



**::आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::**  
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE



सत्यमेव जयते

द्वितीय तल, जी एस टी भवन / 2<sup>nd</sup> Floor, GST Bhavan

रेस कोर्स रिंग रोड / Race Course Ring Road

राजकोट / Rajkot - 360 001

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**रजिस्टर्ड डाक ए.डी.द्वारा :-**

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	<b>V2/59 &amp; 60/GDM/2019</b>	<b>13 &amp; 14/AC/Anjar- Bhachau/2018-19</b>	<b>29-03-2019</b>

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

**KCH-EXCUS-000-APP-100-TO-101-2019**

आदेश का दिनांक / Date of Order:	<b>22.11.2019</b>	जारी करने की तारीख / Date of issue:	<b>28.11.2019</b>
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**श्रीगोपी नाथ, आयुक्त (अपील्स), राजकोट द्वारा पारित /**

**Passed by Shri. Gopi Nath, 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 Appellant & Respondent :-**

**TPL Plastech limited Survey No. 217/2, Bhuj Bhachau Highway, Village Kotda, Tal; Anjar (Kutch),**

इस आदेश (अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में 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 अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असारवा अहमदाबाद- 380016 को की जानी चाहिए। /

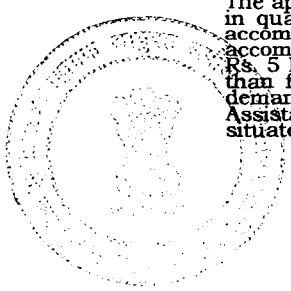
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(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 किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

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

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर 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 से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार 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 fee of Rs. 1000/- 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 नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन 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 Form 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, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल हैं

- (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

- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा। /

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 पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, 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 छुट (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 an 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 इयूटी क्रेडिट 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 समयावधि 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.

- (v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। /  
The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-in-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

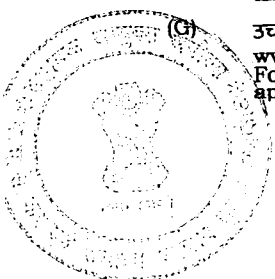
- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।  
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए।  
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय 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 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.

- (G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट [www.cbec.gov.in](http://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 appellants may refer to the Departmental website [www.cbec.gov.in](http://www.cbec.gov.in).



**:: ORDER IN APPEAL ::**

**M/s TPL Plastech Ltd.**, Survey No. 217/2, Bhuj Bhachu Highway , Village: Kotda, Tal: Anjar (Kutch) (hereinafter referred to as "**appellant**") filed the present appeals against Orders-In-Original No. 13 & 14 /AC/Anjar-Bhachu/2018-19 dated 29.03.2019 (hereinafter referred to as "**impugned order**") passed by the Assistant Commissioner, Central GST, Division-Anjar-Bhachau, CGST Gandhidham (hereinafter referred to as "**the adjudicating authority**").

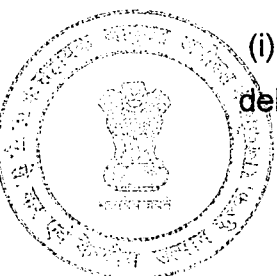
2. The brief facts of the case are that, appellant is engaged in manufacturing of excisable goods Viz. Plastic Barrels and Carboys falling under the CETSH No. 3923 3090 and holding the Central Excise Registration. The appellant is availing Cenvat Credit of Central Excise duty/ Service Tax paid on inputs, capital goods and input services under Rule 3 of CENVAT Credit Rules, 2004 (hereinafter referred to as CCR, 2004). The appellant also availed the Cenvat Credit in respect of input services viz. Goods Transport by Road (GTA) and utilized the same for the payment of Central Excise duty on clearance of final product. During the course of scrutiny of ER-1 returns for the period as mentioned in the table below, it was noticed that appellant had availed and utilized cenvat credit of service tax paid on outward transportation of finished goods, which was not admissible in terms of definition of input service as provided under Rule 2(i) of Cenvat Credit Rules, 2004, as it covers the services eligible for credit upto place of removal, as defined under Section 4(3)(c) of the Central Excise Act, 1944 (hereinafter referred to as the "Act"). Therefore, two Show Cause Notices, as under, were issued to the appellant, under Rule 14 of the CCR, 2004 read with Section 11A of the Act. alongwith interest under Rule 14 of the CCR,2004 read with Section 11AA of the Act and penalty proposed under the provisions of Rule 15 of the CCR, 2004 read with Section 11AC of the Act.

