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

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

[illegible]

क अपील / फाइल संख्या / Appeal /File No. V2/24/GDM/2019 | मूल आदेश सं / O.I.O. No [illegible]/2018-19 | दिनांक / Date [illegible]-2018

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

KCH-EXCUS-000-APP-095-2019

आदेश का दिनांक / Date of Order: 23.10.2019 | जारी करने की तारीख / Date of issue: 23.10.2019

श्री गोपी नाथ, आयुक्त (अपील्स), राजकोट द्वारा पारित /

Passed by Shri. Gopi Nath, Commissioner (Appeals) Rajkot

ग [illegible]

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 :-

Gujarat NRE Coke Ltd. (Bhuj Division), Village: [illegible], Taluka: Bhachau, Kutch 370140

[illegible]

Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) [illegible]

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) [illegible]

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) [illegible]

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at [illegible] in case of appeals other than as mentioned in para- 1(a) above

(iii) [illegible]

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / [illegible] Rule 6 of Central Excise (Appeal) Rules, 2001 [illegible] Rs. 1,000/-, Rs. 5,000/-, Rs. 10,000/- [illegible] Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

(B) [illegible]

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 [illegible] Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

(ii) [illegible]

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 [illegible] Commissioner Central Excise or Commissioner, Central Excise (Appeals) [illegible] Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal. [illegible]

(iii) [illegible]

(i) [illegible]

(ii) [illegible]

(iii) [illegible]

[illegible]

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 [illegible]

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.

(B) [illegible]

Revision application to Government of India:

[illegible]

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) [illegible]

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) [illegible]

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) [illegible]

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(iv) [illegible]

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) [illegible]

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) [illegible]

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) [illegible]

In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) [illegible]

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) [illegible]

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) [illegible]

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. Gujarat NRE Coke Ltd. (Steel Division), Village Lunava, Tal Bhachau, Kutch (hereinafter referred to as 'Appellant') has filed the present appeal 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').

2. The facts of the case in brief, are that audit revealed that the appellant had availed Cenvat 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 cenvat credit of service tax to the tune of Rs. 72,51,137/- along with interest under Rule 14 of the Cenvat Credit Rules, 2004 (hereinafter referred to as 'the CCR, 2004) read with Section 11AB and Section 11 AA of the Central Excise Act, 1944 respectively and to impose penalty under Rule 15 of CCR, 2004 read with Section 11 AC of the Central Excise Act, 1944. The adjudicating authority adjudicated the show cause notices vide impugned order wherein he confirmed demand of Rs 72,51,137/- 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 Section 11AA of the Act and also imposed penalty of Rs. 72,51,137/- under Rule 15 of CCR, 2004 read with Section 11AC of CEA,1944.

3. Being aggrieved with the impugned order, the appellant preferred the present appeal, interalia, on the following grounds:

(i) The impugned order passed by the adjudicating authority is illegal being based on the misreading and misinterpretation of relevant statutory provisions of definition of input service under Rule 2(l) of the CCR, 2004, being contrary to the settled principles of law and binding instructions of the Board. The adjudicating authority has discarded the Circular No. 97/8/2007-CX dated 23.08.2007 on the basis of his reading of the definition of 'input 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 cleared on FOR destination basis; that the transfer of ownership/property in goods in terms of definition of 'sale' 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 copy of customer order, invoice and lorry receipt of the sample transactions evidencing transfer of ownership, freight term, and payment of duty for the different period in support of their claim to the adjudicating authority along with reply to SCN.

(ii) The buyer's premises have to be considered as "place of removal" and not the 'factory gate' in terms of definition of 'place of removal' as per clause (c) of Section 4(3) of the Act as clarified by CBEC vide Circular dated 29.08.2007 & Circular No 988/12/2014-CX dated 20.10.2014. The conditions prescribed by Board vide the said Circulars stands fully complied with by the appellant. It is a settled legal position that clarification/instructions issued by the Board are binding on the departmental authorities. The same is also clarified in CBIC Circular No. 1065/4/2018-CX dated 08th June,2018 issued vide F.No. 116/23/2018-CX-8.

