



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

द्वितीय तल, जी एस टी भवन / 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



सत्यमेव जयते

रजिस्टर्ड डाक ए.डी.द्वारा :-

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/91/RAJ/2019	03/DC/KG/2019-20	13-06-2019

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

**RAJ-EXCUS-000-APP-040-2020**

आदेश का दिनांक / Date of Order:	जारी करने की तारीख / Date of issue:	27.02.2020	27.02.2020
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श्री गोपी नाथ, आयुक्त (अपील्स), राजकोट द्वारा पारित/  
Passed by Shri Gopi Nath, 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 Appellants & Respondent :-

**M/s Atul Auto Ltd, 8-B, National Highway, Near Microwave Tower, Shapar (Veraval).**

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 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 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/demand/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 नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है 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 fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- 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 Form 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 जमाना विवादित है, या जमाना, जब केवल जमाना विवादित है, का भुगतान किया जाए, वशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपये 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  
- वशर्त यह कि इस धारा के प्रावधान वित्तीय (सं० 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी 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 को पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपत्रक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, 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-35B ibid:
- (i) यदि माल के किसी नुकसान के मामले में, जहाँ 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 (रिवेट) 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 (नं० 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समयावधि 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 उत्पाद 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 OI 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 रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रूपये 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, 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 filed 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 ::**

M/s. Atul Auto Industries Ltd., Rajkot (hereinafter referred to as 'Appellant') filed appeal No. V2/91/Raj/2019 against Order-in-Original No. 3/DC/KG/2019-20 dated 13.6.2019 (hereinafter referred to as 'impugned order') passed by the Dy. Commissioner, Central GST Division, Rajkot-II (hereinafter referred to as 'adjudicating authority').

2. The brief facts of the case are during audit of the records of the Appellant, it was observed that the appellant had purchased transit insurance policy for transportation of goods to their customer's premises; that the appellant was recovering insurance charges from their customers but was not including the same in assessable value for the purpose of discharging Central Excise duty; that the Appellant had availed credit of service tax paid on insurance charges and had also shown the insurance amount as expenditure in their books of accounts; that the Appellant had recovered Rs. 5,82,763/- towards insurance charges during the period from 2007-08 to 2009-10 from their customers, which were liable to be included in assessable value; that the Appellant had short paid Central Excise duty of Rs. 61,825/-.

2.1 It was further observed that the Appellant had cleared old and used 'Broach sharpening machine' valued at Rs. 4,00,000/- under cover of commercial invoice dated 27.12.2008 without payment of Central Excise duty considering it as 'waste and scrap'. It appeared that Central Excise duty of Rs. 41,200/- was leviable on its transaction value in terms of Section 4 of the Central Excise Act, 1944 (hereinafter referred to as 'Act').

2.2 Show Cause Notice No. IV/3-70/D/2010-11 dated 14.10.2010 was issued to the appellant calling them to show cause as to why Central Excise duty of Rs. 1,03,025/- should not be recovered from them under Section 11A(1) of the Act along with interest under Section 11AB of the Act and proposed imposition of penalty under Section 11AC of the Act. The Show Cause Notice was adjudicated by the adjudicating authority vide the impugned order who confirmed demand of Rs. 1,03,025/- under Section 11A(1) of the Act along with interest under Section 11AB of the Act and imposed penalty of Rs. 1,03,025/- under Section 11AC of the Act.

3. Aggrieved, the Appellant preferred the present appeal, *inter alia*, on the following grounds:

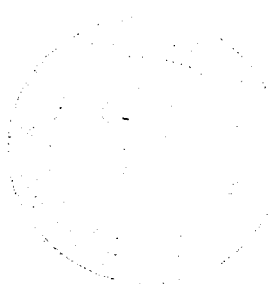


(i) The impugned order confirming duty of Rs. 61,825/- by including transit insurance charges in assessable value is untenable in law; that they were selling their products at the factory gate; they were not related in any way with their buyers and the price was the sole consideration for sale, their transaction value should be treated as assessable value and hence the impugned order, confirming recovery of duty on transit insurance charges, is unsustainable in law.

(ii) That the provisions of Section 39 of the Sales of Goods Act, 1930 also prescribes that when the seller delivers the goods to a carrier for the purpose of transmission to the buyer it is deemed to be a delivery of goods to the buyer; that mere fact that they have paid for transportation and transit insurance and subsequently recovered the same from the buyers would not show that ownership in goods continued to be with them; that it is settled legal position that when sale is effected at factory gate, as in the present case, the subsequent transport and insurance charges collected from the customers, for transportation / insurance of goods to customer's place are not required to be included in the assessable value and relied upon case law of Escorts JCB Ltd.- 2002 (146) E.L.T. 31 (S.C.) and Order-in-Appeal No. 417/2010/Commr(A)/CMC/Raj dated 9.9.2010 passed by the then Commissioner (Appeals), Rajkot in their case.

