

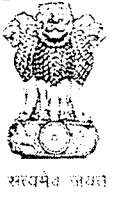


::प्रधानआयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::  
O/O THE PRINCIPAL COMMISSIONER (APPEALS), GST & CENTRAL EXCISE

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

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



रजिस्टर्ड डाक ए.डी.द्वारा :-

क	अपील / फाइल नम्बरा / Appeal / File No.	मूल आदेश नं / O.I.O. No.	दिनांक / Date
	V2/23 /GDM/2018-19	01&02/SUPDT/2017-18	26-02-2018

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

**KCH-EXCUS-000-APP-063-2019**

आदेश का दिनांक / Date of Order:	12.06.2019	जारी करने की तारीख / Date of issue:	17.06.2019
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श्री कुमार संतोष, प्रधान आयुक्त (अपील्स), राजकोट द्वारा पारित /

Passed by Shri Kumar Santosh, Principal Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर,  
राजकोट / जामनगर / गांधीधामा द्वारा उपरलिखित जारी मूल आदेश से मृजित: /  
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 :-

**M/s Genus Electrotech Ltd., Survey No.43, Meghpar Borichi, Galpadar Road,, Taluka:Anjar, District:Kutch, .**

इस आदेश (अपील) में व्यापक कोई व्यापक निम्नलिखित तरीक में उपयुक्त प्राधिकार / प्राधिकरण क 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) मामा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपालाय न्यायाधिकरण क प्रांत अपाल, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 का धारा 35B क अंतगत एवं वित्त अधिनियम, 1994 का धारा 86 के अंतगत 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 (मिन्स्टेट) 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 रजिस्ट्रार के नाम से किसी भी मार्वाजिनक 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 आवदन-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 का 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 सकती एवं उनके 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 रजिस्ट्रार के नाम से किसी भी मार्वाजिनक 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 आवदन-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 is 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) विन 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 सकती है एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ मंगल करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा महायुक्त आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, को अपील की न्यायाधिकरण को आवेदन दस करने का निर्देश देने वाले आदेश की प्रति भी साथ में मंगल 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 अपील की प्राधिकरण (मेन्ट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की विन अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपील की प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जमाना विवादित है, या जमाना, जब केवल जमाना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रूप 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) मेन्ट जमा की गयी गलत राशि  
(iii) मेन्ट जमा नियमावली के नियम 6 के अंतर्गत देय रकम  
- बशर्ते यह कि इस धारा के प्रावधान विनियम (नं. 2) अधिनियम 2014 के आरंभ में पूर्व किमी अपील की प्राधिकारी के समक्ष विचारणीय स्थान अर्थात् अपील को लागू नहीं होवे। / 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 पुनरीक्षण याचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरतक 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 किमी नुकसान के मामले में, जहां नुकसान किमी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किमी अन्य कारखाने या फिर किमी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किमी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किमी कारखाने या किमी 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 किमी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के शिपिंग में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो भारत के बाहर किमी 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) मुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो छूटी क्रेडीट 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 संश्लेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां मंगल की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के माध्य के तौर पर TR-6 की प्रति मंगल 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 मंगल रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि मंगल 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 निम्न पट्टी कार्य से बचने के लिए यथास्थिति अपील की 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, notwithstanding 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) यथामंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायानय 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-1 in terms of the Court Fee Act, 1975, as amended.  
(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील की 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 अपील की प्राधिकारी को अपील दाखिल करने में 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 appellant may refer to the Departmental website [www.cbec.gov.in](http://www.cbec.gov.in).



**:: ORDER IN APPEAL ::**

M/s. Genus Electrotech Limited, Survey No. 43, Meghpar-Borichi, Galapadar Road, Gandhidham (Kutch)-370110 having Central Excise Registration No. AABCG9645HXM001 (*hereinafter referred to as "the appellant"*) filed this present appeal against Order-in-Original No. 01 & 02/SUPDT/2017-18 dated 26/02/2018 (*hereinafter referred to as 'the impugned order'*) passed by the Superintendent, CGST, Anjar & Bhachau Division, Gandhidham (*hereinafter referred to as 'the lower adjudicating authority'*).