(iii) The outward transportation of the final products is a post-manufacturing activity or not is irrelevant and immaterial as the same has no bearing at all on the admissibility of cenvat credit. The adjudicating authority has clearly misdirected himself in facts and also in law while recording that outward transportation of a final product is a post-manufacturing activity and hence, credit thereon is not admissible. Similarly, the observation of the adjudicating authority that the ownership of the goods is not the relevant criteria for determining the liability to pay which is as at the time and place of removal and therefore, may not be relevant in determining whether certain service can be treated as input service or not, is without basis and contrary to the aforesaid clarifications issued by Board as well as settled vide judicial pronouncements.

(iv) The impugned order is not maintainable in law on merits, they are not liable to make payment of any interest under Section 11AA of the Act read with Rule 14 of the CCR, 2004 nor they are liable to any penal action under Rule 15(1) of the CCR, 2004.

(v) The issue involved relates to interpretation of statutory provisions and therefore, it is neither justified nor permissible in law to impose penalty on appellant even if it is assumed without admitting that they are not entitled for cenvat credit of service tax paid on the relevant service under consideration. The appellant has acted on the basis of CBEC's Circular dated 29.08.2007 and various judicial pronouncements and on their bonafide belief that the admissibility of cenvat credit on the said service as the conditions prescribed vide the said Circular stand complied with by them. The appellant in this regard, relied on following case-laws: -

- *Associated Ships Ltd. Vs CCE, New Delhi(2002) (143) E.L.T. 319 (Tri. Del)*
- *M/s. Escorts JCB Ltd. Vs. CCE, New Delhi(2002) (146) E.L.T. 31 (SC)*
- *M/s. Ultratech Cement Ltd. Vs CCE, Kutch – ST/11095/2015-DB*

4. Personal hearing in the matter was attended to by Shri Pradyot K Chattopadhyay, General Manager Commercial, and Shri Amit Agarwal, AGM Commercial, who reiterated Grounds of Appeal and submitted copy of circular no. 1065/4/2018-CX dated 08.06.2018 and copy of judgement of M/s. JCB India Cement Ltd. Vs CCE, Kutch -

ST/1098/2015-DB for consideration: that their appeal may be decided on the basis of above facts and legal position.

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

6. I find that the Appellant had availed Cenvat credit of service tax paid on outward GTA service during the period from 2010-11 to 2014-15. The adjudicating authority disallowed said Cenvat credit of service tax on the ground that outward GTA service was availed by the Appellant for transportation of their finished goods from their factory to customer's premises i.e. beyond place of removal, and hence not covered under definition of "input service" in terms of Rule 2(l) of CCR, 2004. The Appellant has contested that entire sale was on FOR basis and hence, Cenvat of Service Tax paid on transportation from factory to buyer's premises ought to have been allowed in view of the judgement in the case of *M/s. Ultratech Cement Ltd. Vs CCE, Kolkata* ST/1098/2015-DB, which laid down general principle as to what constitutes place of removal considering the point of sale where the ownership and risk passes on from the seller to the buyer; that the term "Place of removal" defined in the CCR, 2004 envisages a location even beyond factory gate or even depot or any premises other than that of the manufacturer, to be considered as place of removal.

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

> *"(l) "input service" means any service,-*
>
> *(i) used by a provider of taxable service for providing an output service; or*
>
> *(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,*
>
> *and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal;".*

(Emphasis supplied)

7.1 From above, it is observed that "input service" means any service used by the manufacturer, whether directly or indirectly, in or in relation to manufacture of final products and clearance of final products upto the place of removal with the inclusion of outward transportation upto the place of removal. It is, therefore, evident that as per main clause - the service should be used by the manufacturer which has direct or indirect relation with the manufacture of final products and clearance of final products upto the place of removal and the inclusive clause restricts the outward transportation upto the place of 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 or premises of production or manufacture of excisable goods; a warehouse 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.

