



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



द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan
रेस कोर्स रिंग रोड / Race Course Ring Road

राजकोट / Rajkot - 360 001

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रजिस्टर्ड डाक ए.डी.द्वारा :-

क	अपील / फाइलसंख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/36/GDM/2019	21/JC/2018-19	31-12-2018

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

KCH-EXCUS-000-APP-102-2019

आदेश का दिनांक / Date of Order:	10.12.2019	जारी करने की तारीख / Date of issue:	11.12.2019
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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 :-**

Deendayal Port Trust (Formerly known as Kandla Port Trust, Administrative office building, PO Box No. 50, Sector-8, Gandhidham, 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.

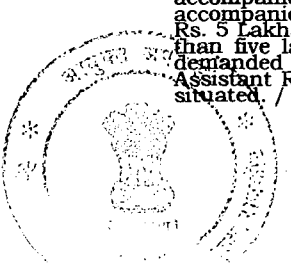
(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है।/
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of 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 असावा अहमदाबाद- 380016 को की जानी चाहिए।/
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज 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 नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो 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 fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.



- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर 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 क. (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 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, दर्शाते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए 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
- बशर्ते 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 demand, 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 कोपुनरीक्षण 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 इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:
- (i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। /
In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse
- (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /
In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
- (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
- (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इयुर्टे। क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम, (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समयावधि पर या बाद में पारित किए गए 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।
जहां 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 नयाधिकरण 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 filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। /
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.
- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। /
Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.
- (G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। /
For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in.

:: ORDER-IN-APPEAL ::

M/s Kandla Port Trust, (presently known as Deendayal Port Trust) AO Building, PO Box NO. 50, Sector-8, Gandhidham, Kutch (hereinafter referred to as "**the appellant**") filed the present appeal against Order-In-Original No. 21/JC/2018-19 dated 31.12.2018 (hereinafter referred to as "impugned order") passed by the Joint Commissioner, Central GST & Central Excise, Kutch, Gandhidham (hereinafter referred to as "**the adjudicating authority**").

2. Brief facts of the case are that during the course of CERA Audit and scrutiny of Service Tax records of the appellant for the period from **2013-14 to 2015-16**, the CERA Audit has observed that the appellant was taking services of Central Industrial Security Force (hereinafter referred to as the 'CISF') for its Ports located at Kandla and Vadinar. The Kandla Port and Vadinar Port are separately registered with jurisdictional authorities and having separate Service Tax Registration. The Gandhidham office of the appellant was making payment of all services received from CISF for both the Ports under reverse charge mechanism (RCM). The input service credit of the total service tax paid towards services from CISF on account of Security Services was availed by the appellant (KPT). The appellant did not take registration as ISD and failed to distribute the Input Service Tax Credit of the services of CISF utilized, in proportion to the turnover of Kandla Port and Vadinar Port in terms of Rule 7 of Cenvat Credit Rules, 2004 (**hereinafter referred to CCR, 2004**). As the above omission resulted in excess distribution of Input Service Tax Credit of **Rs. 93,64,183/-**, a Show Cause Notice dated 20.11.2017 was issued to the appellant. The Adjudicating Authority vide OIO No. 21/JC/2018-19 dated 31.12.2019 confirmed the demand under Rule 14 of the CCR, 2004 read with Section 73(1) of the Act, 1994 alongwith interest and imposed penalty of Rs. 10,000/- under Section 77 of the Act, 1994 for filing incorrect returns and equal penalty under Section 78 of the Act, 1994 read with Rule 15(3) of the CCR, 2004 for non-maintenance of separate accounts as required under Rule 6(3) of CCR, 2004.

3. Aggrieved, appellant preferred the present appeal, *inter-alia*, on the



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various grounds as under:

(i) that the appellant is a major port and for its security, personnel is required at Kandla Port and Vadinar Port. The appellant had deployed total 393 CISF staff, out of which only 22 security staff were working at Vadinar.

(ii) that the invoices of input services of security services from CISF were received by Gandhidham unit, paid by Gandhidham unit and credit also availed by Gandhidham unit.

(iii) that CCR, 2004 does not mandate that services should be received only within the premises of a registered person. As the said services were received and used by the appellant, there was no question of distributing the credit to Vadinar Port as very few staff members of CISF were deployed at Vadinar.

