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

रजिस्टर्ड डाक ए.डी.द्वारा :-

क	अपील / फाइलसंख्या/ Appeal /File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/66, 67 & 104/GDM/2019	**01/JC/2019-20**	**29-04-2019**
		2/JC/2019-20	**30-04-2019**
		8/JC/2019-20	**24-07-2019**

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

KCH-EXCUS-000-APP-037-TO-039-2020

आदेश का दिनांक / Date of Order: **16.03.2020**

जारी करने की तारीख / Date of issue: **16.03.2020**

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 :-

1. Gujarat NRE Coke Ltd, Village- LunavaTaluka- Bhachau Kutch-370140Gujarat
2. **Gujarat NRE Coke Ltd, Village- LunavaTaluka- Bhachau Kutch-370140Gujarat**
3. **Gujarat NRE Coke Ltd(Steel Division), Survey No. 233 & 234, Village- LunavaTaluka- Bhachau Kutch-370140Gujarat**

इस आदेश(अपील) से व्यथित कोइ व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क ,केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम ,1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है ।/

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

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

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क,केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट)की पश्चिम क्षेत्रीय पीठिका,,द्वितीय तल, बहुमाली भवन असावा 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-380016in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील)नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए । इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की माँग ,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, वित्त अधिनियम,1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की माँग ,ब्याज की माँग और लगाया गया जुर्माना,रुपए 5 लाख या उससे कम,5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/

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

(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 (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /
In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी 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 ओर भी ध्यान आकर्षित किया जाता है। /
Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं । /
For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in.

:: ORDER IN APPEAL ::

The appeals listed below have been filed by the Appellants against Orders-in-Original as detailed below (hereinafter referred to as "*impugned orders*") passed by the Jt. Commissioner, CGST & Central Excise, Gandhidham (hereinafter referred to as "adjudicating authority").

Sl. No.	Name of Appellant	Appeal No.	Order-in-Original No. & Date
1.	M/s Gujarat NRE Coke Ltd, Village Lunva, District Kutch.	V2/66/GDM/2019	1/JC/2019-20 dated 29.4.2019
		V2/67/GDM/2019	2/JC/2019-20 dated 30.4.2019
2.	M/s Gujarat NRE Coke Ltd (Steel Division) Village Lunva, District Kutch.	V2/104/GDM/2019	8/JC/2019-20 dated 24.7.2019

1.1 Since issue involved in above appeals is common, all appeals are taken up together for decision vide this common order.

2. The brief facts of the case are that the Appellants were engaged in manufacturing of Billets, TMT Bars, Ingots etc falling under Chapter 72 of Central Excise Tariff Act, 1985 and were registered with Central Excise. During the course of Audit, it was found that the Appellants had received certain services like GTA Service, Rent-a-Cab Service, Manpower Recruitment and Supply Agency Service etc; that the Appellants were required to discharge service tax on said services on reverse charge mechanism, in terms of Notification No. 30/2012-ST dated 20.6.2012; that the Cenvat Credit cannot be utilized for payment of service tax in respect of services where the liability to pay service tax is on service recipient, in terms of explanation to Rule 3(4) of the Cenvat Credit Rules, 2004 (*hereinafter referred to as 'CCR,2004'*). It was observed by the Audit that that the Appellants had discharged the said service tax liability from their Cenvat Credit accounts instead of paying in cash and after making payment from Cenvat accounts, the Appellants availed credit in their Cenvat accounts in the subsequent month. It was alleged by the Audit that non payment of Service Tax liability in proper manner amounted to non payment of Service Tax.

2.1 Show Cause Notice No. V.ST/15-2/Audit/SCN-JC-04/18-19 dated 19.7.2018 was issued for the period from December, 2013 to June,2017 calling the Appellant No. 1 to show cause as to why Service Tax of Rs. 91,43,184/- should not be demanded and recovered from them under Section 73(1) of the

Finance Act, 1994 (*hereinafter referred to as* "Act"), along with interest under Section 75 of the Act and why penalty under Sections 76,77, and 78 of the Act should not be imposed on them.