8. I find that the issue is no more res integra and stands decided by the Hon'ble Supreme Court vide judgment dated 01.02.2018 passed in the case of Ultratech Cement Ltd reported as 2018 (9) G.S.T.L. 337 (S.C.), wherein it has been held that,

> *"4. As mentioned above, the assessee is involved in packing and clearing of cement. It is supposed to pay the service tax on the aforesaid services. At the same time, it is entitled to avail the benefit of Cenvat Credit in respect of any input service tax paid. In the instant case, input service tax was also paid on the outward transportation of the goods from factory to the customer's premises of which the assessee claimed the credit. The question is as to whether it can be treated as 'input service'.*
>
> *5. 'Input service' is defined in Rule 2(l) of the Rules, 2004 which reads as under:*
>
> *"2(l) 'input service' means any service: -*
>
> *"(l) "input service" means any service, -*
>
> *(i) Used by a provider of taxable service for providing an output services; or*
>
> *(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,*
>
> *and includes services used in relation to modernisation, renovation or repairs of a factory premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal;"*
>
> (Emphasis supplied)

सत्यापित

अधीक्षक

अधीक्षक (अपील्स)

6. It is an admitted position that the instant case does not fall in sub-clause (i) and the issue is to be decided on the application of sub-clause (ii). Reading of the aforesaid provision makes it clear that those services are included which are used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products 'upto the place of removal',

7. It may be relevant to point out here that the original definition of 'input service' contained in Rule 2(l) of the Rules, 2004 used the expression 'from the place of removal'. As per the said definition, service used by the manufacturer of clearance of final products 'from the place of removal' to the warehouses or customer's place etc. was eligible for Cenvat Credit. This stands finally decided in Civil Appeal No. 11710 of 2016 (Commissioner of Central Excise Belgaum v. M/s. Vasavadatta Cements Ltd.) vide judgment dated January 17, 2013. However, vide amendment carried out in the aforesaid Rules in the year 2008, which became effective from March 1, 2008, the word 'from' is replaced by the word 'upto'. Thus, it is only 'upto the place of removal' that service is treated as input service. This amendment has changed the entire scenario. The benefit which was admissible even beyond the place of removal now gets terminated at the place of removal and does to the cenvat credit of input tax paid gets utilised at that place. This credit cannot travel therefrom. It becomes clear from the bare reading of this amended Rule, which applies to the period in question that the Goods Transport Agency service used for the purpose of outward transportation of goods, i.e. from the factory to customer's premises, is not covered within the ambit of Rule 2(l)(ii) of Rules, 2004. Whereas the word 'from' is the indicator of starting point, the expression 'upto' signifies the terminating point, putting an end to the transport journey. We, therefore, find that the Adjudicating Authority was right in interpreting Rule 2(l) in the following manner:

> '... The input service has been defined to mean any service used by the manufacturer whether directly or indirectly and also includes, inturalia, services used in relation to inward transportation of inputs or export goods and outward transportation upto the place of removal. The two clauses in the definition of 'input services' take care to circumscribe input credit by stating that service used in relation to the clearance from the place of removal and service used for outward transportation upto the place of removal are to be treated as input service. The first clause does not mention transport service in particular. The second clause restricts transport service credit upto the place of removal. When these two clauses are read together, it becomes clear that transport services credit

cannot go beyond that specified in the place of removal. The two clauses, the one dealing with general provision and other dealing with a specific item, are not to be read disjunctively so as to bring about conflict to defeat the laws' scheme. The purpose of interpretation is to find harmony and reconciliation among the various provisions.

15. Credit availability is in regard to 'inputs'. The credit covers duty paid on input materials as well as tax paid on services, used in or in relation to the manufacture of the 'final product'. The final products manufactured by the assessee in their factory premises and once the final products are fully manufactured and cleared from the factory premises, the question of utilization of service does not arise as such services cannot be considered as used in relation to the manufacture of the final product. Therefore, extending the credit beyond the point of removal of the final product on payment of duty would be contrary to the scheme of Cenvat Credit Rules. The main clause in the definition states that the service in regard to which credit of tax is sought, should be used in or in relation to clearance of the final products from the place of removal. The definition of input services should be read as a whole and should not be fragmented in order to avail ineligible credit. Once the clearances have taken place, the question of granting input service stage credit does not arise. Transportation is an entirely different activity from manufacture and this position remains settled by the judgment of Honorable Supreme Court in the cases of Bombay Tyre International 1983 (14) ELT = 2002-TIOL-274-SC-CX-LB, Indian Oxygen Ltd. 1988 (36) ELT 723 SC = 2002-TIOL-84-SC-CX and Baroda Electric Meters 1997 (94) ELT 13 SC = 2002-TIOL-96-SC-CX-LB. The post removal transport of manufactured goods is not an input for the manufacturer. Similarly, in the case of M/s. Ultratech Cements Ltd. v. CCE, Bhavnagar 2007 (6) STR 364 (Tri) = 2007-TIOL-429-CESTAT-AHM. It was held that after the final products are cleared from the place of removal, there will be no scope of subsequent use of service to be treated as input. The above observations and views explain the scope of relevant provisions clearly, correctly and in accordance with the legal provisions."

