



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



सत्यमेव जयते

द्वितीय तल, जी एस टी भवन / 2<sup>nd</sup> Floor, GST Bhavan,  
रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

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

रजिस्टर्ड डाक ए.डी.द्वारा :-

DIN-20201064SX00002V3F48

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/08/EA2/RAJ/2020	28/DC/KG/2019-20	11.01.2020

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

**RAJ-EXCUS-000-APP-107-2020**

आदेश का दिनांक /  
Date of Order: **26.10.2020** जारी करने की तारीख /  
Date of issue: **28.10.2020**

श्री गोपी नाथ, आयुक्त (अपील्स), राजकोट द्वारा पारित/  
Passed by **Shri Gopi Nath, Principal Commissioner (Appeals),**  
Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर,  
राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित: /  
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central  
Excise/ST / GST,  
Rajkot / Jamnagar / Gandhidham :

घ अपीलकर्ता & प्रतिवादी का नाम एवं पता / Name & Address of the Appellant & Respondent :-

**M/s. Finix Corporation, urvey No.253, Bhumi Industrial Area, Plot No. 1/5, Behind Har Gange Weigh  
Bridge, Veraval (Shapar), Dist. Rajkot-360024**

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) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा  
35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है।/  
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section  
86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट  
ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए।/  
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New  
Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण  
(सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असारवा अहमदाबाद- 380016 को की जानी चाहिए।/  
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> Floor,  
Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a)  
above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत  
निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग,  
ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है  
तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का  
भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित  
बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की  
शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।/  
The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule  
6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be  
accompanied by a fee of Rs. 1,000/- Rs.5000/- Rs.10,000/- where amount of  
duty demanded/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the  
form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the  
place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is  
situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के  
तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में  
संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और  
लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/-  
रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय  
न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना  
चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन  
आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।/  
The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be  
filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and Shall  
be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be  
accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied  
is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax &  
interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in  
favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench  
of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। /

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) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रूप से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत रकम  
(ii) सेनवेट जमा की ली गई गलत राशि  
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा। /

For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores.

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

- (i) amount determined under Section 11 D;  
(ii) amount of erroneous Cenvat Credit taken;  
(iii) amount payable under Rule 6 of the Cenvat Credit Rules

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

- (C) भारत सरकार को पुनरीक्षण आवेदन :

**Revision application to Government of India:**

इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत आवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35E ibid:

- (i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। /

In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse

- (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /

In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

- (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /

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

- (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए हैं। /

Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

- (v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। /

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।

जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए।

The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पट्टी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। /

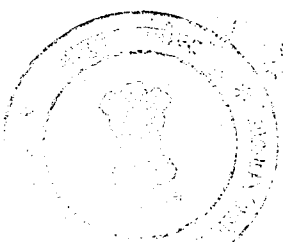
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। /

Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

- (G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट [www.cbec.gov.in](http://www.cbec.gov.in) को देख सकते हैं। /

For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website [www.cbec.gov.in](http://www.cbec.gov.in)



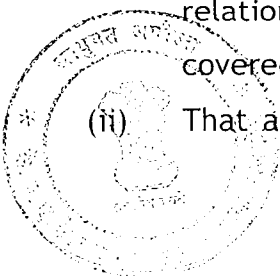
**:: ORDER-IN-APPEAL ::**

The present appeal has been filed by the Deputy Commissioner, CGST Division-II, Rajkot on being authorized by the Commissioner, Central GST and Central Excise, Rajkot (hereinafter referred to as "Appellant Department") against Order-in-Original No. 28/DC/KG/2019-20 dated 11.01.2020 (hereinafter referred to as "impugned order") passed by the Deputy Commissioner, CGST Division-II Rajkot (hereinafter referred to as "adjudicating authority") in the case of M/s. Finix Corporation, Rajkot (hereinafter referred to as "respondent").

