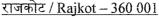


::आयक्त (अपील्स) का कार्यालय,वस्त एवं सेवा करऔर केन्द्रीय उत्पाद शुल्क:: O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE,

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



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



रजिस्टर्ड डाक ए.डी.द्वारा :-

अपील / फाइलसंख्या/ Appeal /File No.

3

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मल आदेश सं / 0.I.O. No.

दिनांक/

Date

V2/ 105/RAJ/2019

06/D/Supdt/2019-20

20/06/2019

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

RAJ-EXCUS-000-APP-063-2020

आदेश का दिनांक /

22.05.2020

जारी करने की तारीख /

Date of Order:

Date of issue:

26.05.2020

श्री गोपी नाथ, आयुक्त (अपील्स), राजकोट द्वारा पारित/

Passed by Shri Gopi Nath, Commissioner (Appeals), Rajkot

अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/वस्त एवंसेवाकर, 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:

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

M/s Gopal Printpack Solutions, Plot no. G-1322, B/H Kadvani Forge, Kishan Gate, Lodhika GIDC Estate, Metoda, Rajkot-360021.

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 निम्नलिखि+त 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:-

वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, अर॰ के॰ पुरम, नई दिल्ली, को की जानी चाहिए।/ (i)

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.

उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क,केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट)की पश्चिम क्षेत्रीय पीठिका,,द्वितीय तल, बहुमाली भवन असार्वा अहमदाबाद- ३८००१६को की जानी चाहिए।/ (ii)

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016in 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 ज़्याज 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 क्रमश: 1,000/- रुपर 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जाम शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजिनक क्षत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ज्ञपिलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्ट 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 dutydemand/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,1994की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5में 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 माँग, व्याज की माँग और लगाया गया जमाना, 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 को निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रिजस्टार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रखांकित बेंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ज्ञाफ्ट 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 layour 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,1994की 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 संवग्न करें (उनमें से एक प्रति प्रमाणित होनी निर्देश की आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने उन्हें 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 Commissionerauthorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (ii)

Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (संग्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की क्षारा 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 जुमांना विवादित है, या जुमांना, जब केवल जुमांना विवादित है, का भुगतान किया जाए, वशर्त कि इस धारा के अंतर्गत लाग 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) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं॰ 2) अधिनियन 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थान अर्जी एवं अपील को लागू नहीं होगे।

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 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.

शारत सरकार कोपूनरीक्षण आवेदन:

भारत सरकार कोपुनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षण आवेदन निम्नलिखित मामलो में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गतअवर सचिव,
भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिस, 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 Delhi110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to subsection (1) of Section-35B ibid: (C)

यदि माल के किसी नुक्सान के मामले में, जहां नुक्सान किसी माल को किसी कारखाने से मंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक मंडार 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 नुक्सीन 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 (i)

- भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कझे 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. (ii)
- 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 Nepai or Bhutan, without payment of duty. (iii)
- सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी ब्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा विक्त अधिनियम (न॰ 2),1998 की धारा 199 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए है। (iv) 19 81/ 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.
- 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। (v) 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 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. (vi)
- यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भूगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय नयाधिकरण को एक अपील या केंद्रीय 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. (D)
- 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. (E)
- सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायार्ध्वकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संवन्धित मामलों को सम्मिलित करने वाले नियमों की और 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. (F)
- उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in की 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 (G)



Appeal No: V2/105/RAJ/2019

:: ORDER IN APPEAL ::

M/s Gopal Printpack Solutions, Rajkot (hereinafter referred to as "appellant") having Central Excise Registration No. AAMFG9198DEM001 filed the present appeals against Order-In-Original No. 6/D/Supdt/2019-20 dated 20.06.2019 (hereinafter referred to as "impugned order") passed by the Superintendent, Central GST Division-Rajkot-I (hereinafter referred to as "the adjudicating authority").