Sr No.	SCN date	Period	Amount (Rs.)
1	01.04.2016	March.15 to Jan.16	1,14,411/-
2	05.12.2016	Feb.16 to Oct. 16	1,46,108/-

3. The above referred Show Cause Notices were decided vide impugned order wherein the adjudicating authority confirmed the demand alongwith interest and penalty.

4. Being aggrieved with the impugned order, appellant preferred the present appeal, *inter-alia*, on the various grounds as under:

(i) that the appellant availed the services of transporters for the purpose of delivery of their final products from their factory gate upto the customers'



premises. The said delivery upto customers' premises is being done as under;

- (a) a contractual obligation to deliver the goods upto the customers' premises.
- (b) and in such cases the risk in transit of the goods continue to remain with the appellant.
- (c) the risk in transit of goods continue to remain with the appellant, which gets substantiated from the fact that the appellant delivered the goods upto customers' premises are insured by the appellant.
- (ii) Since the appellant paid freight, they pay service tax in accordance with Section 68(2) read with Rule 2(1)(d)(v) STR, 1994.
- (iii) as the transportation services were utilized for transport of the products manufactured by them upto customers' premises, they had taken credit of service tax paid on the same, treating them as input service.
- (iv) that the impugned Show Cause Notice has been issued without considering the provisions of law, judgments on the issue and CBEC instructions in as much as the demand is not sustainable on the grounds that terms of the purchase orders are delivery upto the customers' premises, that the risk in transit and ownership of the goods remains with appellant upto the customers' premises, that the freight incurred is an integral part of the assessable value on which excise duty is paid, that all the conditions of the master circular No. 97/8/2007-ST, dated 23.08.2007 have been satisfied as substantiated by CA Certificate. That the appellant has relied upon various case laws.
- (v) appellant submitted that they are not liable to pay any duty and/ or reverse duty, hence the question of charging interest does not arise. In absence of *mens rea* Penalty cannot be imposed as held by the Hon'ble Supreme Court in the case of Hindustan Steel Ltd Vs. State of Orissa- [ 1978(2) ELT (J-159) ].
- (vi) that goods had been delivered on FOR basis, that CBEC circular No. 1065/4/2018-CX dated 08.06.2018 clarified the definition of place of removal under Section 4 of the Act, the CCR 2004.
- (vii) that in any case, it is duty neutral exercise as the tax paid on GTA would have been taken as credit by the consignees. However, the credit had been taken by the appellant, in view of the payment of central excise duty on the cost of transportation from the place of removal to the place of delivery. It is a settled position of law that when the issue is leading to duty neutral exercise, denying credit is incorrect.

5. Personal hearing in the matter was attended by Shri Kamlesh G.Mehta appeared on behalf of the appellant wherein he reiterated the submissions made in the grounds of the appeal and requested to allow the appeal.

6. I have carefully gone through the facts of the case, impugned order and the submissions of the appellant in the memorandum of appeal. The issue to be



decided in the present appeals is **whether the appellant is eligible for cenvat credit of service tax paid on Goods Transport Agency Service (GTA) for outward transportation of final products, from their factory to the buyer's premises.** Since the issue involved is similar in both the appeals involving different periods, both the appeals are taken up for common order.