(iv) that entire credit is clearly admissible as the staff deployed at Vadinar is also for security of the appellant and the services are clearly utilized for providing taxable output service.

(v) that in terms of provisions of Rule 2(1) of the CCR, 2004 services received by the appellant from CISF are used for providing output service, it is an input service for them and therefore they are eligible for the credit. In terms of provisions of Rule 3(1) and 3(1a) of the CCR, 2004, they can avail credit of service tax leviable under Section 66 or 66A/B of the Finance Act and SHE Cess and Krishi Kalyan Cess as they are providing taxable services both from Kandla Port and Vadinar Port.

(vi) that both the units Kandla Port and Vadinar Port are under the same entity Kandla Port Trust bearing PAN AAALK0046N and the input service credit relating to security service availed is related to the business of providing taxable output service. Hence the input service tax credit cannot be denied.

(vii) that Vadinar Port is also providing taxable output service, even if the said service is assumed to be used partly for Vadinar Port, still the appellant is entitled to avail the credit and thus there is no question of



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denial of credit. Though service is received by Kandla Port only and hence by availing credit at Kandla Port, even if it is presumed that service is received at Vadinar Port no extra benefit accrues to them and there is no loss caused to the Department.

(viii) they rely upon CBEC Circular No. 1063/2/2018-CX, dated 16.02.2018 giving details of Orders of Supreme Court, High Court and CESTAT accepted by the Department and on which no review petitions have been filed wherein they have referred to the Hon'ble High Court of Gujarat order dated 08.01.2016 in the matter of CCE Vs Dashion Ltd. [2016(41) STR 884 (Guj.)].

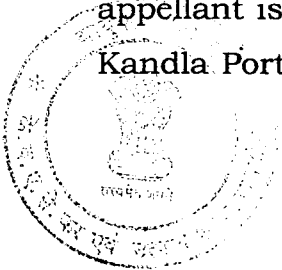
(ix) the denial is not sustainable on the ground that mandatory pre-SCN consultation was not granted to them as mandated vide CBEC Circular No. 1053/02/2017 dated 10.03.2017.

(x) that impugned order denying CENVAT credit and imposing penalties be quashed and set aside. They have requested to consider the submissions made before the adjudicating authority. That extended period of limitation cannot be invoked, interest and penalty cannot be imposed on them when demand of tax is not sustainable.

4. Dr. Nilesh V. Suchak, Authorized Representative of the appellant appeared on behalf of the appellant for the personal hearing and reiterated the submission of appeal memorandum and submitted additional submissions for consideration.

5. I have carefully gone through the facts of the case, grounds of appeal and written and oral submissions made by the appellant. The issue involved in the present appeal for determination is whether the excess Input Service Tax Credit availed by the appellant without taking registration as ISD and also not distributing the credit to Vadinar unit is correct or not.

6. I find that the appellant has fervently contended that, the appellant is a major port and for its security, personnel are required at Kandla Port and Vadinar Port; that CISF had deployed total staff of 393



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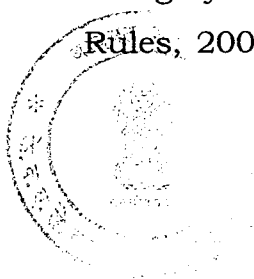
for the appellant, out of which only 22 security staff were working at Vadinar Port; that the invoices of input services of security services from CISF are received by Gandhidham unit, paid by it and credit is also availed by them. They further argued that, there is nothing in the CCR, 2004 that mandates that services should be received only within the premises of a registered person.

6.1 To understand the issue, I would first like to explain the concept of Input Service Distributor (ISD). This concept was first introduced in the year 2004 and is defined under Rule 2(m) of the CCR, 2004 as under:

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

In simple words it means an office of the manufacturer or service provider which receives invoices towards purchases of input services from the providers of input service and further distributes the credit of service tax by issuing invoice, bill or challan to such manufacturer or service provider. In order to provide a mechanism whereby the tax credit could be passed on the respective manufacturer/premises, such head offices distribute the tax credit to these units through the medium of invoices. Thus, an ISD is a conduit to pass on the credit on the services consumed at the manufacturing service providing locations but the invoice of which was not received at such locations. An Input Service Distributor distributed the Cenvat credit in respect of input service credit only to manufacturing units and output service provider.