2. The brief facts of the case are that the respondent was engaged in the manufacture of excisable goods Viz. "Aluminum Ingot" and registered with the Central Excise Department. During the course of Audit for the F.Y. 2015-16 to F.Y. 2016-17, it was observed that the respondent was purchasing finished goods i.e. readymade Aluminum Ingot from various suppliers and the same were removed after raising excisable invoice and on payment of Central Excise Duty thereon; that the respondent had availed and utilized Cenvat credit on said readymade purchased Aluminum Ingots, which can not be termed as eligible input as per the Cenvat Credit Rules, 2004; the said observation culminated into issuance of Show Cause Notice dated 21.08.2018 for demand of wrongly availed cenvat credit of Rs. 3,98,448/- for the period from April-2015 to March-2017 and statement of demand for the subsequent period i.e. April-2017 to June-2017 for demand of wrongly availed cenvat credit of Rs. 7,854/- alongwith interest under Rule 14 of the Cenvat Credit Rules, 2004 and proposed imposition of penalty under Rule 15 ibid read with Section 11AC of the Central Excise Act, 1944. The adjudicating authority vide impugned order dropped the proceedings initiated vide above referred SCN and Statement of Demand.

3. The above order was reviewed by the Appellant Department and appeal has been filed, *inter alia*, on the ground following grounds:

- (i) That the respondent had wrongly availed input credit on Aluminum Ingots which were purchased by them for the purchase of trading of the said goods. The said Aluminum Ingots were purely finished goods and can not be termed as eligible "Input" which has been defined under the Provisions of Rule 2(k) of the cenvat credit rules, 2004. As the said finished goods have no relationship whatsoever in the manufacture of the final products, hence not covered under the definition of input as per cenvat credit rules 2004.
- (ii) That adjudicating authority nowhere discussed in the impugned order that



whether the respondent availed credit on Aluminum Ingots were eligible inputs in terms of Rule 2(k) of cenvat credit rules, 2004 or otherwise as Rule 3(5) of cenvat credit rules, 2004 only deals with the inputs were removed as such. In the instant case, the said finished goods i.e Aluminum Ingots, were not received by the manufacturer for use in or in relation to the manufacture of final product. Respondent adopted practice to purchase readymade Aluminum Ingots i.e. finished goods and cleared the said goods without any manufacturing done. By doing this respondent had wrongly availed credit on the said goods by considering them as inputs and subsequently cleared by them by wrongly paying central excise duty, even though there was no manufacturing activity carried out on the said goods.

- (iii) That the adjudicating authority had wrongly held that the respondent had paid centrally excise duty of amount equal to cenvat credit availed by availing the facility under Sub Rule (5) of Rule 3 of cenvat credit rules, 2004. Adjudicating authority failed to understand that Rule 3(5) of CCR, 2004 is applicable only for inputs or capital goods on which cenvat credit has been taken. In the present case, the said goods i.e. Aluminum Ingots are not inputs as defined under Rule 2(k) of the CCR, 2004 as the same was not used for further manufacturing of a finished product but were sold as such.
- (iv) That case laws relied by the adjudicating authority are completely different and distinguishable from the case on hand.
- (v) That in view of the above, impugned order be set aside.

4. Hearing in the matter was conducted in virtual mode through video conferencing with prior consent of the Appellant. Shri Nilesh Borsania, proprietor of the firm appeared for hearing and sought one week's time to file papers related to case and requested to disallow the Departmental appeal. No one appeared for the Appellant Department.

4.1 The Respondent vide letter dated 13.07.2020 submitted documents such as list of invoices, purchase invoices, copy of sales invoices, delivery challans against purchase invoices under dispute.

5. I have carefully gone through the facts of the case, the impugned order, and grounds raised in the appeal memorandum. The issue to be decided is whether the Cenvat credit on readymade purchased Aluminum Ingots is correct, legal and proper or not.