2.2 The above Show Cause Notice was adjudicated by the adjudicating authority vide the impugned order mentioned at Sl. No. (i) of the table above, which confirmed Service Tax demand of Rs. 91,43,184/- under Section 73(1) along with interest under Section 75 of the Act and imposed penalty of Rs. 91,43,184/- under Section 78 of the Act and Rs. 10,000/- under Section 77 of the Act.

2.3 Show Cause Notice No. V.ST/15-3/Audit/SCN-JC-05/18-19 dated 19.7.2018 was issued for the period from December, 2013 to June,2017 calling the Appellant No. 1 to show cause as to why Cenvat credit of Rs. 91,43,184/- availed and utilized should not be disallowed and recovered from them along with interest under Rule 14 of CCR, 2004 and why penalty under Rule 15 ibid read with Section 11AC of the Central Excise Act, 1944 should not be imposed on them.

2.4 The above Show Cause Notice was adjudicated by the adjudicating authority vide the impugned order mentioned at Sl. No. (ii) of the table above, which disallowed Cenvat credit amounting to Rs. 91,43,184/- and ordered for its recovery, along with interest, under Rule 14 of CCR, 2004 and imposed penalty of Rs. 91,43,184/- under Rule 15 ibid read with Section 11AC of the Central Excise Act, 1944.

2.5 Show Cause Notice No. 6/JC/2018-19 dated 4.10.2018 was issued for the period from March, 2016 to June,2017 calling the Appellant No. 2 to show cause as to why Service Tax of Rs. 91,11,566/- should not be demanded and recovered from them under Section 73(1) of the Act, in-admissible Cenvat credit of Rs. 91,11,566/- should not be disallowed and recovered from them under Section 73(1) of the Act read with Rule 14 of CCR,2004, along with interest under Rule 14 of CCR,2004 read with Section 75 of the Act and why penalty under Sections 76,77, and Rule 15 of CCR,2004 should not be imposed on them.

2.6 The above Show Cause Notice was adjudicated by the adjudicating authority vide the impugned order mentioned at Sl. No. (iii) of the table above, which confirmed Service Tax demand of Rs. 91,11,566/- under Section 73(1) of the Act, disallowed Cenvat credit of Rs. 91,11,566/- and ordered for its recovery under Section 73(1) of the Act read with Rule 14 of CCR,2004, along with interest under Section 75 of the Act read with Rule 14 of CCR,2004 and imposed

penalty of Rs. 9,11,156/- under Section 76 of the Act, Rs. 91,11,566/- under Rule 15 of CCR,2004 and Rs. 10,000/- under Section 77 of the Act.

3. Aggrieved, the Appellants have preferred appeals on various grounds, *inter alia*, as below :-

(i) The impugned order is devoid of merits. Even before insertion of explanation in Rule 3(4) of CCR,2004, manufacturers were denied utlisation of Cenvat credit for payment of GTA and other services by the Department. However, such cases were contested before different High Courts which have been decided in favour of the assessee. Relied upon case laws of Nahar Industrial Enterprise Ltd-2012(25)STR 129, Cheran Spinners Ltd- 2014(33) STR 148 and Deepak Spinners- 2013(32) STR 531. Therefore, the above decisions of the Hon'ble High Courts are still applicable and allowed their appeals in the interest of justice;

(ii) Entire exercise is revenue neutral inasmuch as if they had paid Service Tax on GTA in cash, they were eligible to take credit of such payment in Cenvat account or could have applied for refund of such credit under Rule 5B if it was not possible to utilize the same. It is not a case that by making payment of Service Tax from Cenvat a/c, they had gained any extra undue or illegal monetary benefit. Hence, at the most, it can be said to be a procedural lapse;

(iii) Since certain provisions amended vide Notification No. 28/2012-CE(NT) are not in tune with settled principles of law, they have already challenged the vires of said notification before the Hon'ble High Court of Calcultta vide W.P. No. 1689(W) of 2015 which is pending decision;

(iv) Their act of payment of service tax on reverse charge mechanism as receiver of service from Cenvat credit account and availment of Cenvat credit of the said amount again was very well within the knowledge of the Department by way of letter dated 29.1.2014 and filing of statutory returns during the relevant period. Demand of Service tax was required to be raised within 18 months from the relevant date i.e. date of filing of returns. Hence, Demand raised is time barred.

