HAPRET

# ्रमुख्यसः (अपीतकः) का कर्त्यालकं,कर्म्य एवं केवा सरझीरकेवधीय उत्त्यात सुन्नः : प्रस्तु इस्तर ComMissaOnusc(APTE,668), GST अट⊻४४७३८६ EXCISE

ਨ੍ਕਿੰਪੀਕ ਜਗ,ਜੀ **ਦਲ ਦੀ ਸਕਤਾ** ( ੇ<sup>ਲ)</sup> Post, GST Blavan

रस कोसे रिंग सेड / Rave Course Ring Road

साजव<u>रीट :</u> (१<u>४)(१४) - ३६८ (१८)</u>

Tele: Free No. 10285 - 2471952/2441142[Freeld: 00/24004426]/militario

इतिस<u>्दर्ध सम</u>्च प्रजी<u>दवासः</u> :-

की <u>ज़ारित ए क्यूक्टरिंग्य</u>ी अक्टूक्टरिंग्ट्रिंग

**V2/26/CDM/2**IIIP

ਗ੍ਰਾਫ਼ 3620 ਦੀ () cat.C. No

DOUBLICAMENTAL

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क्य 💎 अपीज क्ष जिस सरस्याते (accete Appel), 🚾 🖰

## KCH-EXCUS-000-APP-095-2019

.सर्वेक का शिशं⇔ /

Date of Leden

23.16.1039

जारी करते की टाउँका*े* 

DanaFizzaki

20.14.2019

**बीबोगी जाया, अ**स्तरका (अभीक्ष्र), शक्तकोट दुगारा परिस्त<sup>ा</sup>

Passed by Shrt Group Nath, Commissions (Appeals) Hajkel.

थः । । असर अनुस्तरः संसूकतः अधुनतः अस्म<sub>िन</sub>ः सम्बद्धनः सन्दन्तः, <del>राज्य</del>ीन असस भूतकः वे*वस्मिनस*्त्रं <del>स्वस्तितस्यः,</del>

राज होऽ<sup>त</sup> सामानीस : बार्नीयाम । द्रावेट द्रवराष्ट्रीदेश कारी शृह उबकेश है अधिते । ।

Altring on all above mentioned from matter by Assistantificing Deputy Academic Commences, Control Excitation, Control Excitation (Control Excitation)

Ryjker v Jamester v Geralmillaum v

ए - अमोजनको के जोतेनाही का पान एए पता असवात के तात्रातका वर्ष पता **तेतृहर्शका**र के Respondent :-

Bujarat BRB Colo: Beljittiral Distatosh, Villago, Canara /Falska Shaohay, Ratah 270140

te কৰ্মপাৰণিত্ৰ) ৰ কোমিৰ প্ৰটাৰ্কনিক নিজনানিকৈ নালিকে সময়কত আজিকা। আদিকৰণ কামদাত ক্ৰমীৰ কৰ্ম কৰ বছৰ (৪৮ ১৮৮ চন জ্যা আনুষ্ঠানলত ডি. প্ৰটাৰ্ক উপৰিচ জৈ Appeal একে শ্ৰিম কে ব্যয়ুক্তা জ কৰে অনুষ্ঠানক ক্ষমান্তৰীয় কি কিব বিশিক্ষান্ত সংক্ৰ

्<sub>ष</sub>ः सिमा पुरुषः होन्दीर अपस्य भूतक सर्व भेरतका अधिकीय स्थायाधिकाण कार्मित अभिन्न, धेरहीय आपस्य भूतक अधिकीयम*ः भू*तक की धार अधि। कि संस्थेत अधिक अधिकिकार, 1994 की लाम 88 की आर्याट मिरनोविमीत समृत्यों या सकती है ए

Appeal to Courtee Two Re (a Service this appetitive forward under Section Set of CEA, 1944 / Linear Section No. of the Diractor Set, 1944 on appendixts to .

र्षे । विकास सुन्य का भी अन्यन्त्रित अभि भाभते भीता कुला केल्क्षेत्र प्रयक्ति कुला का अंतरक असीओन समावधिकार की विभेग पीत, केल्स स्मीत राष्ट्रि, अस्त का पूर्णा, अमें दिस्ती, को विकेशने आहेला ह

The special branch of Customs. Excess & Service Too Appetions TVRe; all of West Black Ho. 2. Rule. Purson, Now Subsets of interfere relating to a needing out and exclusions.

