



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



द्वितीय तल, जी.एस.टी. भवन / 2<sup>nd</sup> Floor, GST Bhavan

रेस कोर्स रिंग रोड / Race Course Ring Road

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सत्यमेव जयते

**रजिस्टर्ड डाक ए.डी.द्वारा :-**

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	<b>V2/109/GDM/2019</b>	<b>01/DC/Mundra/2019-20</b>	<b>06-06-2019</b>

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

**KCH-EXCUS-000-APP-042-2020**

आदेश का दिनांक /

Date of Order: **18.03.2020**

जारी करने की तारीख /

Date of issue:

**18.03.2020**

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 एवं सेवाकर, 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 :-**

**Mundra Container Freight Station Pvt. Ltd., Bharat CFS Zone-1 Gujarat Adani Port Ltd. Mundra 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.

(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 अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असर्वा अहमदाबाद- 370016 को की जानी चाहिए। /

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

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित 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, रूपए 5 लाख या उससे कम, 5 लाख रूपए या 50 लाख रूपए तक अथवा 50 लाख रूपए से अधिक है तो क्रमशः 1,000/- रूपये, 5,000/- रूपये अथवा 10,000/- रूपये 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 सार्वजनिक 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/- रूपए का निर्धारित शुल्क जमा करना होगा। /

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमावली, 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, रूपए 5 लाख या उससे कम, 5 लाख रूपए या 50 लाख रूपए तक अथवा 50 लाख रूपए से अधिक है तो क्रमशः 1,000/- रूपये, 5,000/- रूपये अथवा 10,000/- रूपये 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 सार्वजनिक 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/- रूपए का निर्धारित शुल्क जमा करना होगा। /

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is 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 Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।  
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में 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 अर्जी एवं अपील को लागू नहीं होगा।  
For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,  
Under Central Excise and Service Tax, "Duty Demanded" shall include :  
(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 कोपनरीक्षण आवेदन :**  
**Revision application to Government of India:**  
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /  
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:
- (i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। /  
In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse
- (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /  
In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
- (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /  
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
- (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए हैं। /  
Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
- (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 हैं, 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 रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए।  
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
- (D) 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 केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
- (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](http://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](http://www.cbec.gov.in).

**:: ORDER IN APPEAL ::**

**M/s. Mundra Container Freight Station Pvt. Ltd.** (herein after referred to as "**Appellant**") filed present appeal against Order-in-Original 01/DC/MUNDRA/2019-20 dated 06.06.2019 (hereinafter referred to as '**the impugned order**') (Corrigendum to OIO No. 23/DC/Mundra/2018-19 dated 06.06.2019 issued from F.No.: V/15-21/Mundra/Adj./2018-19 dated 24.09.2019) passed by the Deputy Commissioner, Central GST, Mundra Division, Mundra, (hereinafter referred to as '**the adjudicating authority**'):-

2. The brief facts of the case are that audit conducted by the department objected to the credit availed by the Appellant of the service tax paid on repair & maintenance of their warehouse. It was alleged by the audit that as per work order dated 01.10.2015 entered between M/s SOG Infratech and the Appellant, M/s SOG Infratech was entrusted to carry out the repair and maintenance work of the floor area of the warehouse along with supply of materials, required in the execution of said work. The said work is to be classified as 'works contact' service. Therefore, the credit availed of service tax paid on the said service as 'input service' was not admissible to the Appellant. Hence, the proceedings were initiated by issuance of show-cause notice dated 04.05.2018, demanding cenvat credit of Rs.7,20,992/- along with interest and proposing imposition of penalties on the appellant under the relevant provisions of Cenvat Credit Rules, 2004 (hereinafter referred to as '**the CCR**') read with relevant provisions of Finance Act, 1994 (hereinafter referred to as '**the Act**'). Upon adjudication of the said show-cause notice, the adjudicating authority confirmed the demand of CENVAT Credit along with interest and imposed equal amount of penalty under section 78 of the Act on the appellant in the impugned order. However, penalty under Section 76 was dropped under the impugned order.

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 findings of adjudicating authority are incongruent with the



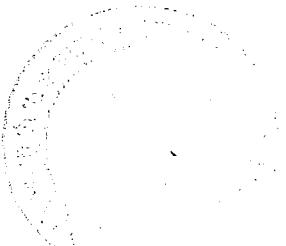
nomenclature mentioned in the invoices, specified in the SCN, as the said invoices deals with breaking, removal of flooring and sub-base of warehouse; that no goods were supplied to the appellant and they received only repair & maintenance service. Consequently, the adjudicating authority erred in treating the service as 'works contract' service. Therefore, the impugned order is not tenable in law and needs to be quashed and set aside.

3.2. That the issue involved is that of interpretation of law, hence, extended period cannot be invoked; that said SCN is time barred. Therefore, the impugned order is not sustainable on ground of limitation also; that in matter of interpretation of law, no *means rea* can be alleged, therefore, imposition of penalty is liable to set aside.

