::आयुक्त (अपील्स) का कार्यालय,वस्तू एवं सेवा करऔरकेन्द्रीय उत्पाद शूल्क:: NATION O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE दवितीय तल, जी एस टी भवन / 2nd Fioor, GST Bhavan MARKET रेस कोर्स रिंग रोड / Race Course Ring Road सलाप्रेट जयते राजकोट / Rajkot – 360 001 Tele Fax No. 0281 - 2477952/2441142Email: cexappealsrajkot@gmail.com रजिस्टर्ड डाक ए.डी.दवारा :-भूपील / फादलसंख्या मूल आदेश सं / दिनांक/ क Appeal /File No. O.I.O. No. Date 05/Refund/2019-20 22-05-2019 V2/73/GDM/2019 ख अपील आदेश संख्या(Order-In-Appeal No.): KCH-EXCUS-000-APP-001-2020 आदेश का दिनांक / जारी करने की तारीख / Date of Order: 02.01.2020 02.01.2020 Date of issue: श्रीगोपी 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/वस्तू एवंसेवाकर, राजकोट / जामनगर / गांधीधाम। दवारा उपरलिखित जारी मूल आदेश से सुजित: / Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST. Rajkot / Jamnagar / Gandhidham : अपीलकर्ता&प्रतिवादी का नाम एवं पता /Name & Address of the Appellant & Respondent :-ঘ Hans Ispat LtdSurvey no. 5/P, 9-13, Village- Budharmora, Bhuj- Bhachau Road, Taluka- Anjar, Kutch इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/ Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way. सीमा शुल्क ,केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम ,1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है ।/ (A) Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय 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. उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क,केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट)की पश्चिम क्षेत्रीय पीठिका,,द्वितीय तल, बहुमाली भवन असार्वा अहमदाबाद- ३८००१६को की जानी चाहिए ।/ (ii) To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016in case of appeals other than as mentioned in para-1(a) above 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 सावजिनक क्षेत्र के बैंक द्वारा जारी रेखाकित बैंक झुफ्ट द्वारा किया (iii) 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/-अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतगेत 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 सलग्न 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/-(B)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 सावजिनक 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 ।/ 598

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 recompanied by a copy of the order appealed against (one of which shall be certified copy) and should be succempanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is than five Jakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than five Jakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs and the place where the bench of Tribunal is Situated (Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

* ġ सरमाग्द्र गद्ध र 8

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(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 दवारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त दवारा 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 । /

सलेबन करना होगा 1 / 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. सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम

(ii) 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 जाएँ, बशर्त 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

- धारा 11 डी के अंतर्गत रकम (i)
- (ii) सेनवेट जमा की ली गई गलत राशि
- सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम (iii)

- 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।/

विचाराधीन स्थगन अज़ों एवं अपोल को लाग नहीं होग।/ For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores, Under Central Excise and Service Tax, "Duty Demanded" shall include : (i) amount determined under Section 11 D; (ii) amount of erroneous Cenvat Credit taken; (iii) amount payable under Rule 6 of the Cenvat Credit Rules - provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

भारत सरकार कोपूनरीक्षण आवेदन : (C)

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भारत सरकार कापुनरात्वण जावतन . 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, पूनरीक्षण आवेदन ईकाई, वित मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद माग, नई

तिल्ली-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:

- 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 (i)
- (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे मान 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.
- 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. (iii)
- सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इयूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐस जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (न- 2),1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि (iv) 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.

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 संतग्न 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 raonths 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. (v)

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 (vi) 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.

- यदि इस आदेश में कई मूल आदेशों 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. (D)
- (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 दिकिट लेगा 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.