2. The brief facts of the case are that the appellant manufactured excisable goods and was availing of Cenvat Credit facility under the Cenvat Credit Rules, 2004 (*hereinafter referred to as "the CCR"*); that the jurisdictional Range officer at the time of scrutiny of ER-1 returns filed online by the appellant found that the appellant had cleared spare parts "as such" at value, higher or lower than the original purchased price and paid duty on the transaction value; that where the inputs/raw materials, on which credit had been taken, removed/sold at lower rate, the appellant was required to pay Cenvat Credit availed on the inputs and when sold at higher rate, the appellant was required to pay differential duty. Two Show Cause Notices No. (i) C.Ex.AR-V-Anjar/PS/2015-16 dated 20.03.2017 for the period from 2010-11 to 2015-16 and (ii) C.Ex.AR-V-Anjar/PS/2015-16 dated 06.06.2017 for the period 2016-17 were issued demanding central excise duty of Rs. 1,33,483/- along with interest and proposing imposition of penalty. These two SCNs were decided vide the impugned order and demand of central excise duty of Rs. 1,33,483/- confirmed under Section 11A of the Central Excise Act, 1944 (*hereinafter referred to as "the Act"*) read with Rule 14 of the CCR along with interest under Section 11AA of the Act read with Rule 14 of the CCR and also imposed penalty of Rs. 1,33,843/- upon the



appellant under Rule 15 of the CCR read with Section 11AC of the Act with reduce penalty option.

3. Being aggrieved with the impugned order, the appellant preferred appeal, *inter-alia*, on the following grounds:

(i) The appellant removed inputs/raw materials as such at a price higher/lower than the actual purchased price, however, they paid duty on such clearances, which is equal to or more than the credit availed on such raw materials, and hence there remains no input credit to be reversed. The demand of duty once again on the difference of purchase and sale price is not at all sustainable and is liable to be set aside.

(ii) The identical issue had been discussed, in the "Central Excise Tariff Conference — Clarifications on technical issues of classification and assessment", and the CBEC vide *Instruction F. No. 96/85/2015-CX.I, dated 7-12-2015* has released the minutes of the conference held on 28/29-10-2015. The CBEC has clarified that no duty can be demanded on the differential value when the goods are sold 'as such' at a higher price than the purchase price and when the goods are sold 'as such', at a lower price than the purchase price, then the entire credit taken on such goods is required to be reversed. Since, the appellant has done the same, there cannot be any further demand of duty, as demanded in the impugned order.

(iii) The impugned order issued on a wrong footing that the cenvat credit availed wrongly on the inputs/raw materials which never been used in or in relation to the manufacturing of the products not the same have been sold with their own goods as an accessories, whereas each item is integral part of final product and supplied with item produced by the appellant, and at the same time on demand, extra quantity is also sold or transfer to the appellant's Tamil Nadu Unit on stock transfer basis, after reversing the proportionate cenvat credit, for manufacturing there at and subsequent sales of finished



good therefrom after levy of duty and taxes as applicable there at by raising invoice from Tamil Nadu Branch.

(iv) The inputs/raw material have been removed as such either at higher rate or lower rate than the purchases rate because these items sold as spares for which no separate inventory was made and sold at average rate and hence, in some cases these average rates lower than purchases rate or in some cases average rate higher than purchases rate. However, whatever consideration was realised on sales thereof, duty has been levied against cenvat credit availed and not a single case was noticed for traded item sold "as such" without levying the duty in pretext of trading item.

(v) The appellant submitted that the demand issued invoking the extended period, however, the appellant has already declared each and every clearance in the ER-1 returns, every month and therefore, suppression on the part of the appellant cannot be alleged. Therefore, the demand of duty, is not at all maintainable beyond the normal period of limitation. The appellant placed reliance on the judgement of the Hon'ble CESTAT in case of BCH Electric Ltd reported as 2016 (344) E.L.T. 469 (Tri. – Chan).

(vi) The appellant submitted that Circular No. 715/31/2003 dated 19-5-2013 regarding provisional assessment directing no provisional assessment shall be permitted by any officer without entering the required details on the system and getting the unique identifier number generated by the system. Thus, without following the procedure initiation of provisional assessment after limitation period is not at all sustainable.

(vii) The appellant submitted that the SCN issued on incorrect figures as per detailed below:

- Differential assessable value would be Rs. 205.20 instead of Rs. 2052/- in respect of Item – Accessories for Bill No. 101067/30.05.2015.



