::आयुक्त (अपील्स) का कार्यालय,वस्तु 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
राजकोट / Rajkot – 360 001
Tele Fax No. 0281 – 2477952/2441142 Email: cexappealsrajkot@gmail.com

सत्यमेव जयते

रजिस्टर्ड डाक ए.डी.द्वारा :-

क	अपील / फाइलसंख्या/ Appeal /File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date:
	V2/62/BVR/2019	AC/JND/10/2019	13/08/2019

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

BHV-EXCUS-000-APP-022-2020

आदेश का दिनांक/ Date of Order: **27.05.2020** जारी करने की तारीख / Date of issue: **15.06.2020**

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

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/वस्तु 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 :

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

M/s. Gujarat Sidhee Cement Limited, Off. Veraval-Kodinar-Highway Road, Sidheegram- 362 275, Dist.- Gir-Somnath (Gujarat).

इस आदेश(अपील) से व्यथित कोइ व्यक्ति निम्नलिखित तरीके मे 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 वित 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- ३८००१६को 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 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, वित 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/-.

(i) वित्त अधिनियम,1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा 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/ 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 Commissionerauthorizing 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

(i) धारा 11 डी के अंतर्गत रकम

(ii) सेनवेट जमा की ली गई गलत राशि

(iii) 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 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 of erroneous Cenvat Credit taken;

(iii) amount payable under Rule 6 of the Cenvat Credit Rules

- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(C) **भारत सरकार कोपुनरीक्षण आवेदन :**
Revision application to Government of India:

इस आदेश की पुनरीक्षणयाचिका 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 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 (रिंबेट) 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 क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (न. 2),1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि 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 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। /

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

(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए ।
जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 1000 -/ का भुगतान किया जाए।

The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

(D) यदि इस आदेश में कई मूल 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 variousnumbers 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 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.

(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. Gujarat Sidhee Cement Limited (hereinafter referred to as "appellant") filed appeal No. V2/62/BVR/2019 against Order-in-Original No. AC/JND/10/2019 dated 13.8.2019 (hereinafter referred to as "impugned order") passed by the Asst Commissioner, Central GST & Central Excise, Junagadh Division (hereinafter referred to as "adjudicating authority").

2. The brief facts of the case are that the appellant was engaged in the manufacture of Cement falling under Chapter 25 of the Central Excise Tariff Act, 1985 and was registered with Central Excise. During scrutiny of ER-1 Returns for the months of April, 2017 to June, 2017, 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 their depots/dumps or buyers' premises. Since, factory gate was place of removal, any services availed beyond place of removal was 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 during the period from April, 2017 to June, 2017.

2.1 Show Cause Notice No. V/3-35/D/2017-18 dated 8.3.2018 was issued to the appellant for recovery of wrongly availed Cenvat credit of Rs. 39,76,851/- along with interest under Rule 14 of the CCR, 2004 and proposing imposition of penalty under Rule 15(1) *ibid*.

2.2 The above Show Cause Notice was adjudicated vide the impugned order which disallowed Cenvat credit of Rs. 39,76,851/- and ordered for its recovery along with interest, under Rule 14 of CCR, 2004 and imposed penalty of Rs. 3,97,685/- under Rule 15(1) of CCR, 2014.

3. Aggrieved, the appellant preferred the present appeal on the following grounds, *inter alia*, contending that,

(i) The adjudicating authority has erred in disallowing Cenvat credit of service tax paid on outward transportation of goods without appreciating facts of the case as well as legal provisions.

(ii) That it is evident that the Hon'ble Apex Court in the case of Ultratech Cement Ltd has allowed Cenvat credit for transportation of goods upto place of removal and denied credit of service tax paid beyond place of removal upto

place of buyer. This was in the wake of amendment brought w.e.f. 1.4.2008 whereby the definition of term 'input service' was amended to substitute word 'from' by the word 'upto' place of removal.

(iii) That 'place of removal' in common parlance means either destination of goods, or in other words, such place till which the manufacturer / owner of goods has absolute ownership/discretion and/or risk including actual / deemed possession of goods, so that he can dispose off the goods at his own discretion. The above interpretation is also in consonance with Sale of Goods Act provisions; that Central laws have to be read harmoniously so as to avoid any conflict between understandings of the concepts therein; that any decisions vis-a-vis place of removal for the purpose of Section 4 of the Central Excise Act,1944 namely valuation of excisable goods has to be limited only for such purpose and cannot be telescoped into Cenvat Credit Rules, 2004 especially for the purpose of benevolent scheme such as input service and limit or whittle down the scope of the term input service in any manner; that this is neither a case of Legislation by reference or Legislation by incorporation inasmuch as the definition under Central Excise Act was never incorporated or embodied into the Cenvat Credit Rules much less within the scope of the term input service. As such the general meaning to the term place of removal has to be assigned for the purpose of Cenvat Credit Rules, 2004 i.e. upto the destination of goods, and thereafter within the meaning as specifically defined in Cenvat Credit Rules, 2004 on and after 11.7.14 for the term place of removal. As such the general meaning of the term place of removal would essentially mean, to a layman, as the destination of the goods. As such irrespective of pre or post 1.4.2008 period, since the term place of removal means the destination of the goods, whether the definition of the term input service referred up to place of removal of beyond place of removal, the Cenvat Credit of Service tax paid on transportation of goods from factory to the destination of the goods would always be available to the assessee.