6. The aforesaid order of the Adjudicating Authority was upset by the Commissioner (Appeals) principally on the ground that the Board in its Circular dated August 23, 2007 had clarified the definition of 'place of removal' and the three conditions contained therein stood satisfied insofar as the case of the respondent is concerned, i.e. (i) regarding ownership of the goods till the delivery of the goods at the purchaser's door step; (ii) seller

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

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

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

"ISSUE: Up to what stage a manufacturer/consignor can take credit on the service tax paid on goods transport by road?

CONCLUSION: This issue has been examined in great detail by the CESTAT in the case of M/s Gujarat Ambuja Cements Ltd. vs CCE, Ludhiana [2007 (8) STR 249 Tri-D] = 2007-TIOL-420-CESTAT-AHM. In this case, CESTAT has made the following observations:-

'the post sale transport of manufactured goods is not an input for the manufacturer/consignor. The two clauses in the definition of 'input services' take care to circumscribe input credit by stating that service used in relation to the clearance from the place of removal and service used for outward transportation upto the place of removal are to be treated as input service. The first clause does not mention transport service in particular. The second clause restricts transport service credit upto the place of removal. When these two clauses are read together, it becomes clear that transport service credit cannot go beyond transport upto the place of removal. The two clauses, the one dealing with general provision and other dealing with a specific item, are not to be read disjunctively so as to bring about conflict to defeat the laws' scheme. The purpose of interpretation is to find harmony and reconciliation among the various provisions'. Similarly, in the case of M/s Ultratech Cements Ltd vs CCE Bhavnagar - 2007-TIOL-429-CESTAT-AHM, it was held that after the final products are cleared from the place of removal, there will be no scope of subsequent use of service to be treated as input. The above observations and views explain the scope of the

relevant provisions clearly, correctly and in accordance with the legal provisions. In conclusion, a manufacturer / consignor can take credit on the service tax paid on outward transport of goods up to the place of removal and not beyond that.

8.7 In this connection, the phrase 'place of removal' needs determination taking into account the facts of an individual case and the applicable provisions. The phrase 'place of removal' has not been defined in CENVAT Credit Rules. In terms of sub-rule (1) of rule 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 in the Central Excise Act, 1944 or the Finance Act, 1994, they shall have the same meaning for the CENVAT Credit Rules as assigned to them in those Acts. The phrase 'place of removal' is defined under section 4 of the Central Excise Act, 1944. It states that,

"place of removal" means-
(i) a factory or any other place or premises of production or manufacture of the excisable goods ;
(ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be stored without payment of duty ;
(iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory;

from where such goods are removed."
It is, therefore, clear that for a manufacturer/consignor the eligibility to avail credit of the service tax paid on the transportation during removal of excisable goods would depend upon the place of removal as per the definition. In case of a factory gate sale, sale from a non-duty paid warehouse, or from a duty paid depot (from where the excisable goods are sold, after their clearance from the factory), the determination of the 'place of removal' does not pose much problem. However, there may be situations where the manufacturer/consignor may claim that the sale has taken place at the destination point because in terms of the sale contract/agreement (i) the ownership of goods and the property in the goods remained with the seller of the goods till the delivery of the goods in acceptable condition to the purchaser at his door step; (ii) the seller bore the risk of loss of or damage to the goods during transit to the destination; and (iii) the freight charges were an integral part of the price of goods. In such cases, the credit of the service

tax paid on the transportation up to such place of sale would be admissible if it can be established by the claimant of such credit that the sale and the transfer of property in goods (in terms of the definition as under section 2 of the Central Excise Act, 1944 as also in terms of the provisions under the Sale of Goods Act, 1930) occurred at the said place."

