



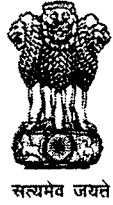
:: प्रधान आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::
O/O THE PRINCIPAL COMMISSIONER (APPEALS), GST & CENTRAL EXCISE

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:
	V2/119/RAJ/2019	A/11392/2019	25/07/2019
ख	अपील आदेश संख्या (Order-In-Appeal No.):		

RJT-EXCUS-000-APP-050-2020

आदेश का दिनांक /
Date of Order: **21.04.2020** जारी करने की तारीख /
Date of issue: **30.04.2020**

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 / भावनगर / गांधीधाम द्वारा उपरलिखित जारी मूल आदेश से मुजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central
Excise/ST / GST, Rajkot/Bhavnagar/Gandhidham :

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

**M/s Maruti Hardware Products Pvt. Ltd, Sub Plot No. 3/C, Survey No. 325,
Nehru Nagar Main Road, Atika, Dhebar Road (South), Rajkot.**

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.

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।

(A) 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 उत्पाद 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.

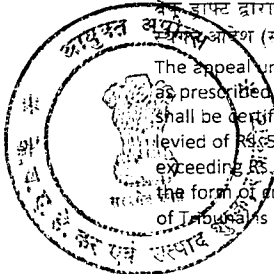
(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असारवा अहमदाबाद- 380016 को की जानी चाहिए।।
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 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 माँग, व्याज की माँग 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। स्थान 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 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 माँग, व्याज की माँग 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। स्थान 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 upto 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding 50 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 the Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.



पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रस्तावित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/मेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। /

(i) 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 मेवाकर अपीलीय प्राधिकरण (सेस्ट) 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 मेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/मेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, वशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि इस करोड़ रूप में अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं मेवाकर के अंतर्गत "मांग किया गया 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 8 के अंतर्गत देय रकम

- वशर्त यह कि इस धारा के प्रावधान विनियम (नं० 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.

भारत सरकार को पुनरीक्षण आवेदन :

(C) **Revision application to Government of India:**

इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परन्तुक 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, जहां नुकसान किसी भाव को किसी कारखाने में भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह में 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 क्रेडिट (रेवट) 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.

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

(iii) 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 जा छोटा क्रेडिट इन अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और इस आदेश को 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 को दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्देशित 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 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.

पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी को जाना चाहिए। /

(vi) 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, उपयुक्त ढंग से किया जाना चाहिए। इस तथ्य के होना हुए भी की लिखा पट्टी कार्य में 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-1 के अनुसूचक मूल आदेश एवं स्थगन आदेश को प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट लगा होना चाहिए। /

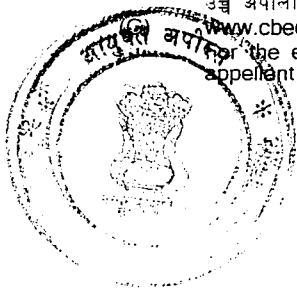
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act,1975, as amended.

(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं मेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित 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.

उच्च अपीलीय प्राधिकारी का अपील दाखिल करने में संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। /

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



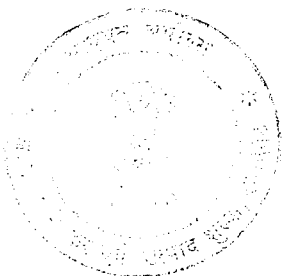
:: ORDER IN APPEAL ::

The present appeal is taken up for *de novo* proceedings on the directions of the Hon'ble CESTAT, Ahmedabad vide Order No. A/11392/2019 dated 25.07.2019. M/s. Maruti Hardware Products Pvt. Ltd., Rajkot (*herein after referred to as "Appellant"*) has filed appeal against Order-in-Original No. 80/D/AC/2016-17 dated 31.03.2017 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Central GST, Division-I, Rajkot (hereinafter referred to as 'adjudicating authority').