6. On going through the records, I find that during the course of Audit by the Department, it was noticed that respondent was engaged in the manufacture of excisable goods Viz. "Aluminum Ingot" and was also purchasing readymade Aluminum Ingot i.e. Finished Goods on which they had availed and utilized Cenvat credit. Hence, these readymade purchased Aluminum Ingots i.e. finished goods can not be termed as eligible input as per Cenvat Credit Rules, 2004 since the said finished goods were not received by the manufacturer for use in or in relation to the manufacture of final product and therefore respondent was not eligible to avail and utilize the input credit on such finished goods. The adjudicating authority dropped the demand on the grounds that the respondent paid the duty upon clearance of such goods, it would amount to reversal of cenvat credit availed on inputs; that appellant had paid central excise duty which is equal to the amount of cenvat credit availed by them after purchase of the aluminum ingots.

6.1 The Appellant Department has contended that adjudicating authority erred in dropping the proceedings initiated against respondent by holding that the respondent has paid the central excise duty which is equal to the amount of cenvat credit availed by them after purchase of Aluminum Ingots; that in the present case, respondent was wrongly availing input credit on Aluminum Ingots which were purchased by them for the purpose of trading of the said goods; that the Aluminum Ingots were purely finished goods and cannot be treated as eligible input as per the Cenvat Credit Rules, 2004; that adjudicating authority has nowhere discussed in the impugned order that whether the respondent availed credit on Aluminum Ingots are eligible inputs in terms of Rule 2(K) of the Cenvat Credit Rules, 2004 or otherwise, as Rule 3(5) of the Cenvat Credit Rules, 2004 only deals with the inputs were removed as such; that the respondent adopted a practice to purchase readymade Aluminum Ingots i.e. finished goods and cleared the said goods without carrying out any manufacturing activities.

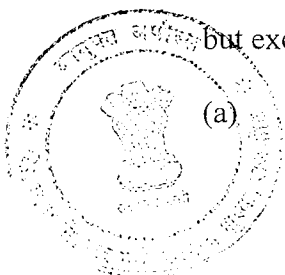
6.2 I find it is pertinent to examine the provisions of Rule 2(k) of CER, 2004, which are reproduced as under:

(k) "input" means -

- (i) all goods used in the factory by the manufacturer of the final product; or
- (ii) ...
- (iii) ...
- (iv) ...
- (v) ...

but excludes -

(a)



.....

(F) any goods which have no relationship whatsoever with the manufacture of a final product.”

[ emphasis supplied]

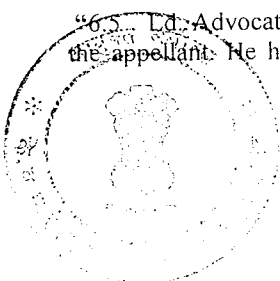
6.3 In backdrop of the above definition, I find that the Respondent had purchased finished goods i.e Aluminum Ingot on which they had availed Cenvat credit. The Respondent had sold the said Aluminum Ingot as such without carrying out any manufacturing activities on them. Under the circumstances, the Respondent is not eligible to avail Cenvat credit on such Aluminum Ingots, in view of specific exclusion provided in Rule 2(k) of the Cenvat Credit Rules, 2004 supra.

7. Further, I am also in agreement with contention of the Appellant Department that adjudicating authority has nowhere discussed in the impugned order that whether credit availed by respondent on Aluminum Ingots were eligible inputs in terms of Rule 2(k) of the cenvat credit rules, 2004 or otherwise.

8. I find that adjudicating authority in the findings of the impugned order relied on the provisions contained under Rule 3(5) of the Cenvat Credit Rules, 2004 while allowing cenvat credit, whereas I find that Rule 3(5) of Cenvat Credit Rules, 2004, only deals with the inputs removed as such. In the present case, the Aluminum Ingots are the finished goods which were purchased by the respondent for trading purpose. I also find that said finished goods- Aluminum Ingots, were not received by the manufacturer for use in or in relations to the manufacture of final product. The Respondent purchased readymade aluminum ingots and cleared the same goods without carrying out any manufacturing activities. By doing this, the respondent had wrongly availed the credit on the said goods by considering them as inputs and erroneously passed on Cenvat credit while clearing the said goods as such.

