT 201(Tri.)

(viii) The Board Circulars dated 23.08.2007, 20.10.2014, and 28.2.2015 are still binding the field and the Board has not withdrawn these circulars and when said circulars were issued, the common perception of the term place of removal was as clarified by the Hon'ble Apex Court in the case of Escorts JCB Ltd.2002(146) ELT 11(SC).

(ix) In light of the various circulars issued by the Board in the year 2014 & 2015 and in 2018, there was no ground to impose penalty as it is a settled position of law that when there is a dispute on bonafide interpretation, penalty cannot be imposed.

5. Personal hearing in the matter was attended by Shri Saurabh Dixit, Advocate on behalf of the Appellant who reiterated the grounds of appeals and

submitted additional submission dated 13.8.2019 and requested to allow the appeals on the grounds mentioned therein.

4.1 In written submission dated 13.8.2019, it has been, inter alia, contended that:

(i) In the present case, entire sale was on FOR basis only and in support of which, CA certificate is produced which is issued after analysis of concerned POs and Central Excise invoices under which goods were supplied. Further, it is also not disputed by the adjudicating authority that sale was on FOR basis as evident from para 24 and para 29 of the impugned order.

(ii) When sale price was inclusive of freight on which Central excise duty was paid and where no separate freight was recovered from the buyers which has also been acknowledged in the impugned order that sale is on FOR basis, they are eligible for Cenvat credit of service tax paid on outward GTA.

(iii) They obtained CA certificates which certifies that sale was on FOR basis and ownership passes on to buyer's doorsteps is also admitted in the impugned order. Once a technical expert like Chartered accountant/ chartered engineer has certified something, unless the Revenue Authorities show how such findings are wrong, the said technical evidence has to be followed and the benefit has to be allowed to the assessee as held in following case laws:

(a) Panasonic Energy India Co. Ltd. -2017(5) TMI 1034-CESTAT AHM.
(b) Tata Technologies Ltd. 2016(42) STR 290(Tri-Mum)
(c) Jayant Metal P. Ltd. 2017(349) ELT 279(Tri-Mum)
(d) Kirloskar Oil Engines Ltd. 2017(349) ELT 299(Tri-Mum)

(iv) In identical circumstances and dealing with the very same issue, the Hon'ble CESTAT Ahmedabad in following cases allowed Cenvat Credit of service tax paid on transportation of finished goods from factory gate to the port of export, or place of buyer in case of domestic sales since ownership of goods passed on to customer at such destination itself, just as in the present case.
(a) Ultratech Cement Ltd 2019 (2) TMI 146(CESTATAhm.
(b) Sanghi Industries Ltd. 2019(2) TMI 1480-CESTATAhm.
(c) Salasar Copper 2019(4) TMI 11-CESTAT Ahm.
(d) GMM Pfaudler Ltd 2019 (5) 1406 CESTATAhm.
(e) Panoli Intermediates India Pvt. Ltd. 2019(5) TMI 1435 CESTAT-Ahm
(f) Alembic Ltd vide Order No. A/10997-11307/2019dt. 6.8.2019

(v) While paying the duty as full rate on transportation of goods, the Cenvat Credit of service tax paid on allocated value of the same transportation charges has been availed by the assessee. As such much more duty already stands paid of the reverse mercury to the amount of Credit actually taken and as such nothing further remains to be said by the Appellant in this regard.

(vi) It was always so perceived that place of removal in case it overseas or to the goods passes on to the customer at their doorsteps and where freight forms the

integral part of the assessable value of the goods on which duty already stands paid, the Cenvat Credit of such service tax paid on such freight being up to place of removal within the normal understanding of the term, therefore has to be allowed to the assessee. Whether required or not, since the assessable value of the goods has already re-built within its scope the transportation cost, and duty stands paid on the transportation value as well accordingly, the Cenvat Credit of service tax paid on such freight element cannot be denied to the assessee in the facts and circumstances of the case.

5. I have carefully gone through the facts of the case, the impugned order, grounds of appeal and submissions made by the appellant. The issue to be decided in the present appeal is whether the impugned order passed by the lower adjudicating authority disallowing Cenvat credit of service tax paid on outward transportation charges is correct, proper and legal or otherwise.

