



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

द्वितीय तल, जी एम टी भवन / 2<sup>nd</sup> Floor, GST Bhavan,  
रेस कोर्स रिंग रोड, / Race Course Ring Road.

राजकोट / Rajkot - 360 001

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



सत्यमेव जयते

रजिस्टर्ड टाक-एन्डी द्वारा :-

क अपील / फाइल नम्बरा /  
Appeal / File No

V2/ 17/RAJ/2020

मूल आदेश नं /  
O.I.O No

22/DC/KG/2019-20

दिनांक /  
Date

28-12-2019

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

**RAJ-EXCUS-000-APP-073-2020**

आदेश का दिनांक /  
Date of Order:

30.06.2020

जारी करने की तारीख /  
Date of issue:

03.07.2020

श्री गोपी नाथ, आयुक्त (अपील्स), राजकोट द्वारा पारित /  
Passed by Shri Gopi Nath, Commissioner (Appeals), Rajkot

ग अपर आयुक्त / संयुक्त आयुक्त / उपायुक्त / महायुक्त, केन्द्रीय उत्पाद शुल्क / सेवा कर / वस्तु एवं सेवा कर,  
राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से मृजित: /

Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST,  
Rajkot / Jamnagar / Gandhidham :

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

**M/s Rolex Rings Pvt Ltd, Near Rajkamal Petrol Pumps, 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 सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं विन 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 मामलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण की विशेष पीठ, बेंगलूर क्रॉक न 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 सेवा कर अपीलीय न्यायाधिकरण (मिस्ट्रेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहामाली भवन असारवा अहमदाबाद-380016 को की जानी चाहिए। /

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित फॉर्म गे एच-3, को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, व्याज की मांग और लगाया गया जुर्माना, रुपय 5 लाख या उससे कम 5 लाख रुपय या 50 लाख रुपय तक अथवा 50 लाख रुपय से अधिक है तो क्रमशः 1,000/- रुपय, 5,000/- रुपय अथवा 10,000/- रुपय का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के महायुक्त रजिस्ट्रार के नाम में किसी भी मार्बलित बैंक के बैंक द्वारा जारी खास 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 आवदन-पत्र के साथ 500/- रुपय 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 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, विन अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवा कर नियमावली, 1994 के नियम 9(1) के तहत निर्धारित फॉर्म S.T.-5 में चार प्रतियों में की जा सकती एवं उक्त माथ जिन आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति माथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवा कर की मांग, व्याज की मांग और लगाया गया जुर्माना, रुपय 5 लाख या उससे कम 5 लाख रुपय या 50 लाख रुपय तक अथवा 50 लाख रुपय से अधिक है तो क्रमशः 1,000/- रुपय, 5,000/- रुपय अथवा 10,000/- रुपय का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के महायुक्त रजिस्ट्रार के नाम में किसी भी मार्बलित बैंक के बैंक द्वारा जारी खास 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 आवदन-पत्र के साथ 500/- रुपय का निर्धारित शुल्क जमा करना होगा। /

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

- (i) विन अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमावली, 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 चाहिये) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST.7 as prescribed under Rule 9 (2) &9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की विनियम अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करने समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जमाना विवादित है, या जमाना, जब केवल जमाना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपये से अधिक न हो।  
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
- धारा 11 डी के अंतर्गत रकम
  - सेनट्रेट जमा की ली गई गलत राशि
  - सेनट्रेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान विनियम (सं० 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचारणीय 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 :
- amount determined under Section 11 D;
  - amount of erroneous Cenvat Credit taken;
  - amount payable under Rule 6 of the Cenvat Credit Rules
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.
- (C) भारत सरकार को पुनरीक्षण आवेदन :  
**Revision application to Government of India:**  
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपठन के अंतर्गत अवर मन्त्रि, भारत सरकार, पुनरीक्षण आवेदन इकाई, विन मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, समद मार्ग, नई दिल्ली-110001, को किया जाना चाहिये। / 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:
- 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
  - 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 छूट (रिवेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। / In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
  - 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.
  - मुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो क्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा विन अधिनियम (सं० 2), 1998 की धारा 109 के द्वारा नियत की गई नगरीय अथवा समायाचिधि 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.
  - उपरोक्त आवेदन की दो प्रतियाँ 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 चाहिये। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियाँ संलग्न की जानी चाहिये। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साथ-साथ के तौर पर TR-6 की प्रति संलग्न की जानी चाहिये। / 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 चाहिये।  
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.
  - यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग में किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पट्टी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाना 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.
  - यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट लगा होना चाहिये। / 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.
  - सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर 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 को अपील दायित्व करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट [www.cbec.gov.in](http://www.cbec.gov.in) का देख सकते हैं। / For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website [www.cbec.gov.in](http://www.cbec.gov.in)

**:: ORDER IN APPEAL ::**

**M/s 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. 22/DC/KG/2019-20 dated 28.12.2019 (hereinafter referred to as the '**impugned order**') passed by the Deputy Commissioner, GST & Central Excise, Division, Rajkot-II (hereinafter referred to as the '**adjudicating authority**').