ि। इन्दर्भन पारत्वद । अ.सं. १८८ अस्ति के अश्राद रोग वसी अभिने वीमा गुल्क हेर्ट्स उत्पाद १२४ वर्ष होस्तर उपीतीय जनपारिक स्म (भिने १)ओ (रिक्ट क्षेत्र पीटिक, हानेतीय तस. बहुनारी अवसे उसकी अस्मधान द्वारण अस्ति। वरिक्ट ।

La tou Gree confirmé tende of Constitues Remai & Egypte Ten Appelline Tribunal (CRAIM) u. 19 Moor. Transmill Phaseus, frances harmateires (Tendian rage of appeals offer than an autocomes in parts if plants in

ा प्रस्तित हो। अस्ति के अपने अपने उरहात कार्य के लिए के दिया तार हुन्य ( भीति के स्वति के स्वति हो के दिया है के इत्ति हो हो हो। अस्ति के स्वति हो के स्वति हो के स्वति हो हो। अस्ति के स्वति हो के स्वति हो। अस्ति हो। अस्

The appeal of the Appelled Chimme, that he fled in confirmations in total 20.8 / as presentate much challe of Continued Contin

The proof make make usuage [3] of decision the of the Plantace Act. 1964 to the Appelian Informal Statiler had an experimental form of 15 at a present of the proof of the Statiler property of the proof of the proo







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भित्र अधिक्षित्रत्त (१९२) की भित्र देश की तम प्रदेशन (१८) एको १९८१ के ब्रावेश देशेकी गांधे असे १ केंग्यन विकासकी, १९९० के कियन विकास न्तरित पुरुष प्राप्ता प्रधान करता का प्रभाव भागत कर (अन्य अग्राज्य अन्यक्षण होना और साम अग्राज्य कर शासका कर्य इनस्थित केन्द्रिय उनाय में क्षा केंग्रावर, को अंक्षिक के बादिक्षण को अन्यक को बाद केन्द्रिय की आस अद्देश के बीचे की साम अ

The Appendix of the profits of the 101 of the section of the former flat [196], should be dead of the Service The Follows for [196], should be dead of the Service The Follows for the final transcriptions of the service The Follows for the final transcriptions of the following the first termination of terminat urC. The state of the ात कर कर के प्राप्तकार, यह का शतकार राजन करा, उपक्र का उस्ता का का का सम्पादन का का सम्पादन कर का उसकार का कार अभिनेत पुरित्रात हैं क्यों करने तनमें अन्ति पुन्तिकार कर महिल्ला के कि 10 महिला (10%), विकास का समित कि कि की स का मान के कार्यकार के मान कार्यकार के कि समान के कि 10 महिला का कार्यकार के समान कि की का समान का कार्यकार की 

रेम्प्रिय आरा, युक्क (प्रोकेस १८) के प्रेटरीत प्रथम दिन्ह गए मुख्या में जिल्ला स्थानित है। १९९७ - १९७७ भत १। 🛊 % -लर्गन स्वस

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केषोर बना की ईए हुई गलन आहे.

सम्बद्धि जन्म भिन्नाकर्षे के प्रीवक 5 के अनुकाद देख रहे न file.

্রহর্ন ४३ के इस । না বা মুখ্পনা উঠার (ব. স) একিটো না 20% বা ৪৩টা না মুঠ কিটা সাইজিও নাল্ডাই ও নাল্ডা

- 京東京 美、東京 (東京 ) (中央 文学 ) (東京 ) (東

सहस्र महाने संवर्धकार करेंद्रन :

मिर्गालक कार्यास्त्र के प्रिक्त करेंद्रन :

मिर्गालक कार्यास्त्र के प्रिक्त कार्यास्त्र के दिल्ला के किन्न कार्यास्त्र के प्रतिक्षित है। के प्रतिक्षित कार्यास्त्र कार्यास कार्या 150

मंद्रे गर के विसी कुरवान के गमले में, वहां सम्बन्ध कियों गर के किसे के शक्कों में सकत हुए हैं पार प्राप्त के द्वेचन के किसे जरूर करवाने मा मिन दिसी एक में हुए हो दूर संगरिया, पार कर है सीमा जा विसी हैं हैं, बहु में मार महर है सकत के प्राप्त के दीए? दिसे कर महिनों के किस में इस नहें के अब के क्यान के समये हैं। कि इस्तर की कर किस में दूर होंगे, कर कर में एक उपयोग्य के एक मार महत्त्व के किस कर के पार का साम के किसे के स जा 2000 पार क्याने के किस के का स्वाप्त प्राप्त के समाप्त की स्थाप के स्थाप के स्थाप के स्थाप के स्थाप के स्थाप को का को में स्थाप है हैं के से स्वाप्त के स्थाप के समाप्त की स्थाप के स्थाप के स्थाप के स्थाप के स्थाप कर स्थाप fi.

