:: 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 :- BY Speed Post

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date:
	V2/11 TO 14/RAJ/2020	15 to 18/DC/KG/2019-20	19.12.2019

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

RAJ-EXCUS-000-APP-064 to 067-2020

आदेश का दिनांक / Date of Order:	29.05.2020	जारी करने की तारीख / Date of issue:	29.05.2020

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/ वस्तु एवं सेवाकर, राजकोट / भावनगर / 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/Bhavnagar/Gandhidham :

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

1. M/s Rolex Rings., Near Rajkamal Petrol Pump, Gondal Road, Village: Kotharia, 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.

(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 अपीलें सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असार्वा अहमदाबाद- ३८००१६ 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 ,ब्याज 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/- 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 सार्वजिनक 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 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 ,ब्याज 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/- 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 सार्वजिनक 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/-.

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/

(i) सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी । /

The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

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

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

(xxviii) धारा 11 डी के अंतर्गत रकम

(xxix) सेनवेट जमा की ली गई गलत राशि

(xxx) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

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

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:

(xxviii) amount determined under Section 11 D;

(xxix) amount of erroneous Cenvat Credit taken;

(xxx) 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 मामलो में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक 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 माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में।/

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

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

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

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

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

(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट इस अधिनियम एव इसके विभिन्न प्रावधानो के तहत मान्य की गई है और ऐस आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं॰ 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समयावधि पर या बाद में पारित किए गए है।/

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

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

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

(vi) पुनरीक्षण आवदन के साथ निम्नलिखित निधारित 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 आदेशो 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 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.

(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 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 Rolex Rings Pvt. Ltd., Near Rajkamal Petrol Pump, Gondal Road, Village: Kotharia, Rajkot. (hereinafter referred to as **'the appellant'**) filed the present appeals against OIO Nos. 15 to 18/DC/KG/2019-20 dated 19.12.2019 (hereinafter referred to as the **'impugned orders'**) passed by the Deputy Commissioner, GST & Central Excise, Division, Rajkot-II (hereinafter referred to as the **'adjudicating authority'**).

2. The brief facts of the case are that the appellant was engaged in manufacture of Forgings and Forged articles and was registered with Central Excise. During the course of audit of the financial records of the appellant by the Departmental audit officers for the period from April-2011 to March-2012 and April-2012 to March-2013, it was observed that the appellant had availed Cenvat credit of Service Tax paid on outward GTA service used for transportation of their finished goods from their factory to customer's premises i.e. beyond place of removal, during the period from October, 2015 to September, 2016, which is alleged to be not proper in view of definition of "input service" as given at Rule 2(l) of the Cenvat Credit Rules, 2004 (hereinafter referred to as **"CCR,2004"**). It appeared that any service availed after clearance of finished goods beyond the place of removal is not an 'input service' and therefore, the appellant was not eligible to avail Cenvat credit of service tax paid on outward GTA service.

2.1 Show Cause Notices were issued to the appellant as under:

Sr.No.	SCN No.	Date	Period	Amount
1.	V.84/AR-1/Div-1/ADC/BKS/218/2015-16	31.03.2016	April-2014-March-2015	9,59,792/-
2.	V.84/AR-1/Div-1/ADC/BKS/34/2016-17	03.05.2016	April-2015-March-2016	17,29,766/-
3.	SOD NO. 01/2018	09.04.2018	December-2016-June-	10,09,021/-

			2017	
4.	V.84/AR-1/Div-1/ADC/BKS/160/2015-16	08.02.2016	April-2011-September-2015	22,09,028/-

2.2 The said SCNs were decided vide the impugned orders. The Adjudicating authority has confirmed the demand amounting to Rs.38,43,590/- (6,73,106 + 12,48,213 + 5,10,936 + 14,11,335) alongwith interest and penalty under Rule 15 of CCR 2004 read with Section 11AC of the C.Ex. Act, 1944.

3. Aggrieved, the appellant filed the present appeal *interalia* on the following grounds:

(i) That the transactions of the appellant are on FOR basis and accordingly the sale transactions have been completed at the time of delivery of the goods to the customers; that they had borne the freight charges and had taken transit insurance also, therefore, the transaction should be treated as FOR transaction.

(ii) That they refer to Circular No. 988/12/2014-CX dated 20.10.2014 which explains Circular no. 97/8/2007 wherein it has been clarified in Para 5 that for determining the term 'place of removal', once the transaction are on FOR basis, the other factors are not to be seen and the credit is to be allowed.

