



सर्वप्रकार (अपील) आकाशवाच, वस्तु एवं सेवा कर अधिनियम द्वारा उत्पन्न शुल्क
 OF THE COMMISSIONER (APPEALS), GST & CENTRAL TAXES



दफ्तर का पता, जी एच सी भवन - 2nd Floor, GST Bldg.

रेस कोर्स रिंग रोड / Race Course Ring Road

राजकोट - Rajkot - 360 001

Tele Fax No. 079- 2179532/4/1421 | Email - gsooper@rajkot001.gst.com

अतिरिक्त शर्त प्रती द्वारा :-

क्र	विवरण	सूत्र संख्या	दिनांक
1	विवरण	सूत्र संख्या	दिनांक
	V13/E42/G11A1/2019	1310/2019	16-11-2019

क्र 2 विषय शर्त संख्या/दिनांक/अपील क्र.

KCH-PANCOU-INDIA-APP-001-2019

पत्र सं. का दिनांक :
 Order No. 14.11.2019 जारी करने की तिथि :
 Issue Date: 15.11.2019

पीसीपी नाम, आवृत्त (अपील), चयनित द्वारा जारी :-
 Issued by: Shri. Gopi Nath, Commissioner (Appeals) Rajkot

1) यह अपील, अतिरिक्त शर्त प्रती द्वारा जारी की गई है। अपीलकर्ता द्वारा उचित रूप से प्रस्तुत किए गए सबूतों के आधार पर, अपीलकर्ता को अपील संख्या/दिनांक/अपील क्र. 1310/2019 में सुनिश्चित है।

आदेश का उल्लंघन करने पर अपीलकर्ता को अपील संख्या/दिनांक/अपील क्र. 1310/2019 में सुनिश्चित है।

2) अपीलकर्ता को अपील संख्या/दिनांक/अपील क्र. 1310/2019 में सुनिश्चित है।

3) अपीलकर्ता को अपील संख्या/दिनांक/अपील क्र. 1310/2019 में सुनिश्चित है।

4) अपीलकर्ता को अपील संख्या/दिनांक/अपील क्र. 1310/2019 में सुनिश्चित है।

5) अपीलकर्ता को अपील संख्या/दिनांक/अपील क्र. 1310/2019 में सुनिश्चित है।

6) अपीलकर्ता को अपील संख्या/दिनांक/अपील क्र. 1310/2019 में सुनिश्चित है।

7) अपीलकर्ता को अपील संख्या/दिनांक/अपील क्र. 1310/2019 में सुनिश्चित है।

8) अपीलकर्ता को अपील संख्या/दिनांक/अपील क्र. 1310/2019 में सुनिश्चित है।

9) अपीलकर्ता को अपील संख्या/दिनांक/अपील क्र. 1310/2019 में सुनिश्चित है।

10) अपीलकर्ता को अपील संख्या/दिनांक/अपील क्र. 1310/2019 में सुनिश्चित है।

11) अपीलकर्ता को अपील संख्या/दिनांक/अपील क्र. 1310/2019 में सुनिश्चित है।

12) अपीलकर्ता को अपील संख्या/दिनांक/अपील क्र. 1310/2019 में सुनिश्चित है।

13) अपीलकर्ता को अपील संख्या/दिनांक/अपील क्र. 1310/2019 में सुनिश्चित है।

14) अपीलकर्ता को अपील संख्या/दिनांक/अपील क्र. 1310/2019 में सुनिश्चित है।

15) अपीलकर्ता को अपील संख्या/दिनांक/अपील क्र. 1310/2019 में सुनिश्चित है।

16) अपीलकर्ता को अपील संख्या/दिनांक/अपील क्र. 1310/2019 में सुनिश्चित है।

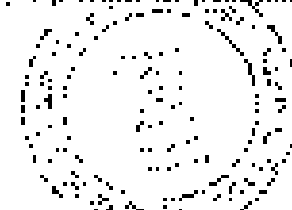
17) अपीलकर्ता को अपील संख्या/दिनांक/अपील क्र. 1310/2019 में सुनिश्चित है।