(iv) That for a place or premise to be termed as place of removal for the purpose of the Act, what is required is that place or premise should be the place or premise from where the excisable goods are to be sold which means that such goods are to be transferred by way of transfer of possession of goods by the seller to the buyer in the course of trade or business for cash or other valuable consideration, after their clearance from the factory.

(v) That any interpretation of the term "place of removal" without factoring the above definition of place of removal as contained in the CCR read with

definition of sale, especially the third clause in the definition of 'place of removal namely, *"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"*, would make that clause in the definition redundant and it is an accepted rule of interpretation that every word has to be given its due meaning and that legislature has not introduced any word without any objective and hence in terms of the decisions of Supreme Court as explained in the Board Circular of June 2018, the buyers premises would require to be treated as a place of removal, on satisfaction of the other terms and conditions as explained above.

(vi) Since duty has been paid on freight component, even if place of removal is held to be factory gate for any reason, such duty payment must be treated as good as credit reversed already and the denial of credit in the present case cannot survive.

(vii) That they relied upon latest decision dated 25.2.2019 passed by the Hon'ble CESTAT, Ahmedabad in the case of Sanghi Industries Ltd wherein the Hon'ble Tribunal has decided the issue of eligibility of Cenvat credit of service tax paid on GTA service for transportation of finished goods for delivery at customer's premises under FOR contract and allowed the appeal on merit. it is not in dispute in the case of Appellant that the sale is on FOR basis and they have also furnished the CA certificate after verification and the AC has not even applied his mind to the issue and hence the impugned order is legally not sustainable and merits to be set aside.

(viii) That insofar as credit pertaining to movement of goods from factory to dump is concerned, the ownership in goods remained with the Appellant and finished goods were sold from such dumps to the customers; that in terms of Rule 2(qa) of CCR, 2004, said dumps are 'place of removal' and credit on transportation from such factory to dumps cannot be denied; that their Chartered Accountant has issued certificate dated 6.6.2018 in this regard.

(ix) That considering the analysis of all the above decisions as also the general principle laid down as to what constitutes place of removal considering the point of sale where the ownership and risk passes on from the seller to the buyer as held by the Hon'ble Apex court in the case of Escort JCB Ltd reported at 2002 (146) BLT 31 (SC), and considering the ratio laid down in the case of Ultra Tech Cement Ltd (supra), the CBEC vide the abovementioned Circular dated 08.06.18 has finally put to rest the entire controversy. It has been expressly clarified that

in terms of Para 3 of the said circular which is the general principle to determine what is the point of sale i.e. place of removal, on facts and circumstances of the each case, it will be determined whether the ownership in goods had passed on at which location i.e. whether at the customers doorstep or at factory/depot. In light of this analysis, the Cenvat of Service Tax paid on transportation up to such place of removal will be allowed as expressly clarified by the Board in the abovementioned circular at Para 4 as well as 5 thereof.

(x) That in the present set of facts and circumstances, since admittedly the entire sale was on FOR basis only and in support of which, CA certificate is produced after analysis of the concerned POs and Central Excise invoices under which goods were supplied as also the transportation charges incurred in this regard, which will clearly show that the whole of transaction was on FOR basis only in respect of which Cenvat credit has been availed by them.

(xi) Apart from the fact that the issue involved in the matter is that of substantial interpretation of statutory provisions, the bona fide views of the Appellant in this regard are well supported vide the catena of orders and decisions cited supra. That thus, it is not correct to state that the Appellant had entertained any malafide intent to evade payment of duty/tax and had suppressed any material fact from the department with such malafide intent. Further, merely because it is not possible for the department to ascertain the quantum of disputed service Cenvat Credit from the monthly returns is hardly a reason to invoke extended period of limitation in the facts and circumstances of the case. For the same reasons, no penalty too can be imposed on them.

4. In hearing, S.R. Dixit, Advocate appeared on behalf of the Appellant and reiterated the submissions of Appeal Memorandum. He filed additional submission dated 12.3.2020 and submitted copy of Hon'ble Supreme Court judgement passed in the case of Manglam Cement Ltd for consideration and requested to allow their appeal.

