आयुक्त (अपील) 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]

रजिस्टर्ड डाक ए.डी. द्वारा :-

क	अपील / फ़ाइल संख्या / Appeal /File No.	मूल आदेश सं. / O.I.O. No.	दिनांक / Date
	V2/3/EA2/GDM/2019	[illegible]	[illegible]

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

KCH-EXCUS-000-APP-[illegible]-2019

आदेश का दिनांक / Date of Order:	14.11.2019	जारी करने की तारीख / Date of issue:	15.11.2019

श्री गोपी नाथ, आयुक्त (अपील), 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 :-

[illegible]

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) [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, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) [illegible]

[illegible]

(B) [illegible]

[illegible]

(i) [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 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

(ii) [illegible]

[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 Rs. 10 Crores,

Under Central Excise and Service Tax, "Duty Demanded" shall include:

(i) amount determined under Section 11 D;

(ii) amount of erroneous Cenvat Credit taken;

(iii) amount payable under Rule 6 of the Cenvat Credit Rules

- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(C) **[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 is 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 ::

The Asst. Commissioner, CGST Division, Bhuj filed appeal No. V2(73)/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. 5/ORK/2018-19 dated 21.2.2019 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 Sanghi 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 services" as given at Rule 2(l) 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. 2,67,10,513/-, 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 customers' 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 customers' premises as place of removal; that the Hon'ble Supreme Court in the case of M/s Ultratech

Cement Ltd reported in 2018 (9) G.S.T.L. 633 has settled the issue holding that input service used by the manufacturer is restricted upto place of removal i.e. factory, depot or warehouse only.

(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 consignment agent or any other place from where the excisable goods are to be sold after their clearance from the factory and that 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 Cenvat 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 service by them is not disputed and hence, they are eligible to avail Cenvat 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 FOR 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 has 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(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. 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 out ward transportation upon 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.

5. I find that the issue is no more *res integra* and stands decided by the Hon'ble Supreme Court vide judgment dated 31.08.2018 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 noted 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 present 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'.
>
> 5. 'Input service' is defined in Rule 2(l) of the Rules, 2004 which reads as under:
>
> "2(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, 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 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 warehouse 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, 2018. However, vide amendment carried out in the aforesaid Rule 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 doors to the cenvat 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(1)(i) 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, inter alia, services used in relation to inward transportation of inputs or capital goods and outward transportation upto the place of removal. The two clauses in the definition of 'input services' take care to circumscribe the 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 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.
>
> 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 service 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 Honourable Supreme Court in the cases of Bombay Tyre International 1983 (14) ELT = 2002-TIOL-374-SC-CX-LB, Indian Oxygen Ltd. 1988 (36) ELT 723 SC = 2002 TIOL-33-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."

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, 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.

9. 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 Rule 2(l) of the Rules. 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?

COMMENTS: 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 (6) STR 249 Tri-D] = 2007-TIOL-429-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 the 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-TOIL-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.

8.2 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 (2) 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 this 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.

15. The upshot of the aforesaid discussion would be to hold that Cenvat Credit on goods transport agency service availed for transportation 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. 1065/4/2018-CX., dated 9.4.2018, wherein it has been clarified that,

"5. CENVAT Credit on GTA Services and : 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., dated 1-2-2019 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 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 during the relevant period. The Apex Court has observed that after enactment of the definition of 'input service' under Rule 2(l) of the CENVAT Credit Rules, 2004, effective from 1-4-2008, the same is inclusive 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 01.04.2008. 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 CCR, 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. Ranbir 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 FOR 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(l) of CCR, 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 670 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 Roofit 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 Sanghi 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 CCR,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. 2,67,40,614/- is required to be imposed upon the Respondent under Rule 15 of CCR, 2004 and I do so.

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 निपटारा उपरोक्त तरीके से किया जाता है।

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

(GOPI NATH)
Commissioner(Appeals)

Attested

(M.T.SHAH)
Superintendent(Appeals)

By R.P.A.D.

To,
M/s Sanghi Industries Ltd
(Grinding Unit),
Sanghipuram, Taluka: Adesar,
District Kutch.

प्रति:-

1) प्रधान मुख्य आयुक्त, वस्तु एवं सेवा कर एवं सेन्ट्रल एक्साइज़ भुज, गुजरात क्षेत्र अहमदाबाद को जानकारी हेतु

2) आयुक्त, वस्तु एवं सेवा कर एवं सेन्ट्रल एक्साइज़ भुज, गांधीधाम आयुक्तालय, गांधीधाम को आवश्यक कार्यवाही हेतु

3) कार्यालय आयुक्त, वस्तु एवं सेवा कर एवं सेन्ट्रल एक्साइज़ भुज, गांधीधाम आयुक्तालय, गांधीधाम, को इस संबंध में सूचित करने हेतु।

4) गार्ड फाइल