



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

द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,
राजकोट / Rajkot - 360 001

Tele Fax No. 0281 - 2477952/2441142 Email: 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
	V2/37/RAJ/2019	14/D/AC/2018-19	28-12-2018

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

RAJ-EXCUS-000-APP-041-2020

आदेश का दिनांक / Date of Order:	27.02.2020	जारी करने की तारीख / Date of issue:	27.02.2020
------------------------------------	-------------------	--	-------------------

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 Amul Industries Pvt Ltd, 2, Aji Industrial Estate, Plot No. 332-333, Opp Boring House, Rajkot.

इस आदेश (अपील) में 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 पीठिकां, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को की जानी चाहिए। /

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) 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, व्याज 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/- रुपए, 5,000/- रुपए अथवा 10,000/- रुपए का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार 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 नियमवाली, 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, व्याज 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/- रुपए, 5,000/- रुपए अथवा 10,000/- रुपए का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार 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 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 मकेगी 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 जमाना विवादित है, या जमाना, जब केवल जमाना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए 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) मेनवेट जमा की ली गई गलत राशि
(iii) मेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं० 2) अधिनियम 2014 के आरंभ से पूर्व किमी 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 को पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन डेकॉर्ट, 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 किमी नुकसान के मामले में, जहां नुकसान किमी माल को किमी कारखाने से भंडार गृह के पारगमन के दौरान या किमी अन्य कारखाने या फिर किमी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किमी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किमी कारखाने या किमी 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 किमी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो भारत के बाहर किमी 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 an 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) मुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो छूटी क्रेडीट 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 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 उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के मंजूरण 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 साध्य 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 रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये 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 चाहिए। 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 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 टिकट 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 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

:: ORDER-IN-APPEAL ::

M/s Amul Industries Pvt. Ltd., Plot No. 332-333, 2-Aji Industrial Estate, Rajkot (hereinafter referred to as **"the appellant"**) filed the present appeal against Order-In-Original No. 14/D/AC/2018-19 dated 28.12.2018 (hereinafter referred to as **"the impugned order"**) passed by the Assistant Commissioner, Central GST, Division, Rajkot-I (hereinafter referred to as **"the adjudicating authority"**).

2. The brief facts of the case are that during the course of CERA audit, it was observed that during the period from 2006-07 to 2010-11 (upto June 2010), the appellant had availed Cenvat credit of Service Tax paid on Courier Services utilized for dispatch of excisable goods through Air for export to the tune of Rs. 1,68,141/-. It was further observed that as per the provisions of Rule-3 of the Cenvat credit Rules, 2004 a manufacturer is allowed to take credit of Service Tax paid on 'input service' used in manufacture of final products only. It was noticed that air freight courier service of the final product is a post manufacturing activity (i.e. activity beyond the place of removal) the credit of tax paid on this service was not available to the appellant in view of the provisions mentioned in Rule 2(l) of the Cenvat Credit Rules, 2004 (hereinafter referred to as **"the CCR"**). The above observation culminated into issuance of a Show Cause Notice dated 02.05.2011, proposing to recover the wrongly availed and utilized Cenvat credit of Rs. 1,68,141/- under Rule 14 of the CCR read with Section 11A(1) of the Central Excise Act, 1944 (hereinafter referred to as **"the Act"**) alongwith interest under Rule 14 of the CCR read with Section 11AB of the Act and penalty under the provisions of Rule 15 of the CCR read with Section 11AC of the Act. The above referred Show Cause Notice was decided vide impugned order wherein the adjudicating authority held that the appellant is eligible for availing Cenvat credit of service tax paid on courier services for the period from 2006 to 31.03.2008 amounting to Rs. 38,221/-. The adjudicating authority further held that the appellant is not eligible for Cenvat credit availed by them for the period from 01.04.2008 to June-2010 amounting to Rs. 1,29,920/- and confirmed the said demand alongwith interest and penalty.

3. Being aggrieved by the impugned order, the appellant filed the



present appeal, *interalia*, on the following grounds:-

3.1 That the adjudicating authority has erred in relying on the decision in the case of Ultratech Cement Ltd. in as much as the credit availed is not in connection with outward transportation but is on courier agency and hence the order is liable to be set aside.