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. (F) . جرمنه در و رو رو

TOP: 3 उन्चे अफीलीय 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 claborate, 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 ::

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M/s. Hans Ispat Ltd. (*herein after referred to as* **"Appellant"**) filed present appeal against Order-in-Original No. 05/Refund/2019-20 dated 22.05.2019 (hereinafter referred to as **'the impugned order'**) passed by the Assistant Commissioner, Central GST, Division, Anjar-Bhachau (Kutch), (hereinafter referred to as **'the refund sanctioning authority'**):-

2. The brief facts of the case are that the appellant is a manufacturer, registered under Central Excise Act,1944 and filed a claim for refund of balance in PLA amounting to Rs.2,44,53,335/- on 14.05.2019. The appellant erroneously carried forward their PLA amount of Rs. 2,44,53,335/- in TRAN-1. The jurisdictional Range Superintendent pointed out erroneous transfer of PLA in Tran-1 as the same was not eligible under Section 140(1) of the CGST ACT (hereinafter referred to as **'the Act'**) to be carried forward in GST regime. On being pointed out, the appellant reversed the disputed amount by debiting the electronic credit ledger. Thereafter, the appellant filed the said refund claim for unspent PLA. The refund sanctioning authority, vide impugned order, sanctioned the refund claim in full, but adjusted interest of Rs.84,57,504/-, recovered for wrong availment of input tax credit (ITC) by way of transferring ineligible credit in TRAN-1.

3. Being aggrieved with the impugned order, the appellant preferred the instant appeal, *inter-alia*, on the various grounds as under:

3.1 That the appellant was having closing balance of Rs. 2,44,53,335/in their PLA and also closing balance in cenvat credit as also shown in ER-1 of June-2017; that as per Section 142 of the Act closing balance of cenvat credit was required to be carried forwarded in Trans-1; that there was no explicit provision in respect of unspent PLA and under the confusion & apprehension that PLA would lapse in entirety, accordingly, they also transferred PLA in TRAN-1 unknowingly.

3.2 That said PLA was never utilized and till it was reversed, the appellant always maintained sufficient balance of ITC in their credit



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account; that this fact establishes that even if wrong transfer of the said PLA, the same was never utilized and question of interest on unutilized credit is just unwarranted and unjustified; that PLA transfer was nothing more than mere posting of the amount in books without being used and utilized.

3.3 That Section 50(3) of the Act though contains slightly different expressions but are quite similar, in basic fabric of the corresponding provisions of the erstwhile law of Cenvat Credit Rules, 2004, containing Rule 14 on the same question of law; that whatever applicable to Rule 14 would also apply to Section 50(3) of the Act. Accordingly, it is manifestly clear that when there is no financial accommodation in respect of credit inadvertently taken and then reversed, without being utilized, neither interest nor penalty can be imposed. The appellant, in support of their contention, relied upon the decision in the following case laws:

- CCE Vs Bill Forge Pvt Ltd [2012(276) ELT 209 (Kar.)]
- Pearl Insulations Pvt Ltd Vs CCE Bangalore [2013(29) STR 640 (Tri-Bang.)]
- CCE, Madurai Vs Strategic Engineering (P) Ltd [2014(310) ELT 509 (Mad.)]
- Hindustan Insecticides Ltd Vs CCE, LTU [2013(297) ELT 332 (Del.)]

4. Personal Hearing in the matter was attended by Shri Santosh Mitra, Sr. Manager (Commercial) on behalf of the Appellant. He reiterated the submissions of appeal memo and requested to allow the appeal.

5. I have carefully gone through the facts of the case, the impugned order, both appeal memorandum and submission made by the appellant at the time of personal hearing. The issue to be decided in the present appeal is whether interest demanded and adjusted for wrong transfer of balance in PLA to Trans-1 is correct or otherwise.

6. It is on record that the appellant had wrongly transferred closing balance of PLA lying on 30.06.2017 to TRAN-1 for subsequent use of the same in the GST regime. On being pointed out by the jurisdictional Range Superintendent, the appellant reversed the said amount and filed a refund claim for the reversed amount. The refund sanctioning authority granted



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the refund of unspent PLA in toto, but also adjusted interest of Rs.84,57,504/- for wrong availment of ITC, availed on account of transfer of said balance of PLA in TRAN-1. Now, the issue in dispute is restricted only to demand and adjustment of said interest.