18) अपीलकर्ता को अपील संख्या/दिनांक/अपील क्र. 1310/2019 में सुनिश्चित है।

19) अपीलकर्ता को अपील संख्या/दिनांक/अपील क्र. 1310/2019 में सुनिश्चित है।

20) अपीलकर्ता को अपील संख्या/दिनांक/अपील क्र. 1310/2019 में सुनिश्चित है।

The appellant, who has appealed to the Commissioner (Appeals) Rajkot, has been granted relief of Rs. 10,00,000/- in the form of a refund. The appellant is advised to deposit the amount of Rs. 10,00,000/- in the form of a bank draft in favour of the Commissioner (Appeals) Rajkot, within the period of 30 days from the date of the order. The appellant is also advised to deposit the amount of Rs. 10,00,000/- in the form of a bank draft in favour of the Commissioner (Appeals) Rajkot, within the period of 30 days from the date of the order. The appellant is also advised to deposit the amount of Rs. 10,00,000/- in the form of a bank draft in favour of the Commissioner (Appeals) Rajkot, within the period of 30 days from the date of the order.



ORDER-IN-APPEAL

The Asst. Commissioner, CGST Division, Bhuj filed appeal No. W/13/EA2/GDM/2019 on behalf of the Commissioner, Central GST & Central Excise, Gandhidham (hereinafter referred to as "Appellant Department"), in pursuance of Review Order No. 570K/2018-19 dated 23.2.2019 issued under Section 35E of the Central Excise Act, 1944 (hereinafter referred to as 'Act') against Order-in-Original No. 9 to 14/Asst. Commr./2018 dated 26.11.2018 (hereinafter referred to as 'Impugned order') passed by the Asst. Commissioner, CGST Division, Bhuj (hereinafter referred to as 'adjudicating authority') in the case of M/s Sanghvi Industries Ltd (Grinding Unit), Kutch (hereinafter referred to as 'Respondent').

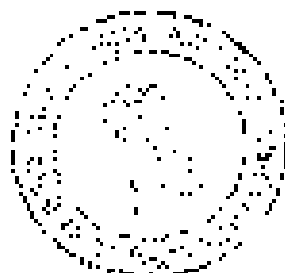
2. The brief facts of the case are that the Respondent was engaged in manufacture of Cement and was registered with Central Excise. On the basis of information called from the Appellant, it was observed that the Respondent had availed Cenvat credit of Service tax paid on outward GTA service used for transportation of their finished goods from their factory to customer's premises i.e. beyond place of removal, during the period from October, 2015 to September, 2016, which is alleged to be not proper in view of definition of "input service" as given at Rule 2(a) of the Cenvat Credit Rules, 2004 (hereinafter referred to as "CCR, 2004"). It appeared that any service availed after clearance of finished goods beyond the place of removal is not an 'input service' and therefore, the Respondent was not eligible to avail Cenvat credit of service tax paid on outward GTA service.

2.1 Show Cause Notices were issued to the Respondent covering the period from October, 2015 to September, 2016 for recovery of wrongly availed Cenvat credit totally amounting to Rs. 2,67,49,513/-, along with interest, under Rule 14 of the CCR, 2004 and proposing imposition of penalty under Rule 15 *ibid*.

2.2 The above Show Cause notices were adjudicated by the adjudicating authority vide the impugned order who dropped the proceedings by holding that the customer's premises were 'place of removal' and hence, the Respondent was eligible to avail Cenvat credit of service tax paid on outward GTA service.

3. The impugned order was reviewed by the Appellant Department and appeal has been filed on various grounds, *inter alia*, as below:

(i) The adjudicating authority erred in considering customer's premises as place of removal; that the Hon'ble Supreme Court in the case of M/s Ultratech



Cement Ltd reported in 2018 (x) Ltd. (30) has settled the issue holding that input service used by the manufacturer is restricted upto place of removal i.e. factory, depot or warehouse etc.