- Items viz. PCB for front panel, STD main board, AV Cable, Card Reader, Remote Control sold vide Bill No. 101067/30.05.2015 were imported and CVD of Rs. 2,43,624/- was paid. When the said items were sold, duty @ 19.52% was charged, which is more than the credit availed and hence, no differential duty is required to be paid.

- The appellant had not availed cenvat credit on corrugate box when purchased but central excise duty was paid when sold vide Bill No. 104116/14.11.2015, hence, no differential duty is required to be paid.

- ABS Natural SD-0150 vide Bill No. 104124/16.11.2015 and 104339/30.11.2015 was sold at higher rate and more duty was paid than the cenvat credit taken. No differential duty is required to be paid.

- Bare Copper Wire was purchased from A B Industries, Anand which got damaged in transit and insurance claim lodged with insurance Co. by handing over 404 of kg damaged goods Vide Gate Pass No.1000354 dated 22.06.2015. The said goods vide Bill No. 106496/23.03.2016 was sold as scrap valued at Rs.1,27,271/-, as per the value fixed by the insurance company, by charging excise duty and the balance amount was given to the appellant as insurance claim of Rs.1,27,260/-.

(viii) Thus, the appellant paid duty equal to or more than the cenvat credit taken whenever the inputs sold at lower price than the purchase price.

(ix) The appellant submitted that extended period cannot be invoked as this is not a case of wrong availment of Cenvat Credit by selling inputs at lower rate due to the reason of collusion and suppression of facts with sole intent to evade duty on sales and wrong availment of Cenvat credit particularly when all the returns along with details were filed and periodic department audits for the period have already been conducted for last two-three years continuously. On limitation, the appellant has a good case, as there is



no suppression on the part of the appellant and extended period cannot be invoked.

4. Personal hearing was granted to the appellant on 15.03.2019, 02.04.2019, 16.04.2019, 02.05.2019, 21.05.2019 but no one appeared on any of the given five dates. Despite personal hearing notices sent to the Commissionerate, no reply / response received and hence, I would like to proceed to decide the appeal.

**Findings:-**

5. I have carefully gone through the facts of the case, the impugned order and written submissions made by the appellant. The issue to be decided in the present appeal is whether the impugned order, in the facts and circumstances of this case, confirmation of demand of Central Excise duty of Rs. 1,33,483/- under Section 11A of the Act read with Rule 14 of the CCR along with interest under Section 11AA of the Act read with Rule 14 of the CCR and imposition of penalty equal to duty under Section 11AC of the Act is correct or not.

6. I find that the appellant is a manufacturer of excisable goods, is registered with central excise department and is availing facility of cenvat credit under the Central Excise Rules, 2004. I find that the appellant has availed cenvat credit on inputs and cenvat credit of the duties paid on the inputs used in, or in relation to, the manufacture of the final products is available as per the provisions of Rule 3(1) of the CCR. The appellant, however, removed said inputs 'as such' and when inputs were removed as such, the appellant was required to pay an amount equal to cenvat credit availed in respect of such inputs in accordance with Rule 3(5) of the CCR, 2004. The relevant portion of said rule is as under:

*"(5) When inputs or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be,*



*shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in rule 9:*

....."

(Emphasis supplied)

7. The impugned SCNs demanded central excise duty on clearance of raw materials/inputs/spare parts 'as such' alleging that these goods were cleared at lower value and/or higher value than purchase value. I find that in cases of removal of inputs/raw materials without undergoing any manufacturing activity, no central excise duty is payable by the appellant on enhanced value, but the appellant is required to reverse cenvat credit taken on such inputs/raw materials at the time of purchase of the same, as envisaged in Rule 3(5) of the CCR, as discussed above.

7.1 In view of above, it is clear that the appellant was required to pay an amount equal to the credit availed in respect of such inputs or capital goods at the time of removal of inputs 'as such' and hence, the very basis of SCNs demanding central excise duty is incorrect. I find that the appellant contended that they have reversed cenvat credit equal to credit taken while removing inputs/raw materials as such and department has no allegation in SCNs that the appellant did not reverse the cenvat credit availed by them but demanded duty more than that. I hold that no demand of central excise duty greater than cenvat credit availed can be made and the appellant has correctly followed Cenvat Credit Rules. Hence, the impugned order confirming demand of central excise duty is not legally sustainable and therefore, I set aside the impugned order.