7. The appellant was having balance in PLA under the Central Excise Act,1944 and subsequently, transferred the same to Tran-1 under CGST Act, 2017. With the onset of GST regime all erstwhile law such as Central Excise, 1944 & Cenvat Credit Rules, 2004 were subsumed in GST Act. It is, therefore, vital to examine the legal position of law with respect to treatment of closing balance of PLA on 30.06.2017 under the Act. The relevant provisions are as under:-

Section 140. (1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed...

Section 142(3). Every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944.

Section 140 of the Act provides carry forward of CENVAT credit only and Section 142(3) paves way for refund of credit as well as tax. The conjoint reading of above provisions brings into note that carry forward of balance in PLA does not qualify as eligible credit; rather it should have been claimed as refund.

7.1. The simple reading of aforesaid provision makes it very clear to hold that transfer of balance in PLA to TRAN-1 by the appellant tantamounted to wrong availment of credit under the CGST Act. Since, amount of credit



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specified in TRAN-1 is to be a related to electronic cash ledger of the appellant, which further cash is the discharging tax liability under the GST. Further, it is pertinent to discuss the provisions relating to wrong availment of credit and receive discuss the CGST Act, which are reproduced as under-

Section 73. (1) Where it appears to the proper officer that any tax has not been paid or share paid on erroneously refunded, or where input tax applied for erroneously refunded, or utilized for any reason, other tasks the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously have thade, or who has wrongly availed or utilised input tax credit requiring him to show cause as to why he should not pay the tracture specified in the notice along with interest payable the won under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.

Section 50(3). A taxable per on who makes an undue or excess claim of input tax crockle under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (11) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cond, as may be notified by the Government on the recommendations of the Council.

7.2. I find that section 73(1) capacitates the revenue to recover the wrongly availed credit and Section 50/3) empowers to recover interest on the wrongly availed credit. The statute is unambiguously clear about recovery of interest on wrongly availed credit. Once the statute is categorically clear about the recovery of ineligible credit with interest, it leaves no further room for any further unterpretation.

7.3. I find that the appellant's contention regarding the applicability of ratio laid down in the Rule 10 of the Cenvat Credit Rules,2004 to the similar provisions of credit availment in GST is not acceptable as the law is precisely outspoken in CGST Act about liability of interest on wrong availment of credit which negates comparison of ratios in similar



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provisions. Therefore, the contention is squarely rejected.

7.4. The appellant has quoted many case laws which deals with the illegitimate demand of interest on wrongly availed credit but not utilized. I find that all these case laws deal with the erstwhile law whereas issue in the instant appeal deals with the CGST Act. Therefore, I find that ratio laid down in the said case laws are not applicable in the instant appeal.

8. In view of above legal position and facts of the case, I, find the refund sanctioning authority has rightly demanded and recovered the interest by adjusting the same from refunded amount. Hence, I, reject the appeal filed by the appellant and uphold the impugned order.

८.१ अपीलकर्ताओ दवारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है।

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

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(Gopi Nath) of Commissioner(Appeals)

By RPAD

To

M/s. Hans Ispat Ltd., Survey no. 5/P, 9-13, Village- Budharmora, Bhuj- Bhachau Road, Taluka- Anjar, Distt: Kutch

मैसर्स हंस इस्पात, सर्वे नो. 5/पी, 9-13, गाँव: बुधरमोरा, भुज-भचाउ रोड़, तालुका:अंजार, डी. कच्छ् ।

Copy for information and necessary action to:

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone Ahmedabad for his kind information.
- 2) The Commissioner, GST & Central Excise, Gandhidham (Kutch) Commissionerate.
- 3) The Assistant Commissioner, GST & Central Excise, Division, Anjar-Bhachau (Kutch).
- 4) Guard File.



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