2. During the course of audit of the financial records of the appellant by the audit officers, during the period from April, 2011 to March, 2013, it was observed that the appellant had wrongly availed Cenvat credit of Service Tax paid on services received in the name of Inspection and Warehousing. Therefore, Show Cause Notices were issued to the appellant for the period from April-2011 to March-2013 and October-2015 to November-2016. The said Show Cause Notices were confirmed by the adjudicating authorities. Despite, this, the appellant had not reversed/paid the wrongly availed /utilized Cenvat credit alongwith appropriate interest and penalty.

2.1 Therefore, a Show Cause Notice dated 05.03.2018 for the period from December-2016 to June-2017 was issued to the appellant for Rs. 1,94,079/- under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A(1) of the Central Excise Act, 1944. The said SCN was confirmed vide the impugned order dated 28.12.2019 along with interest and equal penalty under Rule 15 of the Cenvat Credit Rules, 2004 (hereinafter referred to as "**CCR**") read with Section 11 AC of the Central Excise Act, 1944 (hereinafter referred to as the "**CEA**").

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

3.1 That the fact proves beyond doubt that the said services were availed for performance of our business commitment and can be said to be covered under the category of manufacturing activity; that the said service were related to the manufacturing and therefore , issue cannot be treated as availed after manufacturing and clearance of final product and hence credit as claimed is clearly allowable.

3.2 That the allegations are not sustainable as various audit parties have audited their statutory records and have also noticed such credit therefore the proceedings initiated is liable to be dropped, and also the provisions of Section



11 AC cannot be invoked, hence the proceedings initiated is liable to be set aside.

3.3 That the issue involved is in regard to availment of credit of service tax paid on the services availed for inspection and warehousing of the excisable goods; that the basis of the proposal is that the activity is a post manufacturing activity and is availed after removal of the goods; that it is settled law that credit of service tax is not restricted for the activity carried on till removal of goods; that the 'input service' definition also includes services which are availed post manufacturing activity; that the services availed for the inspection and warehousing of goods is a pre-condition of the goods sold to the respective buyer and hence the said activity is a part of business activity.

3.4 That they relied upon the case of M/s Radhe Renewable Energy Development Pvt. Ltd. Vs CCE & S.T, Rajkot reported in 2015 (315) E.L.T 33 (Tri.-Ahd.) whereby the law is settled that credit need not be restricted to the activity within the factory premises, it was also observed that the assessee being acted in a bonafied manner extended period of limitation are not applicable.

3.5 That their service providers were providing services not only of warehousing but was also handling other persuasive action and was also maintaining stock as per the requirement of their customer and hence such activity is covered by the inclusive portion of the definition of word 'input service' and hence credit as claimed is available. In this regard they place reliance to the decision of Hon'ble CESTAT, Mumbai in the case of M/s Reliance Industries Ltd. Vs Commissioner of C.Ex. & S.T (LTU), Mumbai reported in 2016 (42) S.T.R 384 (Tri.-Mumbai) and the decision of the CESTAT dated 25.07.2019 in their own case; that in view of the settled law, extended period of limitation and suppression cannot be invoked; that they have requested to allow the appeal and set aside the impugned order.

4. In hearing, Shri Paresh Sheth, Advocate appeared on behalf of the appellant, he reiterated the written submissions of appeal memo and requested to drop the proceedings.

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 limited issue to be decided in the present case is whether the Cenvat credit is admissible to the appellant on the service tax paid on the services of Inspection and Warehousing.



6. The issue involved in the present appeal is the eligibility to avail the Cenvat credit on the input services which were utilized by the appellant during the course of his business of manufacturing of final products on which undisputedly Central Excise duty is paid. There is no dispute that the appellant is eligible to avail Cenvat credit. The dispute is relating to whether the said services i.e Inspection services and Warehousing services are used in or in relation to the manufacturing of final products or not.

6.1 On going through the records, I find that the appellant had carried out inspection of the goods supplied by them at the premises of their customers. The said inspection has been carried out by some Inspection agency and they raised invoices on the name of appellant. The appellant in turn availed cenvat credit on the same. Further, the appellant has availed the warehousing facility for storing materials/maintaining stock as per the requirement of their customers.

6.2 The appellant has contended that the inspection service is not used for removal of goods but used for inspection of goods only to be sold to the customers. They have further contended that as per their agreement with the customers, the appellant is under obligation to carry out inspection at the customer's end in respect of the goods manufactured and supplied by them. They have also submitted that their service provider had not only provided warehousing services but also handled other persuasive action and maintained the stock as per the requirement of the customers.