3.3 The appellant filed a miscellaneous application for condonation of delay and submitted that they could not file appeal within 60 days on account of the fact that there was a change in the legal counsel which required to collect the documents from the previous counsel and hand them over to the newly appointed counsel; that they received the impugned OIO on 17.08.2019 and filed the present appeal 14 days late and hence prayed to condone delay of 14 days under Section 85 of the Finance Act, 1994 (32 of 1994).

4. Personal Hearing in the matter was attended by Shri Vikas Mehta, Consultant on behalf of the Appellant. He reiterated the submissions of appeal memo and also filed additional submission dated 30.01.2020 for consideration. Further, another additional submission dated 19.02.2020 was submitted by the appellant.

4.1. That the Appellant is provider of output service and service provided by the contractor were used for repair and renovation of warehouses, used for providing such output services. Hence, the repair service is rightly covered within the meaning of 'input service'; that as per Sl. No. (b) in the explanation (ii) to Section 65 (105) (zzzza) of the Act, 'works contract' means a contract for purpose of carrying out construction of a new building or a civil structure or a part thereof; that the appellant has not



carried out any new construction; that Sl. No. (d) of the said explanation envisages a contract for completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to Sl. No. (b) *ibid*; that, thus, these services, including repair, must be carried out in relation to construction of a new building or civil structure or part thereof and not any building or a civil structure which are not new. Therefore, the case of appellant is not covered within the scope of works contract.

4.2. To press their contention, the appellant relied upon the judgement in case of Mahindra & Mahindra Ltd. Vs Commissioner of C.Ex, Hyderabad-I, 2016 (45) S.T.R. 92 (Tri- Hyd.).

4.3. The appellant stated that extended period cannot be invoked where interpretation is involved and where appellant acted in bona fide manner and to support their contention reliance was placed on decision of Hon'ble Tribunal in case of Reliance Industries Ltd. Vs CCE, Vadodara-I [2011 (023) STR 0555 (Tri- Ahm)].

5. I have carefully gone through the facts of the case, the impugned order, both appeal memorandum and additional submission made by the appellant at the time of personal hearing. I find that the appellant has filed application for condonation of delay of 14 days in filing the appeal on account of the fact that there was a change in the legal counsel which required to collect the documents from the previous counsel and hand them over to the newly appointed counsel.

I find that the appellant received the impugned OIO on 17.08.2019 and filed the present appeal 14 days late i.e on 30.10.2019 and hence prayed to condone delay of 14 days under Section 85 of the Finance Act, 1994 (32 of 1994).

I find that the appeal has been filed beyond the stipulated period of **sixty days** from the date of receipt of the impugned order. The appellate authority has, in terms of Section 85 of the Finance Act, 1994 has power to condone delay in filing appeal maximum up to further **thirty days**, albeit on reasonable cause being shown. The present appeal has been filed within the stipulated time limit of **ninety days** i.e 74 days (60 days + 14



days) provided under the statute. I find justice in the reason for delay and as the delay is within the limit of 30 days allowed under law. I, condone the delay of 14 days in filing of Appeal and proceed to decide the Appeal on merits.

5.1 The issue to be decided in the present appeal is whether impugned order is, in law, correct and proper in denying the cenvat credit or otherwise.

6. The Appellant has vehemently contended that as per definition of works contract stipulated under Section 65(105)(zzzza) of the Act, the service received by them is not classifiable under the works contract service, as no new work was done at their warehouse. They also contended that the repair and maintenance work should be classified as work contract service only when the same is done in relation to any new construction or a part thereof and their warehouse is old on which said service was carried out, thus not classifiable under the said category.

6.1 In this regard, I find that the adjudicating authority has observed that the service availed by the appellant was 'works contract' service and not repair service. To consider the issue, I would first like to analyze the definition of 'Works Contract' as defined under Section 65(105)(zzzza) of the Act which reads as under:-

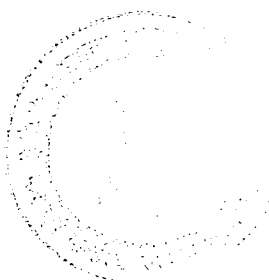
*Section 65(105)- "taxable service" means any service provided or to be provided-*

*(zzzza) to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.*

*Explanation. - For the purposes of this sub-clause, "works contract" means a contract wherein, -*

*(i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and*

*(ii) such contract is for the purposes of carrying out, -*

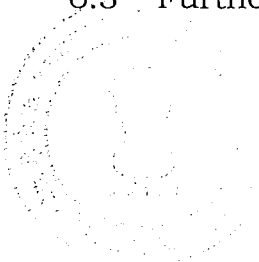


*Q*

- (a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or*
- (b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or*
- (c) construction of a new residential complex or a part thereof; or*
- (d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or*
- (e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects;*

6.2 On plain reading of the definition of 'works contract', at Sl. No. (b) in the explanation (ii) to Section 65 (105) (zzzza) of the Act, 'works contract' means a contract for purpose of carrying out construction of a new building or a civil structure or a part thereof. I observe that the appellant has not received any service for the purpose of carrying out any new construction. I also find that Sl. No. (d) of the said explanation envisages a contract for completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to Sl. No. (b). Thus, these services, including repair, must be carried out in relation to construction of a new building or civil structure or part thereof and not any building or a civil structure which are not new. The repair work undertaken in the instant case was with respect to warehouses which were already in existence and not new. On close perusal of said definition, it is clear that any repair, renovation, alteration or restoration carried out afterwards on any newly constructed building or a civil structure or a part thereof is to be classified as 'works contract' service. Therefore, the contention of the appellant is tenable.