3.2 That the adjudicating authority has erred in confirming the demand ignoring the fact that the goods were exported through courier agency; that the place of removal in case of export is port of export and hence credit as claimed is clearly allowable; that they submitted sample copies of invoices of courier service for reference to the adjudicating authority. That they relied on the decision of:

- (i) The Hon'ble Tribunal in the case of APAR Industries Ltd., reported in 2010 (2) S.T.R 624 (Tri.-Ahmd.)
- (ii) The Hon'ble High Court of Gujarat in the case of Ambalal Sarabhai Enterprises Limited reported on 2011(0) GLHEL-HC 230819

3.3 That the grounds raised above may be treated as part of the ground raised for setting aside the penalty.

4. In view of the principles of natural justice, personal hearing was granted on 27.09.2019 (appellant requested for adjournment), 05.11.2019, 17.12.2019 and 03.01.2020, but the appellant did not appear for the personal hearing on any of the dates and nothing further was heard from the appellant. Therefore, I proceed to decide the case ex-parte on merit on the basis of records available on file.

5. I have gone through the records of the case, the grounds of appeal and written submission filed by the appellant. I find that the issue to be decided in the instant case is whether the assessee is eligible to avail Cenvat Credit of Service Tax paid on Courier Services utilized for dispatch of excisable goods through air courier service for export.

6. I find that the issue in the present case is covering the period from 2006-07 to 2010-11 (upto June-2010). The adjudicating authority has found that the appellant is eligible for Cenvat credit of service tax paid on



courier services amounting to Rs. 38,221/- for the period from 2006 to 31.03.2008 and disallowed the cenvat credit amounting to Rs. 1,29,920/- for the period from 01.04.2008 to June-2010.

7. I find that the appellant has filed the present appeal with respect to the disputed amount of Rs. 1,29,920/- only. Therefore, I would like to take up for discussion the amended definition of 'input service' w.e.f April 1, 2008.

The definition of 'input service' as contained in Section 2(l) of the Cenvat Credit Rules, 2004 for the period after April 1, 2008 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, 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"

7.1 In the main definition portion, the expression "*clearance of final products **from** place of removal*" was replaced by the expression "*clearance of final product **upto** the place of removal*". Thus, it is only 'upto the place of removal' that service is treated as input service. The said 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 the doors to the Cenvat credit of input tax paid gets closed at that place. This credit cannot travel therefrom. It becomes clear from the plain reading of this amended Rule, which applies to the period in the above case that the Courier service used for the purpose of outward



transportation of goods, i.e. from the factory to customer's premises, is not covered within the ambit of Rule 2(l)(i) of Rules, 2004.

7.2 Thus, I hold that once the final products are cleared from the factory premises, extending the credit beyond the point of clearance of final product is not permissible under Cenvat Credit Rules and post clearance use of services in transport of manufactured goods cannot be input service for the manufacture of final product. The various air courier services used by the appellant for transportation of their final product cannot be considered to have been used directly or indirectly in relation to clearance of goods upto the factory viz. place of removal in terms of Rule 2(l) of the Rules and as such cannot be considered as input service to avail Cenvat credit. In this regard, I place reliance in the Civil Appeal No. 11261 of 2016 in the Supreme Court of India in the case of **Commissioner of Central Excise and Service Tax Vs M/s Ultratech Cement Ltd.** wherein the Apex Court held that '*Cenvat Credit on goods transport agency service availed for transport of goods from place of removal to buyer's premises was not admissible to the respondent*'.

8. Further, I find that the appellant has vehemently contended that the adjudicating authority has erred in confirming the demand ignoring the fact that the goods were for export and are exported through air courier agency; that the place of removal in case of export is port of export and hence credit as claimed is clearly allowable.

8.1 With regard to the above contention of the appellant, I find that courier service used for export of goods, was used beyond the place of removal. Furthermore, in the present case, the courier service is not used in relation to the manufacture of final product. It is also not covered in the inclusion clause to the definition as stated above and neither it is covered upto the place of removal. Therefore, courier service used for export of goods does not fall under the ambit of input service in view of the amended definition. Hence, the credit in respect of air courier service for export of consignments used beyond the place of removal is inadmissible.