6. I find that the Appellant had availed Cenvat credit of service tax paid on outward GTA service during the period from January, 2014 to December, 2016. The lower adjudicating authority disallowed said Cenvat credit of service tax on the ground that outward GTA service was availed by the Appellant for transportation of their finished goods from their factory to customer's premises i.e. beyond place of removal, and hence, not covered under definition of "input service" in terms of Rule 2(l) of CCR, 2004. The Appellant has contested that entire sale was on FOR basis and hence, Cenvat of Service Tax paid on transportation from factory to buyer's premises ought to have been allowed in view of the Hon'ble Supreme Court's judgement in the case of M/s. Ruchit Industries Ltd- 2015 (319) ELT 577 (SC) and in the case of Ispat Ltd -2015(322) ELT 594 (SC), which laid down general principle as to what constitutes place of removal considering the point of sale where the ownership and risk passes on from the seller to the buyer; that the term "Place of removal" defined in the CCR, 2004 envisages a location even beyond factory gate or even depot, or any premises other than that of the manufacturer, to be considered as place of removal.

7. I find that definition of "input service" as provided under Rule 2(l) of Cenvat Credit Rules, 2004 reads as under:-

"(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, security, testing, licensing, 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 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 remove.. It is, therefore, evident that as per main 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 inclusive clause restricts the outward transportation upto the place of remove.. The place of removal has been defined under Section 4 of the Act, as per Section 4(3)(c) of the Act, "place of remove." means a factory or any other place or premises of production or manufacture of excisable goods, 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.

8. I find that the issue is no more res integra and stands decided by the Hon'ble Supreme Court vide judgment dated 21.02.2018 passed in the case of Ultratech Cement Ltd reported as 2018 (9) G.S.T.L. 327 (S.C.), wherein it has been held that,

"4. As mentioned above, the assessee is involved in packing and clearing of cement. It is supposed to pay the service tax on the aforesaid services. At the same time, it is entitled to avail the benefit of Cenvat Credit in respect of any input service received. In the instant case, input service tax was also paid on the outward transportation i.e. for goods from factory to the customer's premises of which the assessee claimed the credit. The question is as to whether it can be treated as "input service".

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

"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 repair 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,

delivery under the term FOR at the customer's premises as risk was borne by them till delivery and price charged by the appellant was inclusive of freight and in spite of the same, the adjudicating authority disallowed the Cenvat credit by holding that service was received beyond the place of removal, ignoring the principles enunciated and advised to field formation by the Board in their circular dated 8th June 2018 and hence the impugned order is liable to be set aside.

(iii) That the Hon'ble Supreme Court in the case of M/s. Roofit Industries Ltd. 2015 (319) ELT 27 (SC), Ispat Industries Ltd 2015 (324) ELT 670 (SC) and in the case of Finoo Ltd -2015(322) ELT 394 (SC) has laid down general principle as to what constitutes place of removal considering the point of sale where the ownership and risk passes on from the seller to the buyer as held by the Hon'ble Apex court in the case of Escorts JCB Ltd reported at: 2002 (146) E.L.T. 31 (SC), and considering the ratio laid down in the case of Ultra Tech Cement Ltd 2017-TIOL-47-CESTAT-MAD, the CBEC vide Circular dated 08.06.18 has clarified that in terms of Para 3 of the said circular which is the general principle to determine what is the point of sale i.e. place of removal, on facts and circumstances of each case. In light of this analysis, the Cenvat of Service Tax paid on transportation up to such place of removal ought to have been allowed as expressly clarified by the Board in the abovementioned circular and relied upon case law of Balaji Multiplex Pvt. Ltd vide Final Order No. A/ 12028-12029/2018 dated 25.05.18.

(iv) The term "Place of Removal" has been defined under Rule 2(qa) of the Cenvat Credit Rules, 2004 vide notification No. 21/2014-CE (N-T) dated 11.07.2014 which 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.

(v) The term 'Sale' is defined in Section 2(h) of the Act as the "any transfer of the possession of goods by one person to another in the ordinary course of trade or business for cash or deferred payment or other valuable consideration" and this definition is made applicable to interpretation of Cenvat Credit Rules by virtue of Rule 2 (i) of CCR 2004.