(v) The findings of the adjudicating authority for justifying the penalty under Section 78 that they had suppressed facts with malafide intention to evade payment of Service Tax appears to be perverse because their intentions were clear therefore they had intimated to the Department. Therefore, penalty is not maintainable. It has been held by higher appellate authority that in cases where assessee has erred in following the provisions of law under reasonable bona fide

belief, penalty cannot be imposed under Section 78 of the Act as held in the cases of Rishi Shipping-2014(33) STR 595, S.R. Gupta & Sons- 2012(27) STR 501, Ess Ess Engineering - 2010(20) STR 669.

(vi) The instant matter is of interpretation of law/provisions and divergent views were prevailing, hence no penalty is imposable upon them as held in Infosys Ltd-2015(37) STR 862, SRF Ltd- 2014(36) STR 830.

4. In hearing, Shri Pradyot K. Chattopadhyay, General Manager(Commercial) and Shri Amit Agarwal, AGM (Commercial) appeared for hearing on behalf of the Appellants and reiterated the submissions of appeal memoranda and submitted copy of CESTAT, Ahmedabad's Order dated 4.1.2018 passed in their own case and requested to allow their appeals.

5. I have carefully gone through the facts of the case, the impugned orders, the Appeal Memoranda and submissions made by the Appellants. The issue to be decided is whether the Appellants correctly discharged service tax liability from Cenvat credit account on services availed as recipient of service and whether the Appellants were eligible to avail Cenvat credit on such debit made in Cenvat credit or not.

6. On going through the records, I find that the Appellants had availed GTA Service, Rent-a-Cab Service, Manpower Recruitment and Supply Agency Service etc on which service tax was to be discharged by the service recipient in terms of Notification No. 30/2012-ST dated 20.6.2012. I find that the Appellants had utilized Cenvat credit for discharge of their service tax liability on said services and again availed Cenvat credit thereof in their Cenvat account. The adjudicating authority confirmed service tax demand on the said services on the ground that the Appellants cannot utilize Cenvat credit for discharge of their service tax liability in view of explanation to Rule 3(4) of CCR,2004.

7. I find that receipt of GTA Service, Rent-a-Cab Service, Manpower Recruitment and Supply Agency Service etc by the Appellants and liability to pay service tax by the Appellants on reverse charge mechanism in terms of Notification No. 30/2012-ST dated 20.6.2012, are not under dispute. I find that an explanation was inserted in Rule 3(4) of CCR, 2004 w.e.f. 1.7.2012 vide Notification No. 28/2012-CE(NT) dated 20.6.2012, which reads as under:

> "Explanation - CENVAT credit cannot be used for payment of service tax in respect of services where the person liable to pay tax is the service recipient."

7.1 The above explanation makes it clear that the service tax cannot be paid by utilizing Cenvat credit account in respect of services where the person liable to pay service tax is the service recipient. Therefore, only alternative left with the Appellants to discharge their service tax liability was to pay such service tax in cash only. However, the Appellants debited from Cenvat credit account and thereby contravened the provisions of Rule 3(4) *supra*, and hence, it cannot be regarded as correct discharge of service tax liability and it has to be considered as if no service tax was paid. Hence, the adjudicating authority is justified in confirming service tax demand. I, therefore, uphold confirmation of service tax demand in the impugned orders.

8. I have examined relied upon case laws of Nahar Industrial Enterprise Ltd-2012(25)STR 129, Cheran Spinners Ltd- 2014(33) STR 148 and Deepak Spinners-2013(32) STR 531. I find that in said cases, period involved was prior to 1.7.2012 i.e. prior to insertion of explanation in Rule 3(4) of CCR, 2004 whereas in the present case, the period involved is from December, 2013 to June, 2017. Hence, said case laws are not applicable to the facts of the present case.