2. The brief facts of the case are that the Appellant was engaged in manufacturing activities and was registered with Central Excise. The Appellant had another unit namely M/s. Maruti Hardware Products P. Ltd. (Unit-II), Rajkot (hereinafter referred to as "Unit-II") which was engaged in manufacturing activity as well as providing taxable services under the category of Erection, Commissioning & Installation service and was registered with Central Excise and Service Tax. The Appellant was holding centralized Service Tax registration for both their units.

2.1 During the course of Audit, it was observed that the Appellant had availed Cenvat credit of Service Tax of Rs. 3,07,772/- paid on sales commission in March, 2015 and subsequently transferred to their Centralized Service Tax registration. The Unit-II utilized service tax credit of Rs. 69,610/- from the Centralized registration towards discharge of their Service Tax liability. It appeared to Audit that Service Tax credit availed by the Appellant (unit-I) had no nexus with the output service provided by the Unit-II and as such the Appellant (Unit-I) was neither entitled to pass on the Input Service Tax credit of their unit to Unit-II nor they were entitled to utilise the Input Service Tax credit of their unit-I towards discharging of Service Tax liability of Unit-II.

2.2 The Show Cause Notice No. CEX/Audit-III/Cir-II/AC-32016-17 dated 22.12.2016 was issued to the Appellant calling them to show cause as to why Cenvat credit of Rs. 3,07,772/- which was transferred to their Centralized Registration should not be disallowed and recovered along with interest under Rule 14 of the Cenvat Credit Rules, 2004 (hereinafter referred to as 'CCR,2004') and proposed imposition of penalty under Rule 15 *ibid*.



2.3 The aforesaid Show Cause Notice was adjudicated by the Adjudicating Authority vide the impugned order who disallowed the Cenvat credit of Rs. 3,07,772/- availed by the appellant and confirmed the demand under Rule 14 of CCR, 2004 along with interest and imposed penalty of Rs. 3,07,772/- under Rule 15 *ibid*.

2.4 Aggrieved, the appellant filed appeal before Commissioner(Appeals), Rajkot, which was dismissed vide Order-in-Appeal No. RAJ-EXCUS-000-APP-355-2017-18 dated 4.4.2018 on the ground that appeal memorandum did not contain any grounds of appeal. Aggrieved, the appellant filed appeal before the Hon'ble CESTAT, Ahmedabad who vide its Order No. A/11392/2019 dated 25.7.2019 remanded the matter to Commissioner(Appeals) for deciding the matter on merits.

3. In hearing Shri Paresh Seth, Advocate appeared on behalf of the Appellant and filed grounds of appeal and reiterated the same for consideration. In grounds of appeal, it has been contended that,

(i) the adjudicating authority erred in confirming the order on the grounds as mentioned in the order; that findings in the order on the issue of eligibility of credit are beyond the scope of show cause notice and is bad in law.

(ii) That the demand was confirmed while ignoring the fact that the reference of credit in the relevant return was only a clerical mistake and the clubbing of credit on account of common Registration cannot be treated as transfer of credit and hence, same can not be denied by invoking the provisions of Rule 14 of CCR; that it was not alleged that the credit so reflected was not eligible as "input service". In absence of such allegation, the provisions of Rule 14 are not applicable and accordingly the show cause notice was ought to have been set aside and the proceedings are required to be dropped.

(iii) That the demand confirmed on the ground that there is no nexus between the availment of credit and utilization thereof is bad in law. There is no provision which restricts the availment of credit on the service availed and utilization thereof for the payment of tax for the service provided. There is no need to have any nexus and no credit can be denied on such ground.

(iv) That penalty has been imposed erroneously on the ground that the applicant availed such credit with an intention to evade the payment of duty. The criteria laid



A handwritten signature in black ink, appearing to be the initials "A.S." or similar, written in a cursive style.

down under the provisions of Rule 15 of Cenvat Credit Rules 2004 read with Section 11AC of the Central Excise Act 1944 are not proved to have been complied with and accordingly no penalty is imposable; that interest has been confirmed erroneously as much as the credit availed is not utilized and the department has also not challenged the eligibility of credit.