(ii) That the Hon'ble Supreme Court in the case of Ispat Industries Ltd 2015(324) ELT 675 (SC) has held that 'place of removal' includes places which are related to manufacturer only i.e. a factory, a depot, premises of a management agent or any other place from where the excisable goods are to be sold after their clearance from the factory and final place of removal can only be a manufacturer's premises and buyer's premises can never be a place of removal. Thus, it is clear that Central credit of service tax paid on outward transportation of goods upto buyer's premises is not available.

(iii) The adjudicating authority erred in relying upon Circulars issued in 2007 and 2014 for determination of the term place of removal in post amendment era, as the Hon'ble Supreme Court in the case of M/s Ultratech Cement Ltd supra has specifically held that said Circulars are not applicable in post amendment era.

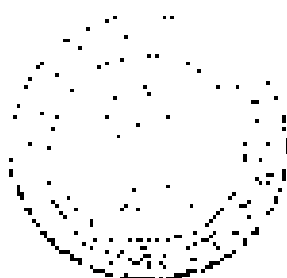
4. In hearing, Shri Ambarish Pandey, Advocate appeared on behalf of the Respondent and submitted written submission along with compilation of statutory provisions and case laws for consideration. No one appeared for hearing on behalf of the Appellant Department.

4.1. In written submission, the Respondent, inter alia, contended that,

(i) The issue is settled in their favour in their own case vide order passed by the CESTAT, Ahmedabad as reported in 2019(2) TMI 1488. The issue involved in the present case is also identical to the one decided by the Hon'ble Tribunal supra.

(ii) They were clearing the goods on which duty was paid on MRP under section 4A of the Act and such MRP was inclusive of transportation cost from the factory to place of delivery. Thus, they have already paid Central Excise duty on transportation charges. Further, payment of service tax on outward GTA services by them is not disputed and hence, they are eligible to avail Central credit of such service tax.

(iii) Their case is covered by Para 4 of the Board's Circular dated 8.6.2018 since in the present case, ownership, risk in transit remained with them till goods are accepted by buyer; that buyer's premises was place of removal and



therefore Cenvat credit is admissible to them; that Circular issued by the Board is binding to the Department as has been held in various judgments.

(iv) That the Hon'ble Supreme Court in the case of Roofit Industries Ltd - 2015(319) ELT 221 has held that since the property in goods passed at buyer's premises, place of removal will be buyer's premises and the amount of freight, insurance and unloading charges would be includible in the value of goods for the purpose of payment of Central Excise duty. In their case also, they established that sale was on FOB basis and sale took place at buyer's premises and therefore, they had correctly availed Cenvat credit of service tax and present appeal needs to be dismissed.

5. I have carefully gone through the facts of the case, the impugned order, grounds of appeal of the appeal memorandum filed by the Appellant Department and oral as well as written submissions made by the Respondent. The issue to be decided in the present case is whether the Respondent has correctly availed Cenvat credit of service tax paid on outward GTA service or not.

6. I find that the Respondent had availed Cenvat credit of service tax paid on outward GTA service during the period from October, 2015 to September, 2016. I find that definition of "input service" as provided under Rule 2(i) of Cenvat Credit Rules, 2004 reads as under:-

- (i) "input service" means any service:
 - (ii) used by a provider of taxable service for providing an output service;
 - (iii) 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, transportation of goods, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, except transportation of inputs or output goods and outward transportation upto the place of removal.

(Emphasis supplied) *A*

7. 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)(L) 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 or 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 whom the excisable goods are to be sold.

5. I find that the issue is no more *res integra* and stands decided by the Hon'ble Supreme Court vide judgment dated 01.09.2014 passed in the case of Ultratech Cement Ltd reported as 2014 (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 Input Credit in respect of any input service tax paid. In the instant case, input service tax was also paid on the outward transportation of its 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'.