9. I have also examined CESTAT, Ahmedabad's Order dated 4.1.2018 relied upon by the Appellants. I find that in the said case, the Hon'ble Tribunal remanded the matter to the adjudicating authority to examine liability of the Appellant therein for payment of service tax on reverse charge basis in terms of Notification No. 30/2012-ST dated 20.6.2012. However, in the case on hand, it has been recorded in the Show Cause Notices that the Appellant had received services like GTA Service, Rent-a-Cab Service, Manpower Recruitment and Supply Agency Service etc and the Appellants being limited company, they were liable to pay service tax on reverse charge basis in terms of Notification No. 30/2012-ST dated 20.6.2012. It is pertinent to mention that the Appellants have not disputed about receipt of GTA Service, Rent-a-Cab Service, Manpower Recruitment and Supply Agency Service. The Appellants have also not disputed their liability to pay service tax on reverse charge basis in terms of Notification No. 30/2012-ST dated 20.6.2012 in contention raised in appeal memoranda nor during hearing. Thus, relied upon CESTAT's order is not applicable to the facts of the present case.

10. I find that the Appellants had availed Cenvat credit after debit of service tax in their Cenvat Credit account on reverse charge mechanism. The Adjudicating authority disallowed Cenvat credit availed by the Appellant in view of the provisions contained in Rule 4(7) and Rule 9(1)(e) of the Cenvat Credit

Rules, 2004 and held that the Appellants had wrongly availed the amount of Cenvat credit so debited towards payment of service tax on reverse charge mechanism. I find it is pertinent to examine the provisions of Rule 4(7) and Rule 9(1)(e) of the Cenvat Credit Rules, 2004, which are reproduced as under:

> **"RULE 4. Conditions for allowing CENVAT credit:**
>
> (7) The CENVAT credit in respect of input service shall be allowed, on or after the day on which the invoice, bill or, as the case may be, challan referred to in rule 9 is received :
>
> Provided that in respect of input service where whole or part of the service tax is liable to be paid by the recipient of service, credit of service tax payable by the service recipient shall be allowed after such service tax is paid :"

> **"RULE 9. Documents and accounts.** — (1) The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely :-
>
> (a) ...
>
> ...
>
> (e) a challan evidencing payment of service tax, by the service recipient as the person liable to pay service tax;"

(Emphasis supplied)

10.1 On harmonious reading of both the above provisions, it transpires that the Appellants were required to make payment of service tax in cash through challan where they were liable to pay service tax as recipient of service and on the basis of the said challan evidencing payment of service tax, they could have availed Cenvat credit. I am in agreement with the findings of adjudicating authority that by utilizing Cenvat credit for discharge for their service tax liability on reverse charge mechanism and again availing Cenvat credit of such debit of service tax, the Appellants had contravened the provisions of Rule 4(7) and Rule 9(1)(e) of the Cenvat Credit Rules, 2004 *supra* and that the appellants wrongly availed Cenvat credit of service tax and the same was required to be recovered from them. I, therefore, uphold the impugned order disallowing Cenvat credit under Rule 14 of CCR,2004.

11. The Appellants contended that entire exercise is revenue neutral inasmuch as if they had paid service tax in cash on reverse charge mechanism, they would have been eligible to avail Cenvat credit in their Cenvat credit account. I do not find any merit in the contention of the Appellants. First, they had not made payment of service tax in cash but utilized Cenvat credit in

contravention of provisions of Rule 3(4) of CCR, 2004 as detailed in para *supra*. Further, when payment is not made in cash but through debit in Cenvat Credit Account, they were not eligible to avail Cenvat credit of such debits as per my findings in para *supra*. Thus, contention of the Appellants is devoid of merit and not sustainable.

12. The Appellants contended that entire demand is barred by limitation since their act of payment of service tax on reverse charge mechanism as receiver of service from Cenvat credit account and availment of Cenvat credit of the said amount again was very well within the knowledge of the Department by way of filing of statutory ER-1 returns during the relevant period. I find that ER-1 Returns do not capture details of Cenvat credit availed and utilized by the assessee, so the Department is not in a position to know whether the Cenvat credit availed by the assessee is rightly availed or not and whether Cenvat credit was correctly utilized by the assessee or not. Thus, merely filing periodical ER-1 Returns would not mean that it was within the knowledge of the Department that the Appellants were utilizing Cenvat credit for discharge of their service tax liability on reverse charge mechanism or that they were availing said debits in Cenvat credit again in their Cenvat credit account. Even otherwise, merely filing of self assessed ER-1 Returns will not entitle them to get away with charge of suppression of facts when it is on record that wrong availment of Cenvat credit was revealed only during audit of the records of the Appellants by the Department. Had there been no audit of the Appellant's records, the wrong utilization and wrong availment of Cenvat credit by the Appellant would have gone unnoticed and hence, ingredients for invoking extended period under Section 73 of the Act and under Rule 14 of the CCR, 2004 very much existed in the present appeals. Accordingly, I hold that the demand is not barred by limitation. In this regard, I rely on the order passed by the Hon'ble CESTAT, Chennai in the case of Six Sigma Soft Solutions (P) Ltd. reported as 2018 (18) G.S.T.L. 448 (Tri. - Chennai), wherein it has been held that,