भारत के बाह्य किसी सम्बुधन क्षेत्र को लियोज़ का की भाग के लिकियोग में स्ट्राज करने कहा भा तो गई के दीन, उत्तरह कुला के कुला (जिल्ला) क सामजे हैं, जो के मत के बहुद कियो बहुद का लेप को सियोज़ कि करे हैं। ' ''' (Mote of Endance of Bully of orders on 1900)' (Algorith) का कहा (Mote of Text) के orders (India) (India) के का अकारतीक and could have the many Section of the goods Which are experted to top country or market, minds of the ΗI

वर्षि क्रमार १५-४ क भारतान क्षेत्र केला मारत केलाहर, नेमारा वा १८५५ को नात निर्मात किया गया है। १ क्षेत्र केलाक क्षेत्रकां क्षेत्रकांक सामित्रक स्थापक स्थापक सिर्माण का सिर्माण का सिर्माण स्थापक स्थापक स्थापक 340

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टा रोम्स देशका की दो पतियाँ परा मंदरा Espa है, जो की कादीन कावका सूच्या (उमीम,सिम्प्यवसी/शक्षा) के सिक्स है के अंतुरात जिमित्य है, दूस मोहें के सेविया के 2 जात के दिख्यत की जाने कहिए। उपरांत्रत संस्थान के ताम गुरु उपरांत्र के पति अदेश की दो प्रतिया जनमा की जाति हो हैंगा कर हैं, केन्द्रिय कावह कुन्य अधिनिक्स, 1984 की बार 25-47, के 365 सिमीमेन कुनक में 36 वसी के 25-4 के 44 तनका के जाने दाहुए। कर है कि इस पहुंच के कि अपने के कि कि के के इंटिंग के अपने के कुछ कि कि अपने के अपने के अपन तिर के प्रत्न के उसे उसके के उसके पहुंच । The shower placetime that he pade in Suplicate in Form Ko. है के दिस के specified under Toils, 4 of Germi Resign Page and Ades, Albit with the note to the total of white the form any plat of the superior of an and in references and shall be proposed by but taken cash in the Chip and Creation September 18 phores and to execute and by a copy of 13 to Carling to the cash in the Chip and Creation of the second section 25 FE of CREATION 1941 makes biggs than a flavour.

पुन्नीकार के के के कि पिर्टन विकास निवासित पुरस्त की जायानी की खानी नहीं हैं. होई रहमन (का एक बाद कराये के 25% पुन्न की के की 2007) जा अनुसान किया जाए और वटि मोलन रम्बर एक खात कराय से कावण ही तो 600 (1000) कि अंतर की की जाया है। 120 का 1800 का से 1800 के की में के का का specified by a flee of Ric 2007- इतिकास और अनुसारक smeaked on Ruspers Unc 120 or 1800 का से 1800 (1007- को 180 miles and 120 decire) के 1800 की कि कि की की 1800 की 340

वहिंद्दर महिन में इंद हम अर्थ के उनकार है हो उन्हें के उन अर्थ के लिए उनके के हैं है जा है है कि उनके अहिंदी हम तथ्य के होते हुए और जे देकर के देखे के उन्हें के लिए उनकिएती अनेशिय नार्योग्याल की एक उनके ने केर्य न उनका का रक आकेश किया जाता है है है to case, if the casts covers we is succeeded to determ of a pool for the extension of the form of the problem the observed protects and the succeeding the last that the succeeding to the chief policy of the covers Ή.

नगरकोतिक नामकान मुख्य अधिकेदन, 1975, के इंक्टूबी एक लुक्सा, तुब आहेत पर्य स्थान अधीत की मिन पर विधितित है की अधि को नगरक को में कि किया होंगे होंगे पाएँचा ? Use round of graffest on SSTO intering may be, and the order of the employment sufficients shall cause a count for examplest Relation as prosecuted under Schooling Force in part 16 5 and feet on 1995 incommonded ·-2

ਲੰਗ ਖੁਲਾ, ਬੰਦੜ੍ਹੋਰ ਨਾਰਣ ਮੁਨਕ ਦਾ ਨੰਗਵਰ ਭਗੋਵੇਂਕ ਬਾਰਬਸ਼ਿਕਾਰ (ਬਾਬੇ ਪਿੱਧੇ) ਵਿਖਲਪਤੀ, 1982 ਲੰਗਵਿਤ ਅੰਗਰਤ ਜੰਬਦਿਤ ਜਾਜਦੀ ਕੀ ਨਾਕਿਵਿੰਤ ਚਾਲੇ ਹੁਣ ਵਿੱਚ ਹੈ ਦੀ ਪੀਟ ਹੈ। ਵਸਦੇ ਮੰਤਵਿੰਗ ਇਹ ਕਰਗਤੇ । Allogor to demonstration ! A filler cover ng these jent inter relocal treaters creation to the Customs. Aborec ਕਰੋਰ Bernes Aproblets Terrinos (Hospitale) Bules 1983 7