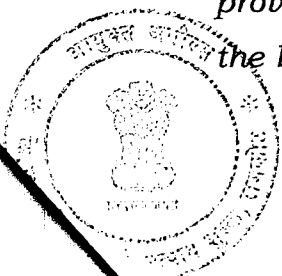
7. As regards availment of input service credit by the appellant on the input services utilized, I observe that the appellant ought to have got themselves registered with the jurisdictional office as 'Input Service Distributor' in terms of Rule 3 of the "Service Tax (Registration of Special Category of Persons) Rules 2005" read with Rule 7 of the Cenvat Credit Rules, 2004. On a similar set of facts, the CESTAT, Ahmedabad in the



case of **M/s Market Creators Ltd. Vs Commissioner of C.Ex. & S.T., Vadodara decided on 04.07.2014 as reported in 2014 (36) S.T.R. 386 (Tri. - Ahmd.)** has relied upon the CESTAT, Bangalore's decision in the case of *Mangalore Refinery & Petrochemicals Vs CCE, Mangalore* and held as follows :-

"2. I have given careful consideration to the submissions. The specific statutory provisions requiring any office of a manufacturing unit or output service providing unit to take ISD registration for the purpose of distributing CENVAT credit on any input service received by it under cover of invoices/bills/challans issued by the input service provider, to its own manufacturing unit or output service-providing unit are clear. ISD, as defined under Rule 2(m) of the Cenvat Credit Rules, 2004 read with Rule 2(ccc) of the Service Tax Rules, 1994, is an office of the manufacturer/ producer of final products or the provider of output service, which receives invoices issued under Rule 4A of the Service Tax Rules, 1994 towards purchase of input services and issues invoice/bill/challan for the purpose of distributing credit of the service tax paid on the said input services to such manufacturer/producer or service provider. Rule 3(1) of the Service Tax (Registration of Special Category of Persons) Rules, 2005 requires an ISD to obtain registration with the Department. Sub-rule (2) of Rule 4A of the Service Tax Rules, 1994 provides the manner in which a registered ISD shall distribute service tax credit. It provides that the ISD shall issue an invoice/bill/challan duly signed by him or it or a person authorized by him/it, for each of the recipients of the credit so distributed. This provision also specifies the particulars to be contained in such invoice/bill/challan. Accordingly, the document should contain (i) the name, address and registration number of the provider of input service and the serial number & date of the invoice/bill/challan issued by the service provider, (ii) the name and address of the ISD, (iii) the name and address of the recipient of the credit distributed and (iv) the amount of credit distributed.

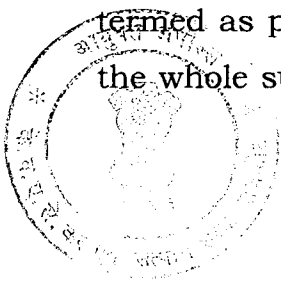
3. In the instant case, it is not in dispute that the manufacturing unit of the company at Mangalore chose to take Cenvat credit on BOFS provided by Corporation Bank, on the strength of the invoices issued by the bank to the Mumbai office of the company. Again, it is not in dispute



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that the Mumbai office of the appellant-company, which was, effectually, the recipient of the Service rendered by the bank, allowed the Mangalore unit to take Cenvat credit of the Service Tax paid on the said service. This was not permissible inasmuch as the transactions involved distribution of Cenvat credit by the Mumbai office of the appellant-company to its Mangalore unit without obtaining ISD registration and issuing invoices in terms of sub-rule (2) of Rule 4A of the Service Tax Rules, 1994. If it is held that the availment of Cenvat credit by the Mangalore unit on the basis of the invoices issued to the Mumbai office by the input service provider is not vitiated by the nature and/or the contents of the invoices used by the manufacturing unit, it would be tantamount to rendering the ISD-related provisions otiose. The aforesaid provisions made by the legislative authority are special provisions governing the registration and conduct of input service distributors. Such provisions must prevail over general provisions. By arguing that the Cenvat credit on BOFS cannot be denied to the manufacturing unit by reason of defects of documents, the learned counsel was virtually invoking the general provisions. At the risk of repetition, I must say that **the special provisions prevail over the general provisions and should be given full effect to.**"