> "6.5 Ld. Advocate has been at pains to point out that there was no *mala fide* intention on the part of the appellant. He has contended [that] they were under the impression that the said activities would come within the scope of IT services, hence not taxable. For this reason, Ld. Advocate has contended that extended period of time would not be invocable. However, we find that the adjudicating authority has addressed this aspect in para-10 of the impugned order, where it has been brought to the fold that appellant had not at all disclosed the receipt of income in respect of the activities done by them in respect of services provided by them in their ST-3 returns.
>
> 6.6 The facts came to light only when the department conducted scrutiny of the annual reports, possibly during audit. In such circumstances, the department is fully justified in invoking the extended period of limitation of five years."

(Emphasis supplied)

12.1 Since, suppression of facts has been made by the Appellants, penalty under Section 78 of the Act and under Rule 15 of CCR, 2004 is mandatory. The Hon'ble Apex Court in the case of Rajasthan Spinning & Weaving Mills reported as 2009 (238) E.L.T. 3 (S.C.) has held that once ingredients for invoking extended period of limitation for demand of duty exist, imposition of penalty under Section 11AC is mandatory. The ratio of the said judgment applies to the facts of the present case. I, therefore, uphold the penalty imposed under Section 78 of the Act and under Rule 15 of CCR, 2004.

13. Regarding penalty imposed under Section 76 of the Act, I find that failure to pay service tax would attract the provisions of Section 76 of the Act and it is on record that the Appellant did not discharge their liability to pay service tax as recipient of service, as held by me in paras supra. I, therefore, uphold the penalty imposed under Section 76 of the Act.

14. Regarding penalty imposed under Section 77 of the Act, I find that the impugned order has imposed penalty on the ground that the Appellants had not discharged their service tax liability in accordance with the provisions of the Act for such contravention, they were held liable to penalty. I do not find any infirmity in the impugned order for imposing penalty under Section 77 of the Act and accordingly I uphold the same.

15. In view of above discussion, I uphold the impugned orders and reject the appeals.

16. अपीलकर्ता द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है।

16. The appeals filed by Appellant are disposed off as above.

(GOPI NATH) 16/3/2020
Commissioner(Appeals)

Attested

(V.T.SHAH)
Superintendent(Appeals)

By RPAD

To,
1. M/s Gujarat NRE Coke Ltd,
Village Lunva, P.O. Chopadva
Taluka: Bhachau,
District Kutch.

सेवा में,
मे॰ गुजरात एनआरई कोक लिमिटेड,
लुनवा, पी॰ओ॰ चोपड़वा, तालुका भचाउ,
जिल्ला कच्छ।

2. M/s Gujarat NRE Coke Ltd (Steel Division), Village Lunva, P.O. Chopadva Taluka: Bhachau, District Kutch.	मे॰ गुजरात एनआरई कोक लिमिटेड (स्टील डिविजन), लुनवा, पी॰ओ॰ चोपड़वा, तालुका भचाउ, जिल्ला कच्छ।

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, गांधीधाम आयुक्तालय, गांधीधाम को आवश्यक कार्यवाही हेतु।
3) सयुंक्त आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गांधीधाम आयुक्तालय, गांधीधाम को आवश्यक कार्यवाही हेतु।
4) गार्ड फ़ाइल।

contravention of provisions of Rule 3(4) of CCR, 2004 as detailed in para *supra*. Further, when payment is not made in cash but through debit in Cenvat Credit Account, they were not eligible to avail Cenvat credit of such debits as per my findings in para *supra*. Thus, contention of the Appellants is devoid of merit and not sustainable.