10. I find that wrong availment of Cenvat credit on Aluminum Ingots was revealed during audit of the records of the Respondent by the Department. Had there been no audit of the Respondent's records, the wrong availment of Cenvat credit by the Respondent would have gone unnoticed and hence, ingredients for invoking extended period under Section 11A of the Central Excise Act, 1944 existed in the present appeal. In this regard, I rely on the order passed by the Hon'ble CESTAT, Chennai in the case of Six Sigma Soft Solutions (P) Ltd. reported as 2018 (18) G.S.T.L. 448 (Tri. - Chennai), wherein it has been held that,

“6. S. Id. Advocate has been at pains to point out that there was no *mala fide* intention on the part of the appellant. He has contended [that] they were under the impression that the said activities would



come within the scope of IT services, hence not taxable. For this reason, Ld. Advocate has contended that extended period of time would not be invocable. However, we find that the adjudicating authority has addressed this aspect in para-10 of the impugned order, where it has been brought to the fold that appellant had not at all disclosed the receipt of income in respect of the activities done by them in respect of services provided by them in their ST-3 returns.

6.6 The facts came to light only when the department conducted scrutiny of the annual reports, possibly during audit. In such circumstances, the department is fully justified in invoking the extended period of limitation of five years."

(Emphasis supplied)

10.1 Since, suppression of facts has been made by the Respondent, penalty under Rule 15 of the Cenvat Credit Rules, 2004 is mandatory. The Hon'ble Apex Court in the case of Rajasthan Spinning & Weaving Mills reported as 2009 (238) E.L.T. 3 (S.C.) has held that once ingredients for invoking extended period of limitation for demand of duty exist, imposition of penalty under Section 11AC is mandatory. The ratio of the said judgment applies to the facts of the present case.

11. In view of above, I hereby confirm the demand of Rs. 3,98,448/- under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A of the Central Excise Act, 1944 in respect of Show Cause Notice dated 21.08.2018. Since demand is confirmed, it is natural that confirmed demand is to be paid along with interest under Rule 14 ibid read with Section 11AA of the Central Excise Act, 1944. I impose penalty of Rs. 3,98,448/- under Rule 15(2) of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.

11.1 I also confirm the demand of Rs. 7,854/- along with interest under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A of the Central Excise Act, 1944, in respect of Statement of Demand dated 17.12.2019. I find that respondent had wrongly availed Cenvat credit in contravention of Rule 2(I) of the Cenvat Credit Rules, 2004. I, therefore, impose penalty of Rs. 785/- under Rule 15(1) of the Cenvat Credit Rules, 2004 @ 10% of wrongly availed Cenvat credit.

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

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

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



सत्यापित  
 जम  
 श्री. ग. नारायण  
 अधिकारी (अपील)

*(Signature)*  
 (Gopi Nath)  
 Principal Commissioner (Appeals)  
 26/10/2020

By RPAD

To,

M/s Finix Corporation, Survey No. 253, Bhumi Industrial Area, Plot No. 1/5, Behind Har Gange Weigh Bridge, Veraval (Shapar), Dist. Rajkot-360024	M/s फीनिक्स कोर्पोरेशन, सर्वे नंबर 253, भूमि इंडस्ट्रियल एरिया, प्लॉट नंबर 1/5, हर गंगे वे ब्रिज के पीछे, वेरावल (शापर), जिल्ला: राजकोट-360024
---	---

प्रति:-

- 1) प्रधान मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट को आवश्यक कार्यवाही हेतु।
- 3) उप/सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क मण्डल-II, राजकोट को आवश्यक कार्यवाही हेतु।
- ✓ 4) गार्ड फाइल।