4. 'Input service' is defined in Rule 2(i) of the Rules, 2004 which reads as under:

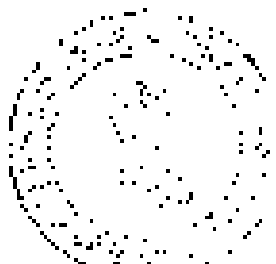
"(i) 'input service' means any service-

(a) 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 selling, eg, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal."

6. It is an admitted fact 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.

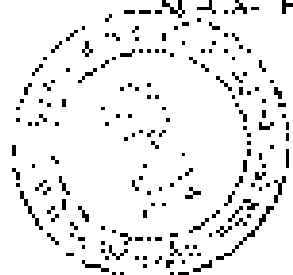
7. It may be relevant to point out here that the original definition of 'input service' contained in Rule 2(i) of the Rules, 2004 used the expression 'in or



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 warehouse or customer's place etc., was eligible for Central Credit. This stands finally decided in Civil Appeal No. 11510 of 2018 (Commissioner of Central Excise Deegauri v. M/s. Vasavateka Cements Ltd.) vide judgment dated January 17, 2018. However, vide amendment worked out in the aftermath of 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 still available even beyond the place of removal now gets terminated at the place of removal and credit to the extent credit of input tax paid gets closed at that place. This credit cannot travel thereafter. 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(2)(i) of Rules, 2001. 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(i) in the following manner:

"... The input service has been defined to mean any service used by the manufacturer whether directly or indirectly for raw materials, materials, 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 service have been so circumscribed to grant 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 services. 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 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 law scheme. The purpose of interpretation is to find harmony and reconciliation among the various provisions.

The Central Excise duty is imposed on inputs. The credit amount 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 from the final products are fully manufactured and cleared from the factory premises. The question of utilization of services does not arise as such services cannot be considered as used in relation to the manufacture of the final product. Therefore, calculating the credit upto the point of removal of the final product on payment of duty would be contrary to the scheme of Central Excise 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 the clearance of the final products from the place of removal. The definition of input service should be read as a whole and should not be fragmented in order to avail eligible credit. Once the clearance has 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 Ramkay Tyre International 1987 (14) 111 T.R. = 2003-ITD 374 SC 2003-118, Indian Drygas Ltd. 1988 (36) 111 T.R. 503 SC = 2002 TCR-88-50-03 and Bharati Electric Motors 1991 (19) 111 T.R. 13 SC = 2002 TCR-96-50-03-118. The post removal transport of manufactured goods is not an



input for the manufacturer's service, in the case of M/s Ultratech Cements Ltd. v. CCE, Bangalore 2007 (6) STR 361 (Tri) = 2007 TOL 479-CESTAT-ADM. 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."

8. 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, 2006 had clarified the definition of 'place of removal' and the three conditions contained therein stand satisfied insofar as the case of the respondent is concerned, i.e. (i) regarding ownership of the goods till the delivery of the goods to the purchaser's door step; (ii) seller bearing the risk of 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. The approach of the Commissioner (Appeals) was later 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.

9. We are afraid that the aforesaid approach of the facts below is clearly amenable for the following reasons:

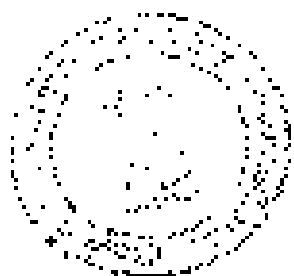
10. In the first instance, it needs to be kept in mind that Board's Circular dated August 23, 2006 was issued to clarify on the definition of 'input service' as existed on that date i.e. it related to *transportation*. Relevant portion of the said circular is as under:

"ISSUE: Up to what stage a manufacturer's input can take credit on the service tax paid on goods transported by road?"