"11. As can be seen from the reading of the aforesaid portion of the circular, the issue was examined after keeping in mind judgments of CESTAT in Gujarat Ambuja Cement Ltd. and M/s Ultratech Cement Ltd. These judgments, obviously, dealt with unamended Rule 2(l) of Rules, 2004. The three conditions which were mentioned explaining the 'place of removal' as defined under Section 4 of the Act, there is no quarrel upto this stage. However, the important aspect of the matter is that Cenvat Credit is permissible in respect of 'input service' and the Circular relates to the unamended regime. Therefore, it cannot be applied after amendment in the definition of 'input service' which brought about a total change. Now, the definition of 'place of removal' and the conditions which are to be satisfied have to be in the context of 'upto' the place of removal. It is the amendment which has made the entire difference. That aspect is not dealt with in the said Board's circular, nor it could be.

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

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

(Emphasis supplied)

8.1 Further, vide CBEC vide Circular No. 1065/4/2018-CX dated 09.05.2018, it has been decided that circular no. 868/12/2014-CX dated 20.10.2014 shall stand rescinded from the date of issue of the above circular. Further, clause (c) of para 8.1 and para 8.2 of the circular no. 97/8/2007-CX dated 23.08.2007 are also omitted from the date of issue of the above circular and also clarified the 'Place of removal' under section 4 of the Central Excise Act, 1944, the Cenvat Credit Rules, 2004 and the Cenvat Credit Rules, 2017 wherein it has been clarified that.

15. CENVAT Credit on GTA Service : The other issue decided by Hon'ble Supreme Court in relation to place of removal is in case of CCE & ST v. Ultra Tech Cement Ltd. - [2018-TIOL-2213] in Civil Appeal No. 11251 of 2016 on the issue of CENVAT Credit on Goods Transport Agency Service availed for transport of goods from the place of removal to the Buyer's premises. The Apex Court has allowed the appeal filed by the Revenue and held that CENVAT Credit on Goods Transport Agency service availed for transport of goods from the place of removal to buyer's premises was not admissible for the relevant period. The Apex Court has observed that after amendment of in the definition of 'input service' under Rule 2(l) of the CENVAT Credit Rules 2004, effective from 1-3-2008, the service is treated as input service only up to the place of removal."

8.2 In view of above law settled by the Hon'ble Supreme Court, Cenvat Credit on GTA service availed by the appellant for outward transportation of goods from place of removal to buyer's premises is not admissible w.e.f. 01.04.2008. The period involved in this case is from April-2016 to June-2017 and hence, Cenvat credit of Service Tax paid on GTA for outward transportation of goods cannot be allowed.

9. I have also examined CESTAT, Ahmedabad's order passed in the case of M/s *Ultratech Cement Ltd. Vs CCE, Kutch - STA/11008/2015-DB* and other case laws relied upon by the Appellant. I find that case laws are not relevant and has to be held *per incuriam* in the light of judgment of the Hon'ble Apex Court in the case of M/s. Ultratech Cement Ltd. supra since judgement of the Apex Court prevails over any decision/orders passed by the subordinate courts/Tribunals.

10 Regarding penalty imposed under Rule 15 of CCR,2004. I find that the Appellant wrongly availed and utilized Cenvat credit of service tax paid on outward GTA service used for transportation of their finished goods from their factory to buyers premises, which is not admissible as discussed supra. The Appellant, thus contravened the provisions of Cenvat Credit Rules, 2004 and therefore the Appellant has been rightly held liable for penalty under Rule 15 of CCR, 2004. I, therefore, uphold 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.

12. अपीलकर्ता द्वारा दर्ज की गई अपीलों का निपटारा उपरोक्त तरीके से किया जाता है।

12. The appeals filed by the appellant stand disposed off in above terms.

(Gopi Nath)
Commissioner (Appeals)

By R.P.A.D.

To,
M/s. Gujarat NRE Coke Ltd (Steel Division),
Village Lunava Tal Bhachau,
Kutch

Copy to:

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