4.1 In additional submission, the grounds of appeal memorandum are reiterated.

5. I have carefully gone through the facts of the case, the impugned order, and grounds of appeal memorandum. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority disallowing Cenvat credit of service tax paid on outward transportation charges is correct, proper and legal or not.

6. I find that the Appellant had availed Cenvat credit of service tax paid on outward GTA service during the period from April,2017 to June, 2017. The adjudicating authority disallowed said Cenvat credit of service tax on the ground that outward GTA service was availed by the Appellant for transportation of their finished goods from their factory to customer's premises i.e. beyond place of removal, and hence, not covered under definition of "input service" in terms of Rule 2(l) of CCR, 2004.

6.1 The Appellant has contested that entire sale was on FOR basis and hence, the buyers premises was required to be treated as a place of removal and relied upon case law of Mangalam Cement Ltd - 2020(32) GSTL J156 (S.C.) and Sanghi Industries Ltd- 2019 (369) E.L.T. 1424 (Tri. - Ahmd); that in respect of transportation of goods from factory to their dump, the ownership in goods remained with the Appellant and finished goods were sold from such dumps to the customers and said dumps are 'place of removal' in terms of Rule 2(qa) of CCR, 2004, and credit on transportation from such factory to dumps cannot be denied. They.

7. 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)

7.1 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. 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 exigible for Cenvat Credit. This stands finally decided in Civil Appeal No. 11710 of 2016 (Commissioner of Central Excise Belgaum v. M/s. Vasavadatta Cements Ltd.) vide judgment dated January 17, 2018. However, vide amendment carried out in the aforesaid Rules in the year 2008, which became effective from March 1, 2008,

the word 'from' is replaced by the word 'upto'. Thus, it is only 'upto the place of removal' that service is treated as input service. This amendment has changed the entire scenario. The benefit which was admissible even beyond the place of removal now gets terminated at the place of removal and doors to the cenvat credit of input tax paid gets closed at that place. This credit cannot travel therefrom. It becomes clear from the bare reading of this amended Rule, which applies to the period in question that the Goods Transport Agency service used for the purpose of outward transportation of goods, i.e. from the factory to customer's premises, is not covered within the ambit of Rule 2(l)(i) of Rules, 2004. Whereas the word 'from' is the indicator of starting point, the expression 'upto' signifies the terminating point, putting an end to the transport journey. We, therefore, find that the Adjudicating Authority was right in interpreting Rule 2(l) in the following manner:

> "... The input service has been defined to mean any service used by the manufacturer whether directly or indirectly and also includes, interalia, services used in relation to inward transportation of inputs or export goods and outward transportation upto the place of removal. The two clauses in the definition of 'input services' take care to circumscribe input credit by stating that service used in relation to the clearance from the place of removal and service used for outward transportation upto the place of removal are to be treated as input service. The first clause does not mention transport service in particular. The second clause restricts transport service credit upto the place of removal. When these two clauses are read together, it becomes clear that transport services credit cannot go beyond transport upto the place of removal. The two clauses, the one dealing with general provision and other dealing with a specific item, are not to be read disjunctively so as to bring about conflict to defeat the laws' scheme. The purpose of interpretation is to find harmony and reconciliation among the various provisions.
>
> 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. However, there may be situations where the manufacturer /consignor may claim that the 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)

8.1 I find that the Hon'ble Supreme Court in the case of Ispat Industries Ltd - reported as 2015 (324) ELT 670 has examined the term 'place of removal' defined under Section 4(3)(c) of the Act and interpreted the phrase "any other place or premises" appearing therein and held that the said phrase refers only to a manufacturer's place or premises from where excisable goods "are to be sold" to the buyer and such place or premises can only be the manufacturer's premises and cannot, in circumstances, be a buyer's premises. The Hon'ble Supreme Court further held that if the legislature intended that the buyer's premises be treated as the place of removal, then the words "are to be sold" should have been replaced by the words "have been sold" in Section 4(b)(iii) above. The relevant portion of the judgement is reproduced as under:

> "16. It will thus be seen that where the price at which goods are ordinarily sold by the assessee is different for different places of removal, then each such price shall be deemed to be the normal value thereof. Sub-clause (b)(iii) is very important and makes it clear that 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. What is important to note is that 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 obviously places which are referable only to the manufacturer. Even the expression "any other place or premises" refers only to a manufacturer's place or premises because such place or premises is stated to be where excisable goods *"are to be sold"*. These are the key words of the sub-section. The place or premises from where excisable goods are to be sold can only be the manufacturer's premises or premises referable to the manufacturer. If we are to accept the contention of the revenue, then these words will have to be substituted by the words "have been sold" which would then possibly have reference to the buyer's premises.
>
> 17. It is clear, therefore, that as a matter of law with effect from the Amendment Act of 28-9-1996, the place of removal only has reference to places from which the manufacturer is to sell goods manufactured by him, and can, in no circumstances, have reference to the place of delivery which may, on facts, be the buyer's premises."
>
> (Emphasis supplied)

8.2 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'."