\_\_\_\_\_ உடைய என்னிய அரிக்க கூடு சில்கோரு இரு இரிக்க கொடியில் என்ன கூடை இரு இரு இரு இரிக்க கூடியில் கூடு இருக்க கூடு இரிக்க கூடு சில்கோரு இரு இரு இரிக்க கூடு இருக்கு கூடு இருக்கு கூடு இருக்கு இருக்கு இருக்கு இருக்கு இருக்கு இருக்கு இருக்கு இருக்கு இருக்கு அரிக்கு இருக்கு हरत भुद्रात्मेश क्रिकेश को अधिन क्रांकिन करने से भेदिया स्वानन, विस्तृत और तर्दानतमा स्वामानी के लिए, प्रमानमी नेपायीय वण्याहरा। : H Park A

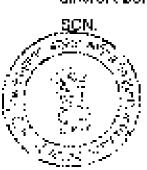
y Tys ;; ; - j 

#### :: ORDER-IN-APPEAL ::

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M/s. Gujarat NRE Coke Ind. (Stoc) Division). Vitage Lurava, flat Bhachau, Kutch (hereinafter referred to as 'Appellant') has find the present appear against Order-In-Original No. 17/JC/2018-19 dated 26.11.2018 (hereinafter referred to as 'the impugned order'), passed by the Joint Commissioner, CGST, HQ., Gandhidham (hereinafter referred to as 'the adjudicating authority').

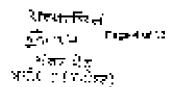
- The facts of the case in briaf, are that audit revealed that the appellant had availed Certvet credit of Service Tax paid on outward transportation services used for transportation of their finished goods during the period from 2010-11 to 2014-15. A SCN was issued to the appellant on 24.07.2015 for recovery of certval credit of service tax to the tune of Rs. 72.51.137/- along with interest under Rule 34 of the Certval Credit Rules. 2004 (hereinafter referred to as 1line CCR, 2004) read with Section 11AB and Section 11AA of the Central Excise Act. 1944 respectively and to impose panalty under Rule 16 of CCR. 2004 read with Section 11 AC of the Central Excise Act, 1944. The adjudicating authority adjudicated the show cause colices vide impugned order wherein he confirmed certiand of Rs. 72,55,137/- under Rule 14 of the CCR,2004 read with Section 11A (1) of the Act, ordered recovery of interest under Rule 14 of the CCR,2004 read with Rule 15 of CCR. 2004 read with Section 11AC of CCR. 2004
- 3 Reing aggressed with the impugned order, the appellant preferred the present appeal, interesia, on the following grounds:
- The impligned order passad by the adjudicating authority is flegal being based on the misreading and misinterpretation of solovant statutory provisions of definition of imput service under Aule 2(4 of the CCR, 2004, being contrary to the settlest principles of law and badding instructions of the Board. The adjudicating authority has discarded the Circular Nn. 97/8/2007-CX, dated 23.08.2007 on the basis of his reading of the definition of 'liquit service' that the main part of the definition as well as inclusive part of the definition of 'input service' only as upto the place of removal'. The facts that the goods were discard on FOR destination basis; that the transfer of ownership/property in goods in terms of definition of take' as per Section 2 of the Act read with relevant provisions of the Sale of Goods Act. 1930 occurred at the customers destination. The appellant submitted cupy of distance order, invoinc and long receipt of the sample furnisations evidencing transfer of ownership freight term, and payment of duty for the different seriod in support of their distinction to the adjudicating authority along with reply to



श्रदश्याचित्र शुक्तिक्रीक् सर्वेश श्रीत शक्तिक (शक्तिक्र)