- Briefly stated facts of the case are that during the course audit, it was 2. noticed by the CERA that the appellant had availed the input service tax credit in respect of service tax paid on job work charges; that job worker charged service tax on the "value of material plus value of labour cost"; that as per the Provisions of Finance Act, Service Tax was required to be charged on the value of service only, but the appellant availed the credit of the Service Tax which was paid on the value of the materials as well; that the appellant had wrongly availed cenvat credit of service tax in contravention of the provisions of Rule 2(I) of Cenvat Credit Rules, 2004 (Hereinafter referred to as "CCR, 2004). Therefore, with the reference to the earlier Show Cause Notice dated 06.04.2017, the Show Cause Notice dated 02.11.2018 for the subsequent period from November-2016 to June-2017 was issued to the appellant calling them to show cause as to why Cenvat Credit of Rs. 52,249/- should not be disallowed and recovered from them under Rule 14 of the CCR, 2004 read with Section 11A of the Central Excise Act, 1944 (hereinafter referred to as "Act") alongwith interest under Rule 14 ibid read with Section 11AA of the Act and proposing imposition of penalty under Rule 15 of CCR, 2004 read with Section 11AC of the Act.
- 3. Being aggrieved, appellant preferred the present appeal on the various grounds, *inter-alia*, as under:
- (i) that appellant has relied upon Order-in-Appeal No. RAJ-EXCUS-000-APP-127-2019, dated 12.06.2019/13.06.2019 in their own case covering the period from July-2014 to October-2016.
- (ii) that the issue is already settled in favour of the Appellant. Accordingly, impugned order, denying Cenvat Credit for the subsequent period i.e. November 2016 to June 2017 is liable to be set aside.

(iii) that in light of above, appellant has rightly availed cenvat credit of the service tax, the order of recovery of interest is also not legal and sustainable and liable to

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be set aside.

- (iv) that in view of the submission, they further requested to allow the appeal.
- 4. The appellant was given opportunities of personal hearing on 03.01.2020, 14.01.2020, and 28.01.2020. The appellant requested for waiver of personal hearing and requested to decide the present appeal in light of OIA No. RAJ-EXCUS-000-APP-127-2019, dated 12.06.2019/13.06.2019 passed by the Principal Commissioner (Appeals), Central Excise & CGST Rajkot. Hence, I proceed to decide the present appeal on the basis of the available records.
- 5. I have carefully gone through the facts of the case, impugned order and ground of appeal submitted by the appellant in the memorandum of appeal. The issue to be decided in the present appeal is whether the Cenvat Credit of Rs. 52,249/- availed by the appellant is legally correct, proper or otherwise.
- 6. On going through the records, I find that the Appellant availed Cenvat Credit of Rs. 52,249/- on the invoices raised by the jobworkers, which comprised material cost as well as labour cost. The lower adjudicating authority denied Cenvat credit to the extent of material cost involved in the invoices on the ground that service tax was required to be charged by the jobworkers only on labour portion and that service tax paid on value of materials is not covered under the definition of 'input service' and, hence the appellant is not eligible to avail cenvat credit. I find that in the case on hand, service provider of the Appellant i.e. Jobworkers were required to pay service tax only on labour cost and not on value of materials cost. I find that there is no dispute about receipt of the services by the Appellant or payment of service tax by the service providers collected by them from Appellant. I find that once the appellant has availed services and paid service tax to the service providers, the appellant is eligible to avail Cenvat credit of such service tax under Rule 3 of Cenvat Credit Rules, 2004. The lower adjudicating authority cannot decide taxability of services rendered by the service recipients, which is to be decided by the respective jurisdictional Service Tax Authority. The lower adjudicating authority, thus, cannot deny Cenvat credit of Service Tax availed by the appellant on duty paid documents.
- 6.1 I place on the reliance on the order passed by the Hon'ble CESTAT, New Delhi in the case of Ultratech Cement Ltd, reported as 2011(22)S.T.R. 289(Tri.-Mumbai) wherein it has been held that

6. After considering the submission, I am inclined to accept the plea made by the learned counsel. As rightly submitted by him, the show cause notices in this case did not allege that the certification of pollution level was not an 'input service' under Rule 2(I) of the