7.2 I further find that CBEC vide Circular F. No. 96/85/2015-CX.I dated 07.12.2015 has clarified that no duty can be demanded on the differential value when the goods are sold as such at a higher price than the purchase price which reads as under:



*[Handwritten signature]*



**"B.32 - Delhi Zone - Cenvat Credit - CAG Audit - Loss of Revenue on Clearance of Inputs As Such**

**Issue:**

CAG audit has raised audit paras for loss of revenue on clearance of inputs as such and has suggested amendment in rules on following grounds. Inputs removed as such are not used in the manufacture of final products therefore input credit is not admissible under the Cenvat Credit Rules 2004. However for reversal following changes in rules are suggested –

(a) In case of removal of inputs as such, at a price lower than the one at which it was received, a manufacturer should reverse Cenvat credit taken on the inputs at the time of receipt on the factory.

(b) In case inputs removal as such at a price higher than the purchase price, the manufacturer should reverse the credit taken initially from the Cenvat account and pay duty on the differential value from the account current.

Rule 3(5) of the CENVAT Credit Rules, 2004 provide for payment of an amount of credit availed in respect of inputs or capital goods removed as such. The position was however different prior to 1-3-2003 before issuance of notification no. 13/2003-C.E. (N.T.), dated 1-3-2003, when on removal of inputs or capital goods as such, a manufacturer was required to pay an amount equal to the duty of excise leviable on such goods at the rate applicable on the date of such removal and on the value determined under section 4 or Section 4A of the Central Excise Act 1944, as the case may be. The view of the audit is that provisions of rule 3(5) of the CENVAT Credit Rules, 2004 can be misused and are being misused. The intention of audit is to bring this to the notice of the Government for the remedial action by amendment in the rules.

**Discussion & Decision:**

The conference concluded after discussion that the audit paras raised by CAG are not acceptable both on the grounds of merit and equity. On grounds of equity, any rule which prescribes reversal on the basis of transaction value only when the selling price is higher and not when it is lower is not likely to stand judicial scrutiny. Further, Central Excise duty is a duty on manufacture of goods. In case of clearance of inputs or capital goods as such there is no manufacture involved. The maximum reversal of credit which the department can demand is the credit which was taken on receipt of inputs/capital goods. Any demand higher than the amount of credit taken would not



*[Handwritten signature]*

*stand judicial scrutiny as it would amount to demanding Central Excise duty on an activity which is not manufacture. The audit objection is accordingly not acceptable and reply to the same may be given suitably."*

(Emphasis supplied)

8. In view of above, I set aside the impugned order and allow appeal filed by the appellant.

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

9. The appeal filed by the appellant stand disposed off in above terms.

*[Signature]*  
12/6/19  
आर.पी.आ.डी.  
अपील विभाग

*[Signature]*  
12/6/2019  
(कुमार संतोष)  
प्रधान आयुक्त (अपील्स)

By R.P.A.D.

To,

M/s. Genus Electrotech Limited, Survey No. 43, Meghpar- Borichi, Galapadar Road, Gandhidham -370110	मे. जीनस एलेक्ट्रोटेक लिमिटेड, सर्वे नं. ४३, मेघपर - बोरिची, गलपादर रोड, गांधीधाम - ३७० ११०.
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प्रति:

(१) प्रधान मुख्य आयुक्त, केन्द्रीय वस्तु व सेवा कर, अहमदाबाद क्षेत्र, अहमदाबाद को जानकारी हेतु।

(२) आयुक्त, केन्द्रीय वस्तु व सेवा कर, गांधीधाम को आवश्यक कार्यवाही हेतु।

(३) उप-आयुक्त, केन्द्रीय वस्तु व सेवा कर, अंजर-भचाउ मण्डल, गांधीधाम को आवश्यक कार्यवाही हेतु।

(४) अधीक्षक, केन्द्रीय वस्तु व सेवा कर, AR-II, अंजर-भचाउ मण्डल, गांधीधाम को आवश्यक कार्यवाही हेतु।

(५) गार्ड फाइल