- The buyar's premises have to be convectated self-place of removal and not the factory gate in terms of definition of pince of removal as per clause (c) of Section 4(3) of the Act as clarified by CBEC was Giossian dated 23.98,2007 & Circular No. 988/12/2014-CX dated 20.10.2014. The conditions preactiond by Board vide the said Circulars stands fully complied with by the appellant. It is a sellled legal position that clarification/instructions issued by the Board are binding on the departmental authorities. The same is also clarified in CBIC Circular No. 1085/4/2018-CX dated 08th June 2019 issued vide F.No. 116/25/2018-CX-3X-3.11
- (iii) The outward transportation of the Soul souther's is a possonamifacturing activity or not is irrelevant and irrelated as the same has no bearing at all on the admissibility of central credit. The adjudicating authority isal attactly rais directed himself in facts and also in law while recording that outward between the final product is a post-manufacturing activity and hence, destill between the admissible. Similarly, the observation of the adjudicating activity that we concership of the goods is not the relevant entent for determining the Nationy to path which is as at the time and place of removal and therefore, may not be relevant to first whether certain service can be breated as input service or not, is probable basis and contrary to the aforesaid clarifications issued by Roard as well as a standard wide judicial pronouncements.
- (iv) The impugned order is not make high object and on merits, they are not liable to make payment of any interest under Section 1994 of the Act read with Rule 14 of the CCR, 2004 not they are liable to eny decal action under Rule 19(1) of the CCR, 2004.
- If is neither justified non-permissible of the total permissible of the
  - Associated Strips (ed. Vs CCE, Main Embi(2002) (143 FCT 1219 To Det).
  - Mts. Escorts JCB Ltd Wh. CCC New Onth (2002) (146) F1T 31 (SQ).
  - M/8, Ultrafecti Cernant List 1//8 CPC, Match = \$7/11095/2015-DB.
- 4. Personal hearing in the matter was absenced to by Shir Pradyot K Chatopadhyay. General Manager Commercial, and Shir Ared Agarwa) AGM Commercial, who relterated Grounds of Appeal and automitted corp. of circular no. 1085/4/2018-CX dated 08 (ij6.2018 and copy of judgement of 50%, and Next Cerrent Ltd. Ws CCE, Kutch -



ST/11098/2015 DB for consideration: that their appeal may be decided on the basis of above racts and legal position.

- I have carefully gone through the facts of the case, the impugned ower, grounds of appeal and automesions made by the appellant. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority disallowing Central credit of service tax paid on outward transportation charges is conect, proper and legal or otherwise.
- Sind that the Appellant had availed Cenval credit of service tax paid on outward GTA service during the period from 2010-11 to 2014-16. The adjudicating authority disaboved seid Cenval credit of service tax on the ground that outward GTA service was availed by the Appellant for transportation of their foliahed goods from their factory to customer's premises i.e. beyond place of removal, and hence and covered under definition of 'Input service' in terms of Rule 2(I) of CCR, 2004. The Appellant has contested that entire sale was on FOR basis and hence, Cenvat of Service Tax paid un transportation from factory to buyer's premises ought to have been allowed in view of the Judgement. In the case of M/s. Ultrafecti Cernent 1td. V/s CCC, Kulch ST/H103B/2015-DB, which laid down general principle as to what constitutes place of removal considering the point of sale where the ownership and fak passes on from the seller to the buyer; that the form "Place of removal" defined in the CCR, 2004 crivisagos 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(I) of Conval Credit.
  Rules: 2004 reads as under:-

'19 "Oput service" means any service. -

- used by a provider of taxable service for providing on opport service; or
- (ii) used by the manufacturer, whether directly or indirectly, in or inrelation 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, moderatization, renovation or repairs of a factory, premises of provider of output service or an infine relating to such factory or promises, advertisement or sples promotion, market research, storage upto the place of removal, procurement of inputs, accounting auditing, financing, recomment and quality control, coacting and behaving, computer networking, credit rating, share registry, and security. Sygwein trensportation of inputs or capital goods and outward trensportation

'up)'y the place of removal;".

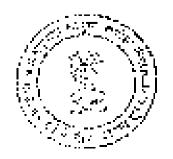
(Emphasis supplied)

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- From above, if is observed itself court ceretor' means any service used by the manufactorer, whether directly or indicatily, in or in clatics to manufacture of final products and clearance of final products up to the c/ace of removal with the inclusion of outward transportation upto the place or removal. It is, therefore, evident that as per main clause the service about he used by the manufacturer which has direct or the restrict and clearance of final undirect upto the place of removal and the industries clause restricts the outward transportation upto the place of removal. The place of removal has been defined under Section 4 of the Act. As per Section 4(3)(c) of the Act, "place of removal" means a factory or any other place of 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
- B. I find that the issue is no more tax integraland etands decided by the Hon'ble Supreme Court vide judgment deted 01 02,2078 passed in the case of Ultratech Cement Ltd reported as 2018 (9) G.S.T.L. 307 (S.C.), wherein it has been held that,
  - '4. As mentioned above, the acsessee is involved in prinking and closing of cernett. It is supposed to pay the service fax on the aforesaid services. At the sense time, it is entitled to avail the transit of Conval Condition prespect of any input service fax paid. In the instant case, input service fax was also paid on the outward transportation of the guards from furting to the customer's promises of which the assessee claimed the credit. The question is as to meether it can be treated as finall service.
  - 5. 'Imput senden' is defined to Hule 20) of the Rules, 2004 which reads as under
  - 12(f) Tinput service: means any service: -
  - "/// Republicandoo" disease any service
    - $m=rac{Usen}{L} b_L g$  provides of favebre service for providing an gulput services, m
    - (a) used by me manufacture; whether divisity or university, in or projection to the manufacture of final products and electronics of final products and electronics.