4. I have carefully gone through the facts of the case, the impugned order, appeal memorandum and submission made by the Appellant at the time of personal hearing. The issues to be decided in the present appeal are:-

(i) whether transfer of the input service tax credit of Rs. 3,07,772/- by the Appellant to the centralized registration is correct, legal and proper or otherwise and;

(ii) whether utilization of the said credit towards payment of service tax liability of Unit-II is correct, legal and proper or otherwise.

5. I find that the Appellant had availed Cenvat credit of service tax of Rs. 3,07,772/- paid on sales commission and subsequently transferred to their Centralized Service Tax registration. The Unit-II utilized service tax credit of Rs. 69,610/- towards discharging their Service Tax liability, which was denied by the adjudicating authority on the grounds that Service Tax credit availed by the Appellant had no nexus with the output services provided by the Unit-II and as such the Appellant (Unit-I) was not entitled to pass on the Input Service Tax credit of their unit to Unit-II.

6. Before examining the merits of the case, I find it is pertinent to reproduce the finding recorded by the adjudicating authority at para 15 of the impugned order as under:

“15. In this regard, I find that the issue of admissibility of credit of service tax paid on commission to sales commission agent for the period prior to 3.2.2016 is under dispute. The Department has preferred an appeal before the Hon'ble High Court of Gujarat in the case of Essar Steel Ltd against CESTAT's order (Tax Appeal No. 444 of 2016). In this regard, I find that the Noticee has also been served a separate Show Cause Notice for wrong avilment of credit of service tax paid on sales commission covering the period from April, 2011 to March, 2016. Thus, the credit of service tax paid on sales commission was even otherwise, not admissible to the Noticee in the present case.”

A



6.1 I do not agree with the above findings of the adjudicating authority. Merely because the Department has challenged the CESTAT's order in the case of Essar Steel Ltd before the Hon'ble Gujarat High Court would not debar the Appellant from availing Cenvat credit of service tax paid sales commission. It is not under dispute that the Hon'ble CESTAT's order issued in the case of Essar Steel Ltd - 2016(42) S.T.R. 869 (Tri. - Ahmd.) is not reversed by the higher judicial forum and therefore, I hold that the Appellant has correctly availed Cenvat credit of service tax of Rs. 3,07,772/- paid on sales commission. Since the Appellant was holding Centralized Service Tax registration, transfer of said Cenvat credit to centralized registration was also legal and correct.

7. Regarding finding of the adjudicating authority that input service tax credit availed by the Appellant had no nexus with output service provided by the Unit-II and hence, the Appellant was not entitled to pass on service tax credit, I find that nexus between input service and output service/manufacture of goods has to be examined at the time of availment of Cenvat credit in terms of Rule 2(l) of the CCR, 2004 and not at the time of its utilization. In the present case, the Appellant was eligible to avail Cenvat credit of service tax paid on sales commission, as held by me in para *supra*. Once availment of Cenvat credit is not under dispute, the Appellant was well within its right to transfer the said Cenvat credit to their Centralized service tax registration and subsequently utilize Rs. 69,610/- towards service tax payable by Unit-II.

8. In view of above, I hold that confirmation of demand of Rs. 3,07,772/- is required to be set aside and I do so. Since, demand is not sustainable, recovery of interest and imposition of penalty under Rule 15 are also not sustainable and hereby set aside.

9. I set aside the impugned order and allow the appeal.

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

10. The appeal filed by the Appellant stand disposed off in above terms.

Nath
(GOPI NATH) 21/4/2020
Commissioner(Appeals)

Attested

VS

(V.T.SHAH)

Superintendent(Appeals)



By RPAD

<p>To, M/s. Maruti Hardware Products Pvt.Ltd., Sub Plot no.3/C, Survey no.325, Nehru Nagar main road, Atika, Dhebar Road (South), Rajkot.</p>	<p>सेवा में, मैसर्स मारुति हार्डवेयर प्रोडक्ट्स प्रा.लि., सब प्लॉट नं. 3, सर्वे नं. 25, नेहरू नगर मुख्य मार्ग, अटिका, डेबर रोड (दक्षिण), राजकोट।</p>
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प्रतिलिपि :-

- 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) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट-1 मण्डल, राजकोट को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फ़ाइल।