(iii) That even after amendment in the definition in the year 2008, the CESTAT, Ahmedabad in the case of Applied Auto Industries Pvt. Ltd. in appeal no. A/10727/WZB/AHD/2013 dated 05.06.2013 has allowed credit of delivery on FOR basis, the said decision was followed in a number of cases. In their case also, they established that sale was on FOR basis and sale took place at buyer's premises and therefore, they had correctly availed Cenvat credit of service tax and the impugned orders are required to be dismissed.

(iv) That since the issue involves interpretation of relevant provisions, there was no malafide intention on the part of the appellant and hence no penalty is liable to be imposed; that the transactions are FOR basis and is covered by the clarification issued by the Hon'ble Board and hence neither interest is liable to be recovered nor any penalty is liable to be imposed.

(v) That since the transactions are on FOR basis in terms of para 8.2 of CBEC circular no. 97/8/2007-S.T dated 23.08.2007 the credit is available to them; that the Board has further clarified the issue vide Circular No. 988/12/2014 dated 20.10.2014 that the place where sale takes place is the place of removal and hence is the place where the transfer of property of goods takes place from the seller to the buyer; that this can be decided as per the provisions of Sale of Goods Act, 1930 as held in the case of M/s Escorts JCB Limited Vs CCE, New Delhi [2002 (146) E.L.T. 31 (S.C.)]. In their case also, they established that sale was on FOR basis and sale took place at buyer's premises and therefore, they had correctly availed Cenvat credit of service tax.

(vi) That since the transactions are on FOR basis in terms of Circular no. 1065-4-2018-CX dated 08.06.2018 the said credit is clearly available to them; that Circular issued by the Board is binding to the Department; therefore they requested to set aside demand confirmed in the impugned orders; and drop the penalty proceedings.

4. In hearing, Shri Paresh Sheth, Advocate appeared on behalf of the appellant, he requested to give him 10 days time to file additional submissions and requested to drop the proceedings. However, considerable time has elapsed and I note that the appellant failed to submit their additional submissions.

5. I have carefully gone through the facts of the case, the impugned order, grounds of appeal of the appeal memorandum and oral submissions made by the appellant during the course of personal hearing. The issue to be decided in the present case is whether the appellant has correctly availed Cenvat credit of service tax paid on outward GTA service or not.

6. I find that the appellant had availed Cenvat credit of service tax paid on outward GTA service during the aforementioned period.

I find that definition of "input service" as provided under Rule 2(l) of Cenvat Credit Rules, 2004 reads as under:-

> *"(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;".*
>
> (Emphasis supplied)

7. From above, it is observed that "input service" means any service used by the manufacturer, whether directly or indirectly, in or in relation to manufacture of final products and clearance of final products upto the place of removal, with the inclusion of outward transportation upto the place of removal. It is, therefore, evident that as per main clause - the service should be used by the manufacturer which has direct or indirect relation with the manufacture of final products and clearance of final products upto the place of removal and the inclusive clause restricts the outward transportation upto the place of removal. The place of removal has been defined under Section 4 of the Act. As per Section 4(3)(c) of the Act, "place of removal" means a factory or any other place or premises of production or manufacture of excisable goods; a warehouse or any other place of premises wherein the excisable goods have been permitted to be stored without payment of duty or a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold.

8. I find that the issue is no more *res integra* and stands decided by the Hon'ble Supreme Court vide judgment dated 01.02.2018 passed in the case of Ultratech Cement Ltd reported as 2018 (9) G.S.T.L. 337 (S.C.), wherein it has been held that,

> *"4. As mentioned above, the assessee is involved in packing and clearing of cement. It is supposed to pay the service tax on the aforesaid services. At the same time, it is entitled to avail the benefit of Cenvat Credit in respect of any input service tax paid. In the instant case, input service tax was also paid on the outward transportation of the goods from factory to the customer's premises of which the assessee claimed the credit. The question is as to whether it can be treated as 'input service'.*
>
> *5. 'Input service' is defined in Rule 2(l) of the Rules, 2004 which reads as under:*
>
> *"2(l) "input service" means any service:-*
>
> *(i) Used by a provider of taxable service for providing an output services; 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, activities relating to business, such as 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;"*
>
> *6. It is an admitted position that the instant case does not fall in sub-clause (i) and the issue is to be decided on the application of sub-clause (ii). Reading of the aforesaid provision makes it clear that those services are included which are 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'.*
>
> *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 eligible 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.*
>
> *15. Credit availability is in regard to 'inputs'. The credit covers duty paid on input materials as well as tax paid on services, used in or in relation to the manufacture of the 'final product'. The final products, manufactured by the assessee in their factory premises and once the final products are fully manufactured and cleared from the factory premises, the question of utilization of service does not arise as such services cannot be considered as used in relation to the manufacture of the final product. Therefore, extending the credit beyond the point of removal of the final product on payment of duty would be contrary to the scheme of Cenvat Credit Rules. The main clause in the definition states that the service in regard to which credit of tax is sought, should be used in or in relation to clearance of the final products from the place of removal. The definition of input services should be read as a whole and should not be fragmented in order to avail ineligible credit. Once the clearances have taken place,*