I find that the Supreme Court of India in the case of **Commissioner of Central Excise and Service Tax Vs M/s Ultratech Cement Ltd.** in the Civil Appeal No. 11261 of 2016 at para 7 has held that:



“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 exigible 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 Rules in the year 2008, which became effective from March 1, 2008, the word ‘from’ is replaced by the word ‘upto’. Thus, it is only ‘upto the place of removal’ that service is treated as input service. This amendment has changed the entire scenario. The benefit which was admissible even beyond the place of removal now gets terminated at the place of removal and doors to the Cenvat credit of input tax paid gets closed at that place. This credit cannot travel therefrom. It becomes clear from the bare reading of this amended Rule, which applies to the period in question that the Goods Transport Agency service used for the purpose of outward transportation of goods, i.e. from the factory to customer’s premises, is not covered within the ambit of Rule 2(l)(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, interalia, services used in relation to inward transportation of inputs **or export goods** and outward transportation upto the place of removal. The two clauses in the definition of ‘input services’ take care to circumscribe input credit by stating that service used in relation to the clearance from the place of removal and service used for outward transportation upto the place of removal are to be treated as input service. The first clause does not mention transport service in particular. The second clause restricts transport service credit upto the place of removal. When these two clauses are read together, it becomes clear that transport services credit cannot go beyond 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."

....."

[Emphasis supplied]

9. Further, the appellant has relied upon the following cases for his defense:

- (i) C.Ex. & Customs, Vapi Vs M/s APAR Industries Ltd.,
- (ii) Commissioner of Central Excise Vs Ambalal Sarabhai Enterprises Ltd.

9.1 In all the above cases, it was ruled that the credit of service tax paid for courier service was available in as much as the said activity can be considered as a part of the business activity. However, all the said cases pertain to the period prior to 01.04.2008 wherein the definition of the 'input service' itself was amended. Accordingly, the credit of service tax paid on courier service was not available to the appellant as held by the Hon'ble Supreme court on Feb 2018 in the case of **Commissioner of Central Excise and Service Tax Vs M/s Ultratech Cement Ltd.**

The above case was affirmed in 2018(13) G.S.T.L. J101(S.C.) wherein the Hon'ble Apex Court on 24.04.2018 dismissed the review petition filed by Ultratech Cement Ltd. and held that –

".....We have carefully gone through the Review Petition and the connected papers. We find no error much less apparent in the order impugned. The Review Petition is, accordingly, dismissed."

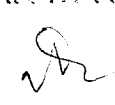
10. In view of my discussions above, I hold that the appellant are not eligible for the Cenvat credit availed by them for the period from 01.04.2008 to June-2010 amounting to Rs. 1,29,920/- which should be paid with interest under Rule 14 of the Cenvat Credit Rules, 2004. The appellant are also liable for penalty amounting to Rs.1,29,920/- under Rule 15A of the Cenvat Credit Rules, 2004.


10.1 In view of the above discussion supported by the judicial pronouncement of the Apex Court, all the submissions/ reliance placed by the appellant do not hold good.

11. In view of my above discussions, I uphold the impugned order and disallow the appeal filed by the appellant.

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

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

सत्यापित

 अ. अ. अन्वर
 अधिकारी (अपील)


 (Gopi Nath)
 Commissioner (Appeals)

By Regd. Post AD

To,

M/s Amul Industries Pvt. Ltd., Plot
 No. 332-333, 2-Aji Industrial Estate,
 Rajkot.

मे. अमूल इंडस्ट्रीज़ प्राइवेट लिमिटेड,
 नं. ३३२-३३३, २-आजी इंडस्ट्रियल इस्टेट,
 राजकोट.

Copy to:

- 1) The Principal Chief Commissioner, CGST & Central Excise,
 Ahmedabad Zone, Ahmedabad.
- 2) The Commissioner, CGST & Central Excise Commissionerate, Rajkot.
- 3) The Deputy Commissioner, CGST & Central Excise, Division, Rajkot-I.
- 4) Guard file.