"COMMENTS: This issue has been examined in great detail by the CESTAT in the case of M/s G. Jay Ashoka Lenses Ltd. vs CCE, Ludhiana (2007) 61 STR 249 Tri-TC = 2007-TOL-479-CESTAT-ADM. In this case, CESTAT has made the following observations:

"the post sale transport of manufactured goods is not an input for the manufacturer's own. The two clauses in the definition of 'input service' take into account the input credit by stating that service used in relation to the clearance from the place of removal and service used for outward transportation from 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 can go up 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 law's 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 Bangalore - 2007-TOL-425-CESTAT-ADM, 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's contractor can take credit on the service tax paid on outward transport of goods up to the place of removal and not beyond that."

8.2 In this connection, the phrase 'place of removal' needs determination taking into account the facts of each and every case and the applicable



provisions. The phrase 'place of removal' has not been defined in CENVAT Credit Rules. In terms of sub-rule (3) of rule 3 of the said rules, if any words or expressions 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 these Acts. The phrase 'place of removal' is defined under section 4 of the Central Excise Act, 1944. It states that:

"place of removal" means-

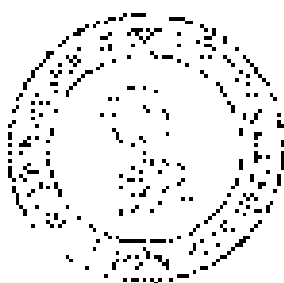
- (i) a factory or any other place or premises of production or manufacture of the excisable goods;
- (ii) a warehouse or any other place or premises wherein the excisable goods have been put on hand to be stored without payment of duty;
- (iii) a depot, premises of a consignment agent or any other place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

Thus, therefore, since the tax is levied on the removal, the duty liability to avoid credit of his services 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 warehouse and warehouse, or from a duty paid depot (those 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/consignee 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 bears 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 his services tax paid on the transportation up to such place of sale would be admissible if it can be established by the character of such sale, that the sale and the transfer of property in goods (in terms of the definition in under section 2 of the Central Excise Act, 1944 as also in terms of the provisions of the Sale of Goods Act, 1930) occurred at the said place."

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11. As can be seen from the reading of the abovesaid portion of the circular, the issue was examined after keeping in mind judgments of CESTAT in Sagar Cement Ltd. vs. ITO and M/S. Bhadrachal Cement Ltd. vs. ITO judgments, obviously, deal with unamended Rule 2(f) of Rule 2004. The three conditions which were mentioned explain the 'place of removal' as defined under Section 4 of the Act, there is no quarrel upon this aspect. However, the important aspect of the matter is that Cenvat Credit is permissible in respect of 'input service' and the character relates to the surrendered value. Therefore, it cannot be applied at a surmount, 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 input service place of removal. In this agreement which has made the entire difference. Tax 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 contrary of Rule 2(f) of Rules, 2004 and such a situation cannot be contemplated.



15. 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 17, 2011 of the Assessing Officer is restored."

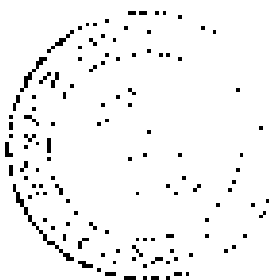
(Emphasis supplied)

8.1 I also take note of the Board's Circular No. 1065/4/2019-CX., dated 06-06-2018, wherein it has been clarified that,

"5. CENVAT Credit on GTA Services etc.: The other issue decided by Hon'ble Supreme Court in relation to place of removal is in case of CCS & ST v. Union State Cement Ltd., dated 1-7-2018 in Civil Appeal No. 11261 of 2016 on the issue of CENVAT Credit on Goods Transport Agency Service availed for transport of goods from the 'place of removal' to the buyer's premises. The Apex Court has allowed its 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 alicor procurement of in the definition of 'input service' under Rule 2(i) 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 Respondent for outward transportation of goods from place of removal to buyer's premises is not admissible w.e.f 01.01.2008. The period involved in this case is from October, 2015 to September, 2016 and hence, Cenvat credit of Service Tax paid on GTA for outward transportation of goods cannot be allowed. I, therefore, hold that the Respondent has wrongly availed Cenvat credit of service tax paid on outward GTA service and demand of Rs. 2,67,40,510/- is required to be confirmed, along with interest, under Rule 14 of CGR, 2004 and I do so.