9. 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 beyond place of removal is not admissible w.e.f 01.04.2008. Further, place of removal can be either factory, depot or consignment agent's premises from where goods are to be sold. In the present case, it is on record that the Appellant had availed transportation service for transport of their finished goods from factory to their depot/ dump as well as to their buyers' premises during the period from April, 2017 to June, 2017. I find that GTA service availed by the Appellant for transportation of their finished goods from their factory to their depot/ dump is to be considered as their 'input service', since depot/dump were the places from where goods were sold and consequently, the same were covered under 'place of removal' as held by the Hon'ble Apex Court in the case of Ispat Industries Ltd *supra*. I find that the Appellant has produced Chartered Accountant's certificate dated 6.6.2018 during the course of personal hearing, wherein it has been certified that the Appellant had availed Cenvat credit of Rs. 15,84,328/- on outward GTA for transportation of their duty paid finished goods from their factory to their own dump/depot. Considering the definition of 'place of removal', transportation service availed by the Appellant for transportation of goods from their factory to dump/depot has to be considered as 'input service' in terms of Rule 2(l) of CCR, 2004. I, therefore, hold that the Appellant had correctly availed Cenvat credit of outward GTA service to the tune of Rs. 15,84,328/-. I, set aside confirmation of demand of Rs. 15,84,328/- under Rule 14 of CCR, 2004 and consequent penalty of Rs. 1,58,432/- imposed under Rule 15(1) of CCR, 2004.

9.1 As regards, Cenvat credit of Service Tax paid on outward GTA for transportation of finished goods from their factory/depot/dump to buyer's premises, I find that buyer's premises can never be a 'place of removal' as held by the Apex Court in the case of Ispat Industries Ltd supra. I, therefore, hold that transportation services availed by the Appellant for transportation of finished goods from their factory/depot/dump to buyer's premises was not 'input service' and hence, the Appellant is not eligible to avail said Cenvat credit of service tax, I, therefore, uphold the impugned order confirming the demand of wrongly availed Cenvat Credit of Rs. 23,92,523/- along with interest under Rule 14 of CCR, 2004.

10. I have also examined CESTAT, Ahmedabad's order passed in the case of Sanghi Industries Ltd 2019 (369) E.L.T. 1424 (Tri. - Ahmd.), which has been relied upon by the Appellant. I find that the said case law has to be held *per incuriam* in the light of judgment of the Hon'ble Apex Court in the case of M/s.

Ultratech Cement Ltd. *supra* and Ispat Industries Ltd supra since judgement of the Apex Court prevails over any decision/orders passed by the subordinate courts/tribunals.

11. Regarding reliance placed by the Appellant on the case law of Mangalam Cement Ltd, I find that in the said case, the Hon'ble Apex Court had remanded the matter to the Hon'ble Rajasthan High Court to decide the issue afresh by observing that the Hon'ble High Court had not analyzed the relevant facts and contentions raised in the appeal on its own merit and instead disposed of the appeal by general observation. Thus, the Hon'ble Supreme Court has not decided the issue on merits but remanded the matter to decide the issue afresh. Hence, reliance placed on the said decision is not sustainable.

12. Regarding penalty imposed under Rule 15(1) of CCR,2004, I find that the Appellant wrongly availed and utilized Cenvat credit of service tax paid on outward GTA service used for transportation of their finished goods beyond place of removal, 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(1) of CCR, 2004. I, therefore, uphold penalty of Rs. 2,39,252/- imposed in the impugned order.

13. In view of above, I partially allow the appeal and set aside impugned order to the extent of confirmation of demand of Rs. 15,84,328/- under Rule 14 of CCR, 2004 and consequent penalty of Rs. 1,58,432/- imposed under Rule 15(1) *ibid* but uphold the remaining impugned order.

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

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

27/5/2020

(GOPI NATH)
Commissioner(Appeals)

सत्यापित ,

विपुल शाह
अधीक्षक (अपील्स)

By RPAD

To, M/s Gujarat Sidhee Cement Ltd Sidheegram, Off Veraval-Kodinar Highway, Taluka Sutrapada, District Somnath (Gir).	सेवा में, मे. गुजरात सिध्धी सीमेंट लिमिटेड, सिध्धीग्राम, वेरावल-कोडिनार हाइवे, तालुका सूत्रापाड़ा, जिल्ला सोमनाथ (गिर)।

प्रति:-

1) प्रधान मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र,अहमदाबाद को जानकारी हेतु।
2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, जूनागढ़ मण्डल, को आवश्यक कार्यवाही हेतु।
4) गार्ड फ़ाइल।