:: ORDER-IN-APPEAL ::

M/s. Saurashtra Cement Limited, Ranavav, Porbandar (hereinafter referred to as "appellant") filed appeal No. V2/71/BVR/2019 against Order-in-Original No. BHV-EXCUS-000-ADC-104-2018-19 dated 31.12.2018 (hereinafter referred to as "impugned order") passed by the Additional Commissioner, Central GST & Central Excise, Bhavnagar (hereinafter referred to as "lower adjudicating authority").

2. In brief facts of the case are that the appellant was engaged in the manufacture of Cement and Cement Clinker falling under Chapter 25 of the Central Excise Tariff Act, 1985 and was holding Central Excise registration No. AABFS5571JXM001. During scrutiny of ER-1 Returns for the months of January, 2014 to June, 2014, it was found that the appellant had availed Cenvat credit of service tax paid on outward GTA service used for transportation of their finished goods from their factory to customer's premises i.e. beyond place of removal, which is alleged to be not proper in view of definition of "input service" as given at Rule 2(l) of the Cenvat Credit Rules, 2004 (hereinafter referred to as "CCR, 2004"). It appeared that any service availed after clearance of goods from the place of removal is not an "input service" and therefore, the Appellant was not eligible to avail Cenvat credit of service tax paid on outward GTA service.

2.1 Show Cause Notice No. V/15 71/Demd Q/2014-15 dated 21.1.2015 was issued to the appellant for the period from January, 2014 to June, 2014 for recovery of wrongly availed Cenvat credit of Rs. 42,83,755/- along with interest under Rule 14 of the CCR, 2004 and proposing imposition of penalty under Rule 15(1) ibid. Subsequently, three more Show Cause Notices were also issued for similar matter for the period from July, 2014 to December, 2016.

2.2 The above Show Cause Notices were adjudicated vide the impugned order which confirmed demand of Rs. 2,66,52,453/-, along with interest under Rule 14 of CCR, 2004 and imposed penalty of Rs. 2,66,52,453/- under Rule 15 of CCR, 2004.

3. Being aggrieved with the impugned order, the appellant preferred the present appeal on the following grounds, inter alia, contending that,

(i) The impugned order was passed without appreciation of the provisions of the Act and the Rules thereof and the case laws relied upon.

(ii) The adjudicating authority made a clear finding at para 29 of the impugned Order that the Appellant fulfilled the conditions regarding the

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;"

6. It is an admitted position that the instant case does not fall in sub-clause (i) and the issue is to be decided on the application of sub-clause (ii). Reading of the aforesaid provision makes it clear that those services are included which are 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.

7. It may be relevant to point out here that the original definition of 'input service' contained in Rule 2(l) of the Rules, 2004 used the expression 'from the place of removal'. As per the said definition, service used by the manufacturer of clearance of final products 'from the place of removal' to the warehouse or customer's place etc. was eligible for Cenvat Credit. This stands finally decided in Civil Appeal No. 11710 of 2016 (Commissioner of Central Excise Belgaum v. M/s. Vasavadatta Cements Ltd.) vide judgment dated January 17, 2018. However, vide amendment carried out in the aforesaid Rules in the year 2008, which became effective from March 1, 2008, the word 'from' is replaced by the word 'upto'. Thus, it is only 'upto the place of removal' that service is treated as input service. This amendment has changed the entire scenario. The benefit which was admissible even beyond the place of removal now gets terminated at the place of removal and doors to the cenvat credit of input tax paid gets closed at that place. This credit cannot travel further from there. It becomes clear from the bare reading of this amended Rule, which applies to the period in question that the Goods Transport Agency service used for the purpose of outward transportation of goods, i.e. from the factory to customer's premises, is not covered within the ambit of Rule 2(l)(ii) of Rules, 2004. Whereas the word 'from' is the indicator of starting point, the expression 'upto' signifies the terminating point, putting an end to the transport journey. We, therefore, find that the Adjudicating Authority was right in interpreting Rule 2(l) in the following manner.