9. Regarding contention of the Respondent that transportation from factory to buyer's premises ought to have been allowed in view of the Hon'ble Supreme Court's judgement in the case of M/s. Roofit Industries Ltd., I find that in said case law, issue involved was inclusion of freight in assessable value for the purpose of charging Central Excise duty. The Hon'ble Apex Court held that in the case of FOB destination sale where the ownership, risk in transit, remained with the seller till goods are accepted by buyer on delivery and till such time of delivery, seller alone remained the owner of goods retaining right of disposal, freight is required to be included in assessable value. Whereas, in the present case issue involved is whether outward GTA service availed by the Respondent can be considered as 'input service' in terms of Rule 2(i) of CGR, 2004 and whether the Respondent had rightly availed Cenvat credit of service tax paid on



outward transportation charges. Hence issue involved in the present case is entirely different and stand decided by the Hon'ble Supreme Court in the case of Ultratech Cement Ltd supra. Further, it is worthwhile to mention that the Hon'ble Supreme Court in the case of Ispat Industries Ltd reported as 2015(324) ELT 678 has categorically held that 'place of removal' can only be a manufacturer's premises and buyer's premises can never be considered as 'place of removal'. Hence, I hold that case law of Renuit Industries Ltd relied upon by the Respondent is not applicable to the facts of the present case.

10. I have also examined CESTAT, Ahmedabad's order passed in the case of Sangh Industries Ltd, which has been relied upon by the Appellant. I find that the said case law 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 judgment of the Apex Court prevails over any decision/orders passed by the subordinate courts/tribunals.

11. Regarding penalty under Rule 15 of CGR, 2004, I find that the Respondent 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 buyer's premises, which is not admissible as discussed supra. The Respondent, thus, contravened the provisions of Cenvat Credit Rules, 2004 and therefore, the penalty of Rs. 2,67,40,613/- is required to be imposed upon the Respondent under Rule 15 of CGR, 2004 and I so do.

12. In view of above, I allow the appeal filed by the Appellant Department and set aside the impugned order.

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

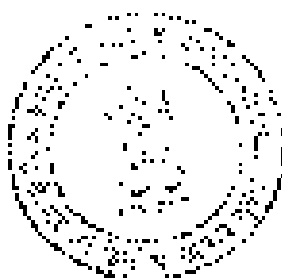
13. The appeal filed by the Appellant is disposed off as above.


G. GOPINATHI
Commissioner (Appeals)

Attested



V. T. SHAHI
Superintendent (Appeals)



By R.P.A.D.

To, M/s Sanghi Industries Ltd (Grinding Unit), Sanghi Colony, Taluka Adasa, District Kutch.	श्री. ए. ए. ए. श्री. ए. ए. ए. लिमिटेड ग्रिंडिंग यूनिट, संगीपुरा, ता. अडासा, जिला कच्छ, जिल्हा कच्छ
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प्रति-

- 1) प्रधान मुख्य उद्युक्त, कच्छ एवं लोच क्षेत्रीय केंद्रीय उत्पाद शुल्क, मुंबई/क्षेत्र अडसा/कच्छ को जानकारी हेतु
- 2) आयुक्त, वस्तु एवं सेवा कर, एवं केंद्रीय महसूल शुल्क, गांधीधाम आयुक्तालय, गांधीधाम को आवश्यक कार्यवाही हेतु
- 3) अयुक्त आयुक्त, वस्तु एवं सेवा कर एवं केंद्रीय उत्पाद शुल्क, गांधीधाम आयुक्तालय, गांधीधाम, को आवश्यक कार्यवाही हेतु।

✓ 4) गाडे प्राइल