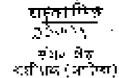
with invitates services used in relation to mademication, renovation or reports of a foliony premises of provider of output service or an office relating to such testory or promises influentialment or select promotion, market research, alorage upto me place of removal, producement of highly, such as equipmentially, enabling fluenting, restrictions and quality control concludes and mining acceptance acceptable, end endeaths obtained testsportation of inputs or capital goods and publicate testsportation upon the place of removal?

γΕσηράσσεις ευγιμένως



**স্থান <u>শি</u>ন্ত** টুট্টাৰ জি ক্ষিত্ৰ জিল শিক্ষিত (১২চন্ত্ৰ)

- 6. If 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 oforesaid provision makes it clear that those services are instituted within are used by the manufacturer, whether directly or indirectly, in or in-relation to the instituteous of that products and dearance of final products and dearance of final products and the plane of removal.
- It may be relevant to point out here that the original definition of imput. service" contained in Rule 20) of the Rules, 2004 used the expression from The place of removal. As per the safe definition, service used by the menutactures of clearance of final products from the place of minoral to the Werellouse or caclamer's place etc. was exigible for Convat Credit. This stancis finally desided in Civil Appeal No. 11710 of 2016 (Commissioner of Control Excise Religeum v. M/s. Vesevedaria Cements Ltd.) vide (adgment. dated January 17, 2013. However, vide entendment certified out in the aforesaid Pules in the year 2008, which became effective from March 1, 2008, the word from is replaced by the word 'upto'. Thus, it is only 'apportie. piece of removal that sorvice is freated as input service. This smendment has changed the antire scenario. The benefit which was admissible even bryond the piece of removal new gets terminated at the piece of removal. and drives to the certial credit of highlitiax paid gate alused at that place. This credit destrict travel therefrom. It becomes clear from the bore reading of this arrended Role, which applies to the period in question that the Goods. Transport Agency service used for the purpose of anisonal transportation of auxids, το from the factory to customer's gremises, is not covered within the arrulit of Rule 2(f)(f) of Rules, 2004. Whereas the word from is the indicator. of stanling union the expression luptor signifies the terminating point, putting an and to the trensport journey. We, therefore, and that the Adjudicating Aubionly was right in interpreting Rule 2(i) in the following manner:
  - The input service has been defined to mean any service based by the manufecturer whether directly or violatedly and also includes, intimatio, services used to retalling to inward imagnostation of inputs or export goods and animated transportation upon the place of remove). (he two clauses in the definition of input services; take nere to excumsorate input create by stating that service used in relation to the clearence from the place of removal and service used for collected inasportation up to the place of removal are to be treated as input service. The first clause stock that transport services matricts important service creat up to the place of service). When these two influences are read together, it becomes clear that transport services amalthouses are read together, it becomes clear that transport services amalthouses are read together, it becomes clear that transport services amalthouses are read together.



carnot go beyond immaps a radio his make of removal. The two clauses, the one dealing with general consists and office dealing with a specific item, are not to be read day national, so we to bring about conflict to defeat the laws adname. The premoval of interpretation is to find harmony and reconciletion is about 1999; its institute provisions.

15 Copdil availability is a securit to 'annual. The credit covers duly paid. ga yapya matanaksi as yesii kis yox yedid da sandoosi usud in or in rukakon. to the menafactors of its Sinoi product. The final products manufactured by the asserble in this factory premises and once the final products are intermediational and algebra from the factory. premises, the question of utilization of sortine does not arise as with services cauno) be considered as used to relation to the menufacture of the final product. Therefore, extensible the profit beyond the point of removal of the final amalies or properties duly would be contrary to the scheme of Cenval Credit Huse. The main datise in the definition states: that the service in regard to which crods of fax is should be used. In ar in relation to desirence of the final products from the plant of remove). The definition of input sorvices thould be read as a whole and should not be fragmented to order to evail vacingible condit. Order that signments have laken place, the abaston of granting input service. stage prepty does not area. <u>Trus sportulop</u> is an entirely different activity. from memblecture and titls <u>possible symples sotiled by the judgment of</u> Handrable Supreme Count in the cases of Bombay Tyra Informational 1983 (14) EL(1 = 2002-Ti(3), -274 +5G/CX/L3), Indian Oxygen Ltd. 1988. (96) ELT 723 SC =  $2000495 \times 484800408$  and Barada Electric Meterol 1987 (94) ELT 13 SC = (4502-7/0) - 96-90-0X-LB. <u>The past</u> removed <u>transport of orenalectured goods is not en input for the mandiacture</u>r. Simplesty, in the case of Mb. Othelech Cameris 133, v. CCE. Shafnegar. 2007 (6) STR 364 (16) = 2007-T(01-429-CESTAT-AHM. it was held theiraffor the final products are weered from the plac<u>e of removal, there will</u> being scope of subsequent row of vervice to be frested as hight. The above opservations and ways expirit: the scope of relevant provisions. clearly, correctly and in accordance with the legal provisions."