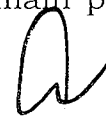
6.3 On plain reading of the definition of 'input service' as per Rule 2(l) of CCR, 2004 it is evident that 'activities relating to business' such as have been excluded from the definition after 01.04.2011. Moreover the services used in or in relation to manufacture and clearance of final product upto the 'place of removal' is included in the definition of 'input service' The service of inspection service is, obviously, used after the clearance of the final product from the factory which is the place of removal. Also the inspection services and warehouse services are not an essential service for manufacture of the goods and the goods can even be manufactured without availing these services. Further, I note that the adjudicating authority has also observed that no agreement has been submitted by the appellant to substantiate that the said service was a precondition of the goods sold to the respective buyer. Therefore, said services cannot be treated as services in and in relation to manufacture, directly or indirectly, of finished goods and clearance upto the place of removal.



6.4 Further, I find that the inspection and warehouse service are not falling even in the inclusive part of the definition of input service. The services mentioned in the inclusive portion of the definition are those in relation to modernization, renovation or repairs of a factory, 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, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal. Thus as per the definition of 'input service', inspection and warehouse services does not figure in the said definition. In view of the above, I am of the view that inspection and warehouse services do not fall under Rule 2(l) of Cenvat Credit Rules, 2004.

6.5 As discussed above, Rule 2(l)(ii) of CCR, 2004 defines the eligible category of services for availing Cenvat credit. The said definition of input services states that the services used by the manufacturer, are required to have a nexus with the manufacture of the final product and clearance of the final product upto the place of removal. From plain reading of the definition of 'Place of removal as defined in Rule 4(3)(c) of the CEA, 1944 and the services which are enumerated in the inclusive clause of the 'input service' which applies to both, in the context of the provider of output services as well as the manufacturer, it is clear that two definitions have to be read in tandem. Therefore, all the activities relating to business, which are used by the manufacturer in relation to the manufacture of their final product upto the place of removal alone will be eligible. After the final products are cleared beyond the place of removal, there will be no scope for subsequent use of service to be treated as input services. Therefore, services utilized beyond the stage of manufacture and clearance of the final product from the factory cannot be treated as input services. Thus, for the purpose of ascertaining the admissibility of Cenvat credit on services, the nature of the service availed should be in consonance with the above parameters.

6.6 I also find that the appellant also could not establish any nexus between the services availed by them and the manufacture of the finished excisable goods as required in view of the ruling in the case of M/s Vikram Ispat Vs CCE, Raigad -2009(16) S.T.R 195. In this case it was held that any service to be brought within the ambit of definition of 'input service' should be one which should satisfy the essential requirement as contained in the main part of the



definition. This requirement is equally applicable to the various items mentioned in the inclusive part of the definition as well. The Hon'ble Tribunal further held that no credit can be allowed unless the appellant provides nexus between the services and the manufacture of the final product. Since, in this case no nexus has been established, I rely upon the above decision and hold that the services in the subject issue do not fall within the definition of 'input service'.

6.7 I also note that the Hon'ble Supreme Court in the case of M/s Maruti Suzuki Vs Commissioner [2009 (240 E.L.T 640) S.C., has laid down that the nexus has to be established between the input and input service on one hand and the finished goods on the other hand. Even the larger Bench of Tribunal in the case of Vandana Global Ltd. Vs CCE, Raigad-2010 (253) E.L.T. 440 (Tri.-LB) has applied the decision of the Hon'ble Supreme Court in the case of Maruti Suzuki (supra) according to which credit in respect of input or input service is admissible only if it is integrally connected to the manufacture of the finished excisable goods.

6.8 Further, I find it relevant to point out 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. 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. Thus, in view of the above, the above services in question do not have any nexus with the manufacturing activities and as such do not fall within the ambit of the definition of 'input services'.

7. I further note that the appellant has relied upon the CESTAT, Ahmedabad's Final Order no. A/11400-11401/2019 dated 25.07.2019 Ahmedabad in their own case wherein the Hon'ble Tribunal has decided the issue for the preceding periods in favour of the appellant. In this regard, I find that Department has accepted the case on monetary grounds only and not on merits.



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

8. Regarding penalty imposed under Rule 15 of CCR, 2004, I find that the Appellant wrongly availed and utilized Cenvat credit of service tax paid on inspection service and warehousing service, which is not admissible as discussed *supra*. The Appellant, thus, contravened the provisions of Cenvat Credit Rules, 2004 and therefore, the Appellant has been rightly held liable for penalty under Rule 15 of CCR, 2004.

8.1 In view of above, I reject the appeal and uphold the impugned order and confirm the demand of Rs.1,94,079/- under Rule 14 of CCR, 2004 alongwith interest and uphold the penalty of Rs.1,94,079/- imposed under Rule 15 of CCR, 2004.

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

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

*Gopi Nath*  
39/6/2020

(Gopi Nath)

Commissioner(Appeals)

**By Regd. Post AD**

To,

**M/s Rolex Rings Pvt. Ltd.,**  
Near Rajkamal Petrol Pump, Gondal  
Road, Village: Kotharia, Rajkot.

मे. रोलेक्स रिंग्स 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.