(iii) That the impugned order confirming duty of Rs. 41,200/- on sale of machine which was used for more than 10 years is not sustainable; that the applicability of sub-rule 5A of rule 3 of Cenvat Credit Rules, 2004 is completely mis-placed in the present case since the said capital goods have not been cleared as 'waste & scrap' but have been sold in running condition and the same by no stretch of imagination can be treated as if the capital goods are cleared as 'waste and scrap'; that as a matter of fact, the said capital goods were purchased in the year 1995 for Rs. 5,40,000/- + taxes and was sold in the year 2008 for Rs. 4,00,000/- + taxes and therefore, it cannot be said that the subject machine was sold as 'waste and scrap' and hence, the impugned order, confirming duty demand on removal of such 'capital goods', is untenable in law.

4. In hearing, Shri Dineshkumar Jain, C.A. appeared on behalf of the Appellant and reiterated the submission of appeal memorandum and requested to decide the appeal on merit.



5. I have carefully gone through the facts of the case, the impugned order, the appeal memorandum and submission made during the personal hearing. The issue to be decided in the present case is whether the impugned order confirming Central Excise duty of Rs. 1,03,025/- and imposing penalty of Rs. 1,03,025/- is correct, legal and proper or not.

6. On going through the impugned order, I find that the appellant had purchased transit insurance policy for transportation of their finished goods to their customer's premises; that the appellant was recovering insurance charges from their customers but was not including the same in assessable value for the purpose of discharging Central Excise duty. The adjudicating authority confirmed Central Excise duty demand of Rs. 61,825/- on the ground that amount recovered by the Appellant from their customers in the guise of transit insurance was additional consideration in lieu of sale and was required to be included in the assessable value as the same was forming part of transaction value as per Section 4 of the Act. The Appellant has contended that when sale is effected at factory gate, the subsequent insurance charges collected from the customers are not required to be included in the assessable value and relied upon case law of Escorts JCB Ltd.- 2002 (146) E.L.T. 31 (S.C.) and Order-in-Appeal dated 9.9.2010 passed by the then Commissioner(Appeals), Rajkot.

7. Before analyzing whether insurance charges are includible in assessable value or not, it is pertinent to examine facts recorded at para 2 of the Show Cause Notice dated 14.10.2010, which are reproduced as under :

"2. Whereas during course of audit it was observed that the assessee has purchased a consolidated transit insurance policy for their entire goods to be transported to their customer's place. Further, amount attributed to such transit insurance being amortized and commensurate to the value of the goods have been charged in the corresponding invoice and recovered accordingly from the respective customers. This amount is over and above the assessable value on which duty has been shown to be payable in the said invoices. Also, on verification, it was observed that the assessee has shown such amount as expenditure in their books of accounts and availed Cenvat Credit of Service Tax amount attributed to such Insurance policy purchased by them as per CAS-4. ... .."

7.1 I find that the Appellant had availed Cenvat credit of Service Tax paid on insurance charges and had also shown the insurance amount as expenditure in their books of accounts. These facts are not disputed by the Appellant. As per definition of input service under Rule 2(l) of the Cenvat Credit Rules, 2004,

input service means '*any service used by a 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*'. I find that insurance service was availed by the Appellant for transportation of their finished goods from their factory to buyers' premises. Thus, by availing Cenvat credit of service tax paid on insurance charges, the Appellant themselves considered buyers' premises as place of removal, otherwise, they would not have availed Cenvat credit of insurance service. I further find that the insurance amount has been shown as expenditure in their books of accounts. All these facts lead to conclusion that buyer's premises was place of removal and any expenditure incurred by the Appellant upto place of removal is required to be added in the assessable value for the purpose of discharging Central Excise duty. I, therefore, hold that the Appellant is liable to pay Central Excise duty of Rs. 61,825/- along with applicable interest. Since, wrong availment of Cenvat credit was unearthed during audit of the records of the Appellant, extended period is invocable as held 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). Since, suppression of facts has been made by the Appellant, penalty under Section 11AC of the Act is mandatory as held by the Hon'ble Apex Court in the case of Rajasthan Spinning & Weaving Mills reported as 2009 (238) E.L.T. 3 (S.C.). I, therefore, uphold penalty of Rs. 61,825/- imposed under Section 11AC of the Act.

7.2 I have examined case law of Escorts JCB Ltd.- 2002 (146) E.L.T. 31 (S.C.) relied upon by the Appellant. I find that in the said case, the Hon'ble Supreme Court held that factory of the Appellant was place of removal and consequently insurance charges were not includible in assessable value whereas in the present case, buyer's premises was place of removal as held by me in para supra. Thus, facts of relied upon case law is different and not applicable to present case.

7.3 Regarding reliance placed on the Order-in-Appeal No. 417/2010/Commr(A)/CMC/Raj dated 9.9.2010 passed by the then Commissioner (Appeals), Rajkot in their case, I find that in the said case, the Appellant had reversed Cenvat credit of service tax paid on insurance charges as noted at para 6.1 of the said Order-in-Appeal, whereas in the present case, the Appellant has not shown that they reversed Cenvat credit of service tax paid on insurance charges. Thus, facts of both cases are different and consequently reliance placed on the said Order-in-Appeal is of no help to the Appellant.