R The aforesaid order of the Adjust catting Additionary was upset by the Commissioner (Appeals) promipally on the ground that the Board in the Circular dated August 23, 2007 had distilled the definition of 'place of removal' and the three conditions contained therein shoot satisfies insofar as the case of the respondent is agreened, i.e. (i) regarding ownership of the goods till the belivery of the goods at the purchasor's door seep: (ii) seller

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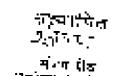
hearing the risk of or less or damage to the goods during transit to the destination and, (iii) freight charges to be integral part of the price of the goods. This approach of the Commissioner (Appeals) has been approved by the CLSTAT as well as by the High Court. This was the main argument extranced by the learned counsel for the respondent supporting the judgment of the High Court.

- a. We are afraid that the storesold expression of the Courts below is algoryunlenable for the following ressons:
- 10. In the first instance, it needs to be kept in mind that Board's Circular dated August 23, 2007 was issued in placification of the definition of ripput service, as existed up that date is, it related to unamended definition. Relevant portion of the serid orgular teles under.

"ISSUE: Up to what stage a manufacture/sonalgoor can take credition the service tax paid on goods transport by road?

COMMEN : 8: This result has been examined in great detail by the CESTAT in the case of M/s Gujaral Ambuja Cements 1td los CCF Turdhigra [2007] (6) STR 249 T4-D] = 2007-TIOL-429-CESTAT-AHM, to this case, CESTAT has made the following observations:-

the post asie transport of manufactured goods is not an input for the manufacturer/consignor. The two clauses in the definition of 'ineut services' take care to circumsoribe input credit by stating that service used in relation. to the clearence from the place of removal and service used for colward. bishappination upto the plane of removal are to be realed as input service. The first clause does not mention transport service in particular. The secondclause restricts transport service credit upto the place of removal. When these two plauses are read together, it becomes clien that transport spryospradit 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' schome. The purpose of interpretation is to find harmony. and reconciliation among the various provisions'. Similarly, in the case of Mis Utratech Comerts 1td va CCH Rhavseger - 2007-[CIL-429-CES]A] -AHM. It was field that after the final products are cleared from the place of romoval, there will be no scope of aubsequers use of service to be treated. is input. The above observations and views explain the scope of the





relevant provisions deady conectly and a aboundance with the legal provisions. In combusion, a manufacturer treasigner can take credit on the service tax perd on outward treaspert of goods up to the place of removal and not beyond that.

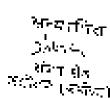
8.2 In this correction, the chiase place of removal needs determination taking into account the tacts of an archividual case and the applicable provisions. The pricese 'place of emoval' has not been defined in CENVAT Credit Ruses in terms of sub-ruls (f) of ruls 2 of the said rules if any words or expressions are used in the CENVAT Credit Rules, 2004 and are not defined therein but are defined to the Cantral Excise Act, 1944 or the Finance Act, 1954, they shall trays the came meaning for the CENVAT Credit Rules as assigned to their in those Acts. The parase 'place of removal' is defined under section 4 of the Central Excise Art, 1944 it sparse. Then,

#### "place of ramoval" means-

- (i) a factory or any other place or premises of production or manufacture of the excisable goods :
- (ii) a wavehouse or any other piece or premises wherein the excisable goods have been permitted to be stored without payment of duty ;
- (iii) a depot, premises of a consignment agent or any other place or premises from where the encisable goods are to be sold after their place of the formy.

from whom such goods are removed to

If in, therefore, clear that for a menufactural consignal, the eligibility to avail credit of the service fax paid on the transportation during removal of excitability 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 watehouse, or hant a duty paid depot (from where the excisable goods are sold, after their department from the landary), the determination of the place of removal does not pose much problem. However, there may be situations where the manufactions (manufactor may alam that the sale has taken place at the destination point because in terms of the sale contract (experiment ty the awards in another to the accordance (with the sale) of the delivery of the goods in accordate condition to the numbraser at his door step (ii) the saler bore the risk of loss of or demand to the apode during transit to the destination; one (iii) the mount charges were an integral roat of the price of goods. In such cases, the credit of the service





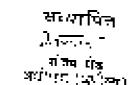
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tax paid on the transportation up to such place of sale would be admissible if it can be established by the claimant of such credit that the sale and the transfer of properly in goods (in topins of the detrotion as under section 2 of the Central Excise Act. 1844 as also in terms of the provisions under the Sale of Goods Act, 1930) accurred at the said place."