> 8. The input service has been defined to mean any service used by the manufacturer whether directly or indirectly and also includes, inter alia, services used in relation to inward transportation of inputs or capital goods and outward transportation upto the place of removal. 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 services 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.
>
> 9. Credit availability is in regard to 'inputs'. The credit covers duty paid on input materials as well as tax paid on services, used in or in relation to the manufacture of the 'final product'. The final products manufactured by the assessee in their factory premises and once the final products are fully manufactured and cleared from the factory premises, the question of utilisation of service does not arise as such services cannot be considered as used for anything in the manufacture of the final product. Therefore, extending the credit beyond the point of removal of the final product on

payment of duty would be contrary to the scheme of Cenvat Credit Rules. The main clause in the definition states that the service in respect to which credit of tax is sought, should be used in or in relation to clearance of the final products from the place of removal. The definition of input services should be read as a whole and should not be fragmented in order to avail ineligible credit. Once the clearances have taken place, the question of granting input service stage credit does not arise. Transportation is an entirely different activity from manufacture and this position remains settled by the judgment of Honourable Supreme Court in the cases of Bombay Tyre International 1983 (14) ELT – 2002-TIOL-374-SC-CX-LB, Indian Oxygen Ltd. 1988 (36) ELT 723 SC = 2006-TIOL-95-SC-CX and Baroda Electric Meters 1997 (94) ELT 13 SC = 2002-TIOL-98-SC-CX-LB. The post removal transport of manufactured goods is not an input for the manufacturer. Similarly, in the case of M/s. Ultratech Cements Ltd. v. CCE Bhavnagar 2007 (6) STR 364 (Tri) = 2007-TIOL-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 relevant provisions clearly, correctly and in accordance with the legal provisions."

8. The aforesaid order of the Adjudicating Authority was upset by the Commissioner (Appeals) principally on the ground that the Board in its Circular dated August 23, 2007 had clarified the definition of 'place of removal' and the three conditions contained therein stood satisfied insofar as the case of the respondent is concerned, i.e. (i) regarding ownership of the goods till the delivery of the goods at the purchasers door step; (ii) seller bearing the risk of or loss or damage to the goods during transit to the destination; and (iii) freight charges 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.

9. We are afraid that the aforesaid approach of the Courts below is clearly untenable for the following reasons:

10. In the first instance, it needs to be kept in mind that Board's Circular dated August 23, 2007 was issued in clarification of the definition of 'input service' as existed on that date i.e. it related to unamended definition. Relevant portion of the said circular is as under:

"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 (6) STR 249 Tri D] = 2007-TIOL-429-CESTAT-DEL. 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 the 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 Cement Ltd vs CCE Bhavnagar - 2007-(011)-LL-439-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 law provisions. In conclusion, a mere declaration / 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 to see what covered 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-section (b) of Rule 2 of the 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 Customs Act, 1962, 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) any 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 consignment, the eligibility to avail credit of the service paid on the transportation 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 depot etc. the point 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 is acceptable 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.

9. As far as the second condition of the Revenue, on merits of the case, the issue was examined after keeping in mind judgments of CESTAT in Gujarat Ambuja Cements Ltd. and M/s Ultratech Cement Ltd. These judgments, obviously, dealt with, interpreted Rule 2(l) of Rules, 2004. The first condition which were mentioned considering the 'place of removal' as defined under Section 4 of the Act, there is no quarrel upto this stage. However, the important aspect of the matter is that Learned Counsel is

permissible in respect of input services and the Circular relates to the unamended regime. Therefore, it cannot be applied after amendment in the definition of input service which brought about a total change. Now, the definition of 'place of removal' and the conditions which are to be satisfied have to be in the context of 'upto' the place of removal. It is this amendment which has made the entire difference. That aspect is not dealt with in the said Board's circular, nor it could be.

12. Secondly, if such a circular is made applicable even in respect of post amendment cases, it would be violative of Rule 2(l) of Rules, 2004 and such a situation cannot be countenanced.

13. The upshot of the aforesaid discussion would be to hold that Cenvat Credit on goods transport agency service availed for transport of goods from place of removal to buyer's premises was not admissible to the respondent. Accordingly, this appeal is allowed, judgment of the High Court is set aside and the Order-in-Original dated August 22, 2011 of the Assessing Officer is restored."