8. I find that the adjudicating authority has confirmed Central Excise duty of Rs. 41,200/- on old and used 'Broach Sharpening machine' cleared by the Appellant on the ground that the Appellant has sold the machine for Rs. 4,00,000/- and was required to discharge duty on transaction value in terms of Rule 3(5A)(b) of the Cenvat Credit Rules, 2004. On the other hand, the Appellant has contended that applicability of sub-rule 5A of Rule 3 of Cenvat Credit Rules, 2004 is mis-placed since the said machine was not cleared as 'waste & scrap' but was sold in running condition; that they had purchased the said machine in the year 1995 for Rs. 5,40,000/- + taxes and was sold in the year 2008 for Rs. 4,00,000/- + taxes and therefore, it cannot be said that the subject machine was sold as 'waste and scrap' and hence, confirmation of duty on said machine is untenable in law.

8.1 I find that the Appellant had purchased the 'Broach Sharpening machine' in the year 1995 for Rs. 5,40,000/- and sold the same for Rs. 4,00,000/- in the year 2008. The Appellant was able to recover around 70% of the cost of machine. In backdrop of above facts, I now examine provisions of Rule 3(5A)(b) of the Cenvat Credit Rules, 2004 relied upon by the adjudicating authority, which are reproduced as under:

“(b) If the capital goods are cleared as waste and scrap, the manufacturer shall pay an amount equal to the duty leviable on transaction value.”

8.2 The provisions of Rule 3(5A)(b) *ibid* are attracted only if goods are cleared as waste and scrap. In the present case, the Appellant was able to recover around 70% of the cost of machine and hence, it cannot be said that what was cleared by the Appellant was waste and scrap. I, therefore hold that provisions of Rule 3(5A)(b) *ibid* are not attracted in the present case and the Appellant is not required to pay Central Excise duty said machine.

8.3. It is also worthwhile to mention that Central Excise duty is levied on manufacture of goods. In the present case, the Appellant had purchased 'Broach Sharpening machine' and there is no evidence brought on record that the said machine had emerged from conversion of inputs as a result of any manufacturing activity carried out by the Appellant. Hence, confirmation of Central Excise duty on sale of said machine is not sustainable. My views are supported by the order passed by the CESTAT, Mumbai in the case of Alembic

Glass Industries Ltd reported as 2006 (198) E.L.T. 141 (Tri. - Mumbai), wherein it has been held that,

“2. The appellants have produced invoices to show that miscellaneous income was for sale of diverse entities e.g. old and used machinery, iron grill etc. and other structured waste of GI Wires etc. Since these items *prima facie* are not emerged from conversion or inputs from raw material or resulting as scrap in the processing of conversion of raw material. The appellant being an assessee engaged in manufacture of medicaments, therefore following the decision in the case of *UOI v. Ahmedabad Electricity Co. Ltd.* - 2003 (158) E.L.T. 3 (S.C.) and which reads as follows.

“From the above discussion it is clear that to be subjected to levy of excise duty ‘excisable goods’ must be produced or manufactured in India. For being produced and manufactured in India the raw material should have gone through the process of transformation into a new product by skilful manipulation. Excise duty is an incidence of manufacture and, therefore, it is essential that the product sought to be subjected to excise duty should have gone through the process of manufacture. Cinder cannot be said to have gone through any process of manufacture, therefore, it cannot be subjected to levy of excise duty.”


Since the entities on which duties have been recovered are not emerging otherwise then skilful manipulation of raw materials, appellants by manufacture of medicaments, the levy of duty, as arrived at cannot be upheld. In view of the above the order is set aside and appeal allowed.”

8.4 In view of above, I hold that confirmation of Central Excise duty of Rs. 41,200/- is not sustainable and required to be set aside and I do so. Since, demand is not sustainable, recovery of interest and imposition of penalty under Section 11AC of the Act are also not sustainable and hereby set aside.

9. In view of above, I partially allowed the appeal and set aside the impugned order to the extent of confirmation of duty of Rs. 41,200/- and imposition of penalty of Rs. 41,200/- but uphold the remaining impugned order.

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

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

  
(GOPI NATH)  
Commissioner(Appeals)

Attested



(V.T.SHAH)  
Superintendent(Appeals)



By RPAD

To, M/s. Atul Auto Industries Ltd Rajkot-Gondal Highway, Near Microwave Tower, Shapar(Veraval), District Rajkot.	सेवा में, मे. अतुल ऑटो इंडस्ट्रीज़ लिमिटेड, राजकोट गोंडल हाइवे, माइक्रोवेव टावर के पास, शापर(वेरावल), जिल्ला राजकोट.
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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 आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट-2 मण्डल को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फ़ाइल।