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Cenvat Credit Rules, 2004. The show cause notices proposed to deny the benefit of CENVAT credit to the appellant on the sole ground that the certification of pollution level was not a taxable service and, therefore, the service provider was not legally required to pay service tax thereon and consequently the Cenvat credit of the Service tax paid by the service provider was not admissible to the appellant. In this context, the case law cited by the Counsel is apparently applicable. The view taken in the cited cases is that, where service tax or Central Excise duty was paid on any service or any excisable goods, as the case may be, by the service provider or the manufacturer of the goods, as the case may be, the manufacturer of would be admissible to the service recipient or, as the case may be, the manufacturer of the final product who has used the aforesaid goods as inputs in the manufacture of final products. The departmental authorities having jurisdiction over the service recipient/manufacturer of final products cannot sit in judgment over the taxability of the service or excisability of the inputs, which function belongs to the departmental authorities having jurisdiction over the service provider/input manufacturer. This settled position of law is squarely applicable to the present case.

(Emphasis supplied)

- 6.2 I further place on reliance on the Order passed by the Hon'ble CESTAT, New Delhi in the case of Parasrampuria Synthetics Ltd reported in 2005(191) E.L.T. 899 (Tri.-Del.), wherein it has been held that,
- Heard Shri Mahesh Daditchi, representative of the appellants and Shri Vipin Verma, learned DR In this appeal, Cenvat credit had been disallowed to the appellants on the ground that the supplier of the inputs had paid duty in excess. It is the contention of the appellants that they had taken Cenvat credit of the duty on the basis of invoice issued by the supplier of the inputs. I find force in the submissions of the appellants and if there was any mistake in payment of duty by the supplier, the issue should have been raised at the suppliers' end and not at the appellants as they had taken the Cenvat credit on the basis of the invoice issued by the supplier. Accordingly, the Cenvat credit taken on the basis of specified duty-paying document is not disallowable. The appeal is, thus, allowed.

(Emphasis supplied)

- 6.3 My views are also bolstered by the Order Passed by the Hon'ble CESTAT, New Delhi, in the case of Ruptex Mineral Water Pvt. Ltd. reported in 2008 (228) E.L.T. 440 (Tri.-Del.) wherein it has been held that,
- 6. Undisputed facts of the case are that the appellants are recipient of inputs which are further used in the manufacture of excisable goods. The appellant availed the credit whatever duty has been paid by the manufacturer. The manufacturer of inputs paid duty under Notification No. 23/2003-CE. Now, the Revenue is" only raising dispute that the supplier of inputs i.e. manufacturer has wrongly paid duty as payable at Sl. No. 3 of the notification whereas the duty actually is to be paid as payable Sl. No. 2 of the notification. It is settled law that the assessment cannot be reopened at recipient end, therefore, whatever the duty paid on the inputs by the manufacturer is accepted by the Revenue, the appellant being recipient of inputs has availed the same. In view of this, the impugned order is set aside and appeal is allowed.
- 7. Further, I observe that issue of the appellant has already been decided vide Order-in-Appeal No.RAJ-EXCUS-000-APP-127-2019, dated 12.06.2019/ 13.06.2019 in their own case covering the period from July-2014 to October-2016.



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- 8. In view of the above facts, discussions and findings, I allow the appeal filed by the appellant and set aside the impugned order passed by the adjudicating authority.
- ८.१ अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
- 8.1 The appeal filed by the appellant stands disposed off as above.

सत्यापित ४० जे. एस. नाग्रेचा अधौकक (अपील्स) (Gopi Nath)
Commissioner (Appeals)

By RPAD:

To,

M/s. **Gopal Printpack Solutions**, Plot No. G-1322, B/H Kadvani Forge,

Kishan Gate, Lodhika GIDC Estate, Metoda, Rajkot

मै. गोपाल प्रिंटपेक सोल्यूसन , प्लॉट नंबर G -1322, कडवाणी फ़ोर्ज के पीछे , किसान गेट, लोधीका, जी. आई. डि. सी. एस्टेट , मेटोडा, राजकोट

Copy to:

- 1. The Principal Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
- 2. The Commissioner, GST & Central Excise, Rajkot.
- 3. The Deputy Commissioner, Central GST Division, Rajkot-I.