the question of granting input service stage credit does not arise. Transportation is an entirely different activity from manufacture and this position remains settled by the judgment of Honorable Supreme Court in the cases of Bombay Tyre International 1983 (14) ELT = 2002-TIOL-374-SC-CX-LB, Indian Oxygen Ltd. 1988 (36) ELT 723 SC = 2002-TIOL-88-SC-CX and Baroda Electric Meters 1997 (94) ELT 13 SC = 2002-TIOL-96-SC-CX-LB. The post removal transport of manufactured goods is not an input for the manufacturer. Similarly, in the case of M/s. Ultratech Cements Ltd. v. CCE, Bhatnagar 2007 (6) STR 364 (Tri) = 2007-TIOL-429-CESTAT-AHM, it was held that after the final products are cleared from the place of removal, there will be no scope of subsequent use of service to be treated as input. The above observations and views explain the scope of relevant provisions clearly, correctly and in accordance with the legal provisions."

8. The aforesaid order of the Adjudicating Authority was upset by the Commissioner (Appeals) principally on the ground that the Board in its Circular dated August 23, 2007 had clarified the definition of 'place of removal' and the three conditions contained therein stood satisfied insofar as the case of the respondent is concerned, i.e. (i) regarding ownership of the goods till the delivery of the goods at the purchaser's door step; (ii) seller bearing the risk of or loss or damage to the goods during transit to the destination and; (iii) freight charges to be integral part of the price of the goods. This approach of the Commissioner (Appeals) has been approved by the CESTAT as well as by the High Court. This was the main argument advanced by the learned counsel for the respondent supporting the judgment of the High Court.

9. We are afraid that the aforesaid approach of the Courts below is clearly untenable for the following reasons:

10. In the first instance, it needs to be kept in mind that Board's Circular dated August 23, 2007 was issued in clarification of the definition of 'input service' as existed on that date i.e. it related to unamended definition. Relevant portion of the said circular is as under:

"ISSUE: Up to what stage a manufacturer/consignor can take credit on the service tax paid on goods transport by road?

COMMENTS: This issue has been examined in great detail by the CESTAT in the case of M/s Gujarat Ambuja Cements Ltd. vs CCE, Ludhiana [2007 (6) STR 249 Tri-D] = 2007-TIOL-429-CESTAT-AHM. In this case, CESTAT has made the following observations:-

"the post sale transport of manufactured goods is not an input for the manufacturer/consignor. 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 service 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". Similarly, in the case of M/s Ultratech Cements Ltd vs CCE Bhavnagar - 2007-TOIL-429-CESTAT-AHM, it was held that after the final products are cleared from the place of removal, there will be no scope of subsequent use of service to be treated as input. The above observations and views explain the scope of the relevant provisions clearly, correctly and in accordance with the legal provisions. In conclusion, a manufacturer / consignor can take credit on the service tax paid on outward transport of goods up to the place of removal and not beyond that.

8.2 In this connection, the phrase 'place of removal' needs determination taking into account the facts of an individual case and the applicable provisions. The phrase 'place of removal' has not been defined in CENVAT Credit Rules. In terms of sub-rule (t) of rule 2 of the said rules, if any words or expressions are used in the CENVAT Credit Rules, 2004 and are not defined therein but are defined in the Central Excise Act, 1944 or the Finance Act, 1994, they shall have the same meaning for the CENVAT Credit Rules as assigned to them in those Acts. The phrase 'place of removal' is defined under section 4 of the Central Excise Act, 1944. It states that,-

"place of removal" means-

(i) a factory or any other place or premises of production or manufacture of the excisable goods ;

(ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be stored without payment of duty ;

(iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory;

from where such goods are removed."
It is, therefore, clear that for a manufacturer /consignor, the eligibility to avail credit of the service tax paid on the transportation during removal of excisable goods would depend upon the place of removal as per the definition. In case of a factory gate sale, sale from a non-duty paid warehouse, or from a duty paid depot (from where the excisable goods are sold, after their clearance from the factory), the determination of the 'place of removal' does not pose much problem. <u>However, there may be situations where the manufacturer /consignor may claim that the</u>

sale has taken place at the destination point because in terms of the sale contract / agreement (i) the ownership of goods and the property in the goods remained with the seller of the goods till the delivery of the goods in acceptable condition to the purchaser at his door step; (ii) the seller bore the risk of loss of or damage to the goods during transit to the destination; and (iii) the freight charges were an integral part of the price of goods. In such cases, the credit of the service tax paid on the transportation up to such place of sale would be admissible if it can be established by the claimant of such credit that the sale and the transfer of property in goods (in terms of the definition as under section 2 of the Central Excise Act, 1944 as also in terms of the provisions under the Sale of Goods Act, 1930) occurred at the said place."

11. As can be seen from the reading of the aforesaid portion of the circular, the issue was examined after keeping in mind judgments of CESTAT in Gujarat Ambuja Cement Ltd. and M/s. Ultratech Cement Ltd. Those judgments, obviously, dealt with unamended Rule 2(l) of Rules, 2004. The three conditions which were mentioned explaining the 'place of removal' as defined under Section 4 of the Act, there is no quarrel upto this stage. However, the important aspect of the matter is that Cenvat Credit is permissible in respect of 'input service' and the Circular relates to the unamended regime. Therefore, it cannot be applied after amendment in the definition of 'input service' which brought about a total change. Now, the definition of 'place of removal' and the conditions which are to be satisfied have to be in the context of 'upto' the place of removal. It is this amendment which has made the entire difference. That aspect is not dealt with in the said Board's circular, nor it could be.

12. Secondly, if such a circular is made applicable even in respect of post amendment cases, it would be violative of Rule 2(l) of Rules, 2004 and such a situation cannot be countenanced.

13. The upshot of the aforesaid discussion would be to hold 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. Accordingly, this appeal is allowed, judgment of the High Court is set aside and the Order-in-Original dated August 22, 2011 of the Assessing Officer is restored."

(Emphasis supplied)

I find that the present case pertains to the post amendment Cenvat Credit Rules, 2004, where the 'Input Service' is restricted to service used by the manufacturer for 'outward transportation **upto** the place of removal". Prior to the amendment i.e till 2008, "input service" was inclusive of services used by the manufacturer for 'outward transportation from the place of removal'. I find that the issue of 'place of removal' in light of the amended CCR vide Notification No. 10/2008-CE (N.T.) dated

01.03.2008 has been clarified at length by the Hon'ble Supreme Court in the case of **Commissioner of Central Excise and Service Tax Vs M/s Ultratech Cement Ltd.** wherein it has been held as above.

9. Further, I find that the determination of place of removal in the post-amendment era has been clarified by the Hon'ble Supreme Court in the case of **Commissioner of Central Excise and Service Tax Vs M/s Ultratech Cement Ltd.** wherein it has been held that-

"Secondly, if such a circular is made applicable even in respect of post amendment cases, it would be violative of Rule 2(l) of Rules, 2004 and such a situation cannot be countenanced."

The said 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. I further find that the appellant has relied upon para 8.2 of CBEC Circular no. 97/8/2007-S.T dated 23.08.2007 and Circular No. 988/12/2014 dated 20.10.2014 and the decision in the case of M/s Escorts JCB Limited Vs CCE, New Delhi [2002 (146) E.L.T. 31 (S.C.)] wherein it has been held that the place of removal is the place from where the transfer of property of goods takes place from the seller to the buyer.

10.1 In this regard, I find that 'place of removal' in the case of Commissioner of Cus. & C.Ex., Nagpur Vs Ispat Industries Limited, as reported in 2015 (324) ELT 670 (S.C.) the Hon'ble Supreme Court has held that-

"22. To complete the picture, by an Amendment Act with effect from 14.5.2003, Section 4 was again amended so as to re-include sub-clause

(iii) of old Section 4(3)(b) (pre 2000) as Section 4(3)(c)(iii). This amendment reads as follows:-

"(3)(c)(iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory;"

Also, Rule 5 of the Central Excise Rules was substituted, with effect from 1.3.2003, to read as follows:

*"**Rule 5.** Where any excisable goods are sold in the circumstances specified in clause (a) of sub-section (1) of section 4 of the Act except the circumstances in which the excisable goods are sold for delivery at a place other than the place of removal, then the value of such excisable goods shall be deemed to be the transaction value, excluding the cost of transportation from the place of removal upto the place of delivery of such excisable goods.*

Explanation 1 - "Cost of transportation" includes -

(i) the actual cost of transportation; and

(ii) in case where freight is averaged, the cost of transportation calculated in accordance with generally accepted principles of costing.