12. The Appellants contended that entire demand is barred by limitation since their act of payment of service tax on reverse charge mechanism as receiver of service from Cenvat credit account and availment of Cenvat credit of the said amount again was very well within the knowledge of the Department by way of filing of statutory ER-1 returns during the relevant period. I find that ER-1 Returns do not capture details of Cenvat credit availed and utilized by the assessee, so the Department is not in a position to know whether the Cenvat credit availed by the assessee is rightly availed or not and whether Cenvat credit was correctly utilized by the assessee or not. Thus, merely filing periodical ER-1 Returns would not mean that it was within the knowledge of the Department that the Appellants were utilizing Cenvat credit for discharge of their service tax liability on reverse charge mechanism or that they were availing said debits in Cenvat credit again in their Cenvat credit account. Even otherwise, merely filing of self assessed ER-1 Returns will not entitle them to get away with charge of suppression of facts when it is on record that wrong availment of Cenvat credit was revealed only during audit of the records of the Appellants by the Department. Had there been no audit of the Appellant's records, the wrong utilization and wrong availment of Cenvat credit by the Appellant would have gone unnoticed and hence, ingredients for invoking extended period under Section 73 of the Act and under Rule 14 of the CCR, 2004 very much existed in the present appeals. Accordingly, I hold that the demand is not barred by limitation. In this regard, I rely on the order passed by the Hon'ble CESTAT, Chennai in the case of Six Sigma Soft Solutions (P) Ltd. reported as 2018 (18) G.S.T.L. 448 (Tri. - Chennai), wherein it has been held that,

> "6.5 Ld. Advocate has been at pains to point out that there was no *mala fide* intention on the part of the appellant. He has contended [that] they were under the impression that the said activities would come within the scope of IT services, hence not taxable. For this reason, Ld. Advocate has contended that extended period of time would not be invocable. However, we find that the adjudicating authority has addressed this aspect in para-10 of the impugned order, where it has been brought to the fold that appellant had not at all disclosed the receipt of income in respect of the activities done by them in respect of services provided by them in their ST-3 returns.
>
> 6.6 The facts came to light only when the department conducted scrutiny of the annual reports, possibly during audit. In such circumstances, the department is fully justified in invoking the extended period of limitation of five years."
>
> (Emphasis supplied)

12.1 Since, suppression of facts has been made by the Appellants, penalty under Section 78 of the Act and under Rule 15 of CCR, 2004 is mandatory. The Hon'ble Apex Court in the case of Rajasthan Spinning & Weaving Mills reported as 2009 (238) E.L.T. 3 (S.C.) has held that once ingredients for invoking extended period of limitation for demand of duty exist, imposition of penalty under Section 11AC is mandatory. The ratio of the said judgment applies to the facts of the present case. I, therefore, uphold the penalty imposed under Section 78 of the Act and under Rule 15 of CCR, 2004.

13. Regarding penalty imposed under Section 76 of the Act, I find that failure to pay service tax would attract the provisions of Section 76 of the Act and it is on record that the Appellant did not discharge their liability to pay service tax as recipient of service, as held by me in paras supra. I, therefore, uphold the penalty imposed under Section 76 of the Act.

14. Regarding penalty imposed under Section 77 of the Act, I find that the impugned order has imposed penalty on the ground that the Appellants had not discharged their service tax liability in accordance with the provisions of the Act for such contravention, they were held liable to penalty. I do not find any infirmity in the impugned order for imposing penalty under Section 77 of the Act and accordingly I uphold the same.

15. In view of above discussion, I uphold the impugned orders and reject the appeals.

16. अपीलकर्ता द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है।

16. The appeals filed by Appellant are disposed off as above.

(GOPI NATH) 6/3/2020
Commissioner(Appeals)

Attested

(V.T.SHAH)
Superintendent(Appeals)

By RPAD

To, 1. M/s Gujarat NRE Coke Ltd, Village Lunva, P.O. Chopadva Taluka: Bhachau, District Kutch.	सेवा में, मे॰ गुजरात एनआरई कोक लिमिटेड, लुनवा, पी॰ओ॰ चोपड़वा, तालुका भचाउ, जिल्ला कच्छ।