(Emphasis supplied)

8.1 I also take note of the Board's Circular No. 1065/4/2018-CX., dated 8-6-2018, wherein it has been clarified that,

"5. CENVAT Credit on GTA Services etc. 5.1 The principles laid down by Hon'ble Supreme Court in relation to place of removal is in case of CCE & ST v. Ultra Tech Cement Ltd. dated 1-2-2018 in Civil Appeal No. 11261 of 2016 on the issue of CENVAT Credit on Goods Transport Agency Service availed for transport of goods from the 'place of removal' to the buyer's premises. The Apex Court has allowed the appeal filed by the Revenue and held that CENVAT Credit on Goods Transport Agency service availed for transport of goods from the place of removal to buyer's premises was not admissible for the relevant period. The Apex Court has observed that after amendment in to the definition of 'input service' under Rule 2(l) of the CENVAT Credit Rules, 2004, effective from 1-3-2008, the service is treated as input service only 'up to the place of removal'."

8.2 In view of above law settled by the Hon'ble Supreme Court, Cenvat Credit on GTA service availed by the appellant for outward transportation of goods from place of removal to buyer's premises is not admissible w.e.f 01.04.2008. The period involved in this case is from January, 2014 to December, 2016 and hence, Cenvat credit of Service Tax paid on GTA for outward transportation of goods cannot be allowed. I, therefore, uphold the impugned order confirming the demand of wrongly availed Cenvat Credit along with interest.

9. Regarding contention of the Appellant that transportation from factory to buyer's premises ought to have been allowed in view of the Hon'ble Supreme Court's judgement in the case of M/s. Roofit Industries Ltd and Escorts Ltd, I find that in said case laws, issue involved was inclusion of freight in assessable value for the purpose of charging Central Excise duty. The Hon'ble Apex Court held that in the case of FOR destination sale where the ownership, risk in transit remained with the seller till goods are accepted by buyer on delivery and till such time of delivery, seller alone remained the owner of goods retaining right

of disposal. Freight is required to be included in assessable value. Whereas, in the present case issue involved is whether outward GTA service availed by the Appellant can be considered as 'input service' in terms of Rule 2(l) of CCR, 2004 and whether the Appellant had rightly availed Cenvat credit of service tax paid on outward transportation charges. Hence, issue involved in the present case is entirely different and stand decided by the Hon'ble Supreme Court in the case of Ultratech Cement Ltd supra. Hence, I hold that case laws of Roofit Industries Ltd and Emco Ltd relied upon by the Appellant are not applicable to the facts of the present case.

10. I have also examined CESTAT, Ahmedabad's order passed in the case of Sanghi Industries Ltd and other case laws relied upon by the Appellant. I find that case laws are not relevant and has to be held per incuriam in the light of judgment of the Hon'ble Apex Court in the case of M/s. Ultratech Cement Ltd. supra since judgement of the Apex Court prevails over any decision/orders passed by the subordinate courts/tribunals.

11. Regarding penalty imposed under Rule 15(1) of CCR,2004, I find that the Appellant wrongly availed and utilized Cenvat credit of service tax paid on outward GTA service used for transportation of their finished goods from their factory to buyer's premises, which is not admissible as discussed supra. The Appellant, thus, contravened the provisions of Cenvat Credit Rules, 2004 and therefore, the Appellant has been rightly held liable for penalty under Rule 15(1) of CCR, 2004. I, therefore, uphold penalty of Rs. 2,66,52,498/- imposed in the impugned order.

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

सत्यापित

सुधा नायर
अधीक्षक (अपील)

(Gopi Nath)
Commissioner (Appeals)

By Speed Post

To, M/s Saurashtra Cement Ltd. Ranavav, District Porbandar.	सेवा में, मे. सौराष्ट्र सीमेंट लिमिटेड, रानावाव, जिला पोरबंदर।

प्रति -

1) प्रधान मुख्य आयुक्त, वस्तु एवं [illegible] एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र,अहमदाबाद को जानकारी हेतु।

2) आयुक्त वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।

3) अपर आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, प्रभाग-I, भावनगर को आवश्यक कार्यवाही हेतु।

4) गार्ड फाइल।