8. I find that the second objection of the adjudicating authority is that the credit of Vadinar Port has also been availed by the appellant without pro rata distribution as per the restriction of this nature flowing from Rule 7 of the CCR, 2004. As regards, the appellant's argument that it is revenue neutral, since no extra benefit has been accrued by them and no loss has been caused to the department and that it is only procedural irregularities is not acceptable as the appellant has violated all the rules pertaining to the availment and utilization of service tax credit and the notifications made thereunder. By any stretch of imagination, it cannot be accepted that violation of rules can be termed as procedural/technical lapse. I find that the Rules are framed for conveying and implementing the legislative intent. Once the same are not followed, the whole purpose and intent behind such legislation are defeated. A Rule has to be followed in substance and any variation of observance of such rule cannot be termed as procedural lapse. In this case, the appellant has not followed the whole substance of concerned rule. In view of this, the lapses on the



part of the appellant cannot be accepted as a mere procedural/technical lapse.

9. Further, I find that the judgments relied upon by the appellant in the case of **Hon'ble Karnataka High Court in the case of CCE, Bangalore-I Vs ECOF Industries Pvt. Ltd. — 2011 (271) E.L.T. 58 (Kar.) = 2011 (23) S.T.R. 337 (Kar.)** and the **Hon'ble Tribunal in the case of Doshion Ltd. Vs CCE — 2013 (288) E.L.T. 291** is not applicable in the present case as in the above cases (period in dispute was prior to 01.07.2012) it was ruled that, the condition (d) - that the credit of service attributable to service used in more than one unit shall be distributed pro rata on the basis of turnover, was introduced only w.e.f. 01.07.2012 and the same cannot be given retrospective effect and that during the period prior to 01.07.2012 the distribution of credit by Input Service Distributor among its manufacturing unit need not be in proportion to their turnover. The period of dispute in the present case is after 01.07.2012, therefore, the credit availed by the appellant is contrary to the provisions of Rule 7 as the same stood during the period of dispute.

10. In view of the above, I find that, before availing the Cenvat credit on the services in question, the appellant should have fulfilled the basic conditions to avail the Cenvat credit and having failed to do so, they are not entitled for the said credit, which has been rightly confirmed by the adjudicating authority vide the impugned order.

11. As regards the appellant's contention that mandatory pre-SCN consultation was not granted to them as mandated vide CBEC Circular No. 1053/02/2017 dated 10.03.2017. I find that the pre-SCN facility is trade friendly and facilitates resolution of disputes raised by the Audit in the light of responses sought and received from the appellant and resolve the dispute in an amicable fashion, thus obviating the necessity to even issue a Show Cause Notice. I observe that though the appellant is registered with the Department and are fully conversant with the laws and procedures, they have not followed the procedure to avail the cenvat credit. I also notice that the even during and after the CERA audit the appellant did not tend to resolve the issue.



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11.1 Further, I note that even after the audit objection and issuance of the Show Cause Notice the appellant has not even applied to the Competent Authority for registration as Input Service Distributor.

12. In view of the above discussions and the provisions contained in statutes referred above, I uphold the impugned Order and disallow the appeals filed by the appellant.

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

13. The appeal filed by the Appellant is disposed off as above.

सत्यापित
अ. अ. अय्यर
अधीक्षक (अपील्स)

(Gopi Nath) 10/12/19
Commissioner (Appeals)

By R.P.A.D.

To,

01	M/s Kanda Port Trust, (now Deendayal Port Trust) AO Building, PO Box No. 50, Sector-8, Gandhidham, Kutch.	मेसर्स कांडला पोर्ट ट्रस्ट, (नया नाम : दीनदयाल पोर्ट ट्रस्ट, AO बिल्डिंग, पीओ बॉक्स नः 50, गांधीधाम, कूटछ.
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Copy to:-

1. The Principal Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
2. The Commissioner, GST & Central Excise, Gandhidham (Kutch).
3. The Assistant Commissioner, GST & Central Excise, Urban Division, Gandhidham (Kutch).
4. The Superintendent, CGST, Range-I, CGST Gandhidham, Urban Division, Gandhidham.
5. Guard File.