7. I find that the definition of input service has been amended from **01.04.2008**. The definition of 'input service' as contained in Rule 2(l) of the Cenvat Credit Rules, 2004 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 repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal"

8. I find that period covered in the present case, is from **March 2015 to October 2016** ( i.e. after 01.04.2008 means after amendment in definition of input service). I find that in the main definition portion, the expression "*clearance of final products from place of removal*" was replaced by the expression "*clearance of final product upto the place of removal*". Thus, it is only 'upto the place of removal' that service is treated as input service. The said 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 therefrom. It becomes clear from the plain reading of this amended Rule, which applies to the period in this case, 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)(i) of Rules, 2004.



9. Thus, I hold that once the final products are cleared from the factory premises, extending the credit beyond the point of clearance of final product is not permissible under Cenvat Credit Rules and post clearance use of services in transport of manufactured goods cannot be input service for the manufacture of final product. The credit of service tax used by the assessee for transportation of their final product cannot be considered to have been used directly or indirectly in relation to clearance of goods from the factory viz. place of removal in terms of Rule 2(l) of the Rules and as such cannot be considered as input service to avail Cenvat credit.

10. In view of the above, I find that the issue is no more *res integra* and also the Hon'ble Supreme Court vide judgment dated 01.02.2018 in the Civil Appeal No. 11261 of 2016, in the case of **M/s Ultratech Cement Ltd. reported as 2018 (9) G.S.T.L.337 (S.C.)** has held 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 after the said amendment.*'

11. Thus, the submission of the assessee that the sales made to their customers was on "FOR" basis as per Chartered Accountant's Certificate and the place of removal was customer's/buyer's premises as per the Board's Circular No. 97/8/2007-ST dated 23.08.2007 does not hold good for the period after 1<sup>st</sup>, April 2008.

12. Reliance placed by the appellant on the judgement in the case of M/s Emco Ltd reported in 2015 (322) ELT 394 (SC) and M/s Roofit Industries Ltd reported in 2015 (319) ELT 221 (SC) as referred in Board's Circular No. 1065/4/2018-CX, dated 08.06.2018 is misplaced as the Board's said circular refers the said cases with reference to the "Place of removal" for valuation purpose under Section 4(3)(d) of the Act.

13. In the above mentioned Circular dated 08.06.2018, I refer to Para.5 which is reproduced as under;

5. **CENVAT Credit on GTA Services etc.** : *The other issue decided 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 of in 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'.

14. In view of the above discussion supported by the judicial pronouncement of the Apex Court, all the submissions/ reliance placed on the various case laws by the appellant does not hold good.

15. Further, the appellant has requested for immunity from imposing penalty. In this regard, I find that, the amendment in the definition is clear and unambiguous and hence it should not have been difficult for the appellant to interpret the same. If the benefit of immunity from penalty is given to the appellant then, it would defeat the very purpose of the amendment in the definition. Therefore, I find that adjudicating authority has correctly imposed the penalty.

16. In view of the above facts and discussions, I hold that the appellant is not entitled for the cenvat credit of the service tax paid on outward transportation of finished goods which should be paid with interest under Rule 14 of the CCR 2004 and Penalty under Rule 15 of the CCR 2004 read with Section 11AC. Thus, I uphold the impugned order and reject both the appeals.

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

16.1 The appeals filed by the appellant stands disposed off accordingly.

Attested

Jm

(J.S.Nagreja)  
Superintendent (Appeals)

(Gopi Nath) 22/11/15  
Commissioner (Appeals)

**By RPAD:**

To,

M/s.TPL Plastech Limited,  
Survey No. 217/2, Bhuj-Bhachau Highway,  
Village: Kotda, Tal: Anjar (Kutch)

मै. TPL प्लास्टेक लिमिटेड, सर्वे नं: 217/2,  
भुज-भचाउ हाइवे, विलेज: कोटड़ा,  
तालुका: अंजार (कच्छ)।

**Copy to:**

1. The Principal Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
2. The Commissioner, GST & Central Excise, Gandhidham.
3. The Assistant Commissioner, Anjar-Bhachau Division, CGST Gandhidham.
4. Guard File.