- 11. As own be seen from the reading of the aforesaid partion of the director; the sade was examined after keeping in mind judgments of CESTAT in Sujarat Amouja. Cement Ed. and MVs. Ultratech Cement Ed. Those judgments, obviously, dealt with unamended Rule 2() of Rules, 2004. The three conditions which were mentioned explaining the 'place of removal as defined under Section 4 of the Abl. there is no quarrel upto this stage. However, the Important aspect of the matter is that Cement Credit is permissible in respect of ringst service' and the Circular relates to the unamended regime. Therefore, it cannot be applied after amengment in the definition of 'input service' which brought about a total change. Now, the deficil on of 'place of removal' and the conditions which are to be satisfied have to be in the context of rupto' the place of removal it is the amendment which has made the entire difference. That expect is not pasts with in the said Board's circular, nor it could be.
- 12. Secondly, if such a propert is made applicable even in respect of post amendment cases, it would be violative of Rule 2(f) of Rules, 2004 and even a situation cannot be couple rance?
- 13. The upshot of the aforceatd discussion would be to hold that Cenval Credit on goods transport agency service availed for transport of goods from clade of removal to buyer's premises was not admissible to the respondent Accordingly, this appeal is allowed, judgment of the High Court is set eather and the Order-In-Original dated August 22, 2011 of the Assessing Officer is restored."

(Emphasis supplied):

8.1 Further, vide CBEC vide Circular No. 1085/4/2018 CX dated 08.06.2019, if has been becaded that circular no. 988/12/2014 CX dated 20.10.2014 shall stand rescinded from the date of issue of the above circular Further, clause (c) of pare 8.1 and pare 8.2 of the orbular no. 97/6/2007-CX dated 23.08.2007 are also omitted from the date of issue of the above circular and also clarified the "Nece of removal" under section 4 of the Central Excise Act. 1994. The Central Credit Rules. 2004 and the Central Credit

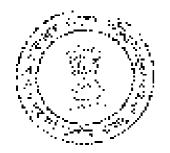


ਸਿੰਘੀਵੁੱਡ, 2017, wherein it has been carified that.

15. GENVAT Credit on STA 12 vices (1). The other issue decided by Honible Supreme Court in relation in again of restroyed is in case of CCF & ST v. Ultra Toch Cement Up . dated (49-2013 in Clini Appeal No. 11251 of 2016 on the issue of CENVA1 Credit on Social Transport Agancy Service availed for transport of goods from the plane of minored to the Buyer's premises. The Apex Court has allowed the plane of removed to have be particle availed for transport of goods from the place of removed to have in particle that effect amendment of million definition of input service make Rose 3(f) of the CCNVAT Credit Rules 2004, effective from 1-3-2006, the sorvice in maked as input service only up to the place of removal."

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- 9.2 In view of above law settled by the Honble Supreme Court, Cenvet Credit or GTA service availed by the appellant for outward transportation of goods from place of removal in buyer's premises is not admissible w.e.f. 01.04.2008. The period involved in this case is from April-2019 to June-2017 and honce, Cenvel credit of Service Tax paid on GTA for outward transportation of goods cannot be allowed.
- in the case of M/s (i) tracketh Common List. Wis CCE. Kulch \$1/11/08/2015-DB and other case laws relied input by the Appellant. I find that case laws are not relevant and has to be field per uncurrent in the light of judgment of the Appex Court in the case of M/s. Uhratech Cement Ltd. supra since judgement of the Appex Court prevails over any decision/orders passed by the subordinate courts/licburs!s.
- Regarding penalty imposed under Rulo 15 of CCR.2004. I find that the Appellant wrongly availed and utilized Convat credit of service tax peid on outward GTA service used for transportation of their finished goods from their fectory to buyers premises, which is not admissible as discussed supra. The Appellant, thus contravened the provisions of Convat Credit Rules, 2004 and therefore the Appellant has been rightly held liable for penalty under Rule 15 of CCR, 2004. I. therefore, upheld penalty of Rs 72,51.137/ imposed in the Impugned order.
- 11 In view of above. I uphold the impugned order and reject the appeal.



- अपोलकर्ता, बद्दारा दक्षे की गई अपोठी का निष्यस्य अपरोक्त तरीक से किया जाता है। 12.
- 12. The appeals filed by the appealant example reposed off in above terms.

क्षा राज्य <del>में भेटा</del>

Commissanner (Appeals)

### <u>SVRPAD</u>

இத் Gigarat NRE Cinko I td. (Steel Division). Village Lunava Tal Chachau, ∠urich.

#### <u>Copy to:</u>

- 1. The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Anmedabad.
   2. The Commissioner, GST & Central Excise, Kutch Commissionerate, Gandhidham.
   3. The Assistant Commissioner, GST & Central Excise Division-, Anjaz-Rhachau
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