Explanation 2 - For removal of doubts, it is clarified that the cost of transportation from the factory to the place of removal, where the factory is not the place of removal, shall not be excluded for the purposes of determining the value of the excisable goods."

23. It is clear, therefore, that on and after 14.5.2003, the position as it obtained from 28.9.1996 to 1.7.2000 has now been reinstated. Rule 5 as substituted in 2003 also confirms the position that the cost of transportation from the place of removal to the place of delivery is to be excluded, save and except in a case where the factory is not the place of removal.

*24. **It will thus be seen that, in law, it is clear that for the period from 28.9.1996 up to 1.7.2000, the place of removal has reference only to places from which goods are to be sold by the manufacturer, and has no reference to the place of delivery which***

may be either the buyer's premises or such other premises as the buyer may direct the manufacturer to send his goods."

Thus, I find that the place of removal includes only the places which are related to the manufacturer i.e depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory. A depot, the premises of a consignment agent, or any other place or premises from where the excisable goods are to be sold after their clearance from the factory are all places of removal. Each of these premises is referable only to the manufacturer and not to the buyer of excisable goods. The depot, or the premises of a consignment agent of the manufacturer are places which are referable only to the manufacturer. The expression 'any other place or premises' refers only to the manufacturer's place or premises because such place of premises is stated to be where excisable goods 'are to be sold'. Therefore, I do not agree with appellant and note that the buyer's premises can never be a place of removal and Cenvat credit of service tax paid on outward transportation upto the buyer's premises is not available to the appellant.

10.2 Further, I observe that the decision of the Apex Court in the case of Ispat Industries Ltd. [2015 (324) E.L.T. 670 (S.C.)] should be resorted to for determination of "place of removal" towards admissibility of Cenvat credit, as the same is the latest pronouncement of the Apex Court amongst its decisions. Thus, I find that a factory, a warehouse, a depot and premises of a consignment agent, as referred to in the definition of "place of removal", are certainly the premises relatable to the manufacturer. As such, the "place of removal" cannot shift beyond such place or premises, more so, when the expression "from where such goods are removed" is used as the concluding sentence in the definition of "place of removal", envisaged in Section 4(3)(c) of Central Excise Act, 1944 as well as Rule 2(qa) of Cenvat Credit Rules, 2004.

11. I also take note of the Board's Circular No. 1065/4/2018-CX., dated 8-6-2018, wherein it has been clarified that,

"5. CENVAT Credit on GTA Services etc. : The other issue decided by Hon'ble Supreme Court in relation to place of removal is

in case of CCE & ST v. Ultra Tech Cement Ltd., dated 1-2-2018 in Civil Appeal No. 11261 of 2016 on the issue of CENVAT Credit on Goods Transport Agency Service availed for transport of goods from the 'place of removal' to the buyer's premises. The Apex Court has allowed the appeal filed by the Revenue and held that CENVAT Credit on Goods Transport Agency service availed for transport of goods from the place of removal to buyer's premises was not admissible for the relevant period. The Apex Court has observed that after amendment of in the definition of 'input service' under Rule 2(l) of the CENVAT Credit Rules, 2004, effective from 1-3-2008, the service is treated as input service only 'up to the place of removal'."

11.1 In view of above law settled by the Hon'ble Supreme Court, Cenvat Credit on GTA service availed by the appellant for outward transportation of goods from place of removal to buyer's premises is not admissible w.e.f 01.04.2008. The period involved in this case is post amendment period and hence, Cenvat credit of Service Tax paid on GTA for outward transportation of goods cannot be allowed. I, therefore, hold that the appellant has wrongly availed Cenvat credit of service tax paid on outward GTA service and demand as confirmed in the impugned orders are rightly confirmed, along with interest, under Rule 14 of CCR, 2014 and penalty under Rule 15 of the CCR read with Section 11AC of the Central Excise Act, 1944 by the adjudicating authority. I uphold the impugned orders and reject the appeal filed by the appellant.

12. 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.

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

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

सत्यापित

अधी

29/5/2020

(GOPI NATH)
Commissioner (Appeals)

To,

M/s Rolex Rings Pvt. Ltd., Near Rajkamal Petrol Pump, Gondal Road, Village: Kotharia, Rajkot.	**मे. रोलेक्स रिंगस पी. ली.,** राजकमल पेट्रोल पम्प के पास, गोंडल रोड, गाऊँ: कोठरिया ,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-II.
4) Guard file.