6.3 Further, on going through the sample invoices submitted by the



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appellant and the invoices covered in the Show Cause Notice, I find that the description given in the invoices are *“Civil work for breaking, removal of flooring and subbase of warehouse.”*

6.4 On perusal of the contract entered between the appellant and M/s SOG Infratech, I note that under the head 3. Contractor’s Scope of Work, below 3.1 General, the contract reads as under –

3.1.1 “ .....*The Contractor shall undertake repair and maintenance works of floors of various warehouses in the CFS area and the repairs of boundary walls are as per the detailed scope given in Annexure A.*”

6.5 I observe from the above documents that the aforesaid invoices are just for civil work of breaking, removal of floors etc., and for which no goods are required to be supplied to the appellant. I also find that there is no new civil construction work undertaken and the appellant has just received repair and maintenance service. Thus, I accept the plea of the appellant and hold that the service received by them was repair and maintenance service only.

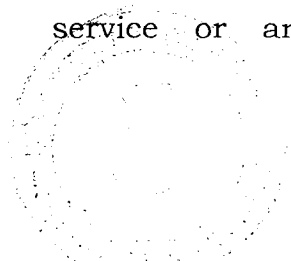
7. Further, I note that the adjudicating authority has denied the cenvat credit amounting to Rs. 7,20,992/- availed by the appellant on repairing service of warehouses on the ground that the input service is “works contract” service which is covered by the exclusion clause.

7.1 For better understanding I would like to reproduce the definition of input service as per CCR which reads as under:

Rule 2(l) of CCR "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,



*A*



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.;

but excludes,-

(A) service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for –

(a) construction or execution of works contract of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or

7.2 The definition hereinabove is broadly construed in three parts- First is main part, second is inclusive part and third part covers exclusions. First part of the definition is restrictive in scope as it covers input services used for providing taxable output service or used by manufacturer, directly or indirectly, in relation to manufacture or clearance of final product upto the place of removal. Second i.e. inclusive part of the definition expands the scope much beyond the coverage of first part. The third part covers specific exclusions. On perusal of the said definition, it is inferred that some services have been excluded from the definition of 'input service'. These would not be eligible even if the same would be eligible as per inclusive part of the definition of 'input service'.

7.3 I note that the inclusion part of the definition covers the words "modernization, renovation, repair", therefore, the said services fall within the meaning of 'input service'. According to the above definition, 'input service', includes services used in relation to renovation or repairs of a premises of provider of output service. I find from the facts on record, that



the appellant is a provider of output service and service provided by the contractor was used for repairs and renovation of warehouses used for providing of output service. Hence, I find that the repair service is covered within the inclusive part of the definition of input services.

7.4 In this regard, I draw support from the dictum laid by the Hon'ble Tribunal, Hyderabad in the case of Mahindra & Mahindra Ltd. Vs. Commissioner of C.Ex., Hyderabad-I, 2016 (45) S.T.R. 92 (Tri.-Hyd.), wherein it has been held that:

*“ The appellants are manufacturers of motor vehicles and components. They are availing Cenvat credit facility of duty paid on inputs, capital goods and input services. On verification of records it was found that during the period April, 2011 to December, 2012 appellants availed credit for an amount of Rs. 1,36,352/- on services like works contract service which according to department was not admissible.....”*

**2.** *The issue for consideration is whether appellant is eligible for credit on certain works contract service during the period April, 2011 to December, 2012.*

.....

**15.** *I have given anxious consideration to the detailed arguments put forward by both sides. The disputed works are as follows : (a) Expansion of capacity of Effluent Treatment Plant (ETP) from existing 160 KLD to 250 KLD; credit involved is Rs. 37,389/-, (b) Epoxy coating to the floor/Flooring works; credit involved is Rs. 63,873/- (c) Pipe & valve fittings, erection of cooling tower and foundation works; credit involved is Rs. 927/-. Out of these, the first and second works on bare perusal, do not fall in the exclusion part of the definition of input service, as these works are not construction of building, civil structure or laying of foundation. The ETP was upgraded in order to meet the situation of improvements done to increase volume of production. So also **flooring works were done inside the factory which will come within modernization. The inclusive part of the definition as stated above includes services related to modernization, renovation and***



**repair of factory.** These works in my opinion would fall within the work of modernization, renovation and repair works and therefore, are eligible for credit. I hold that appellant is eligible for credit of Rs. 37,389/- & Rs. 63,873/-."

[Emphasis supplied]

7.5 In view of the above decision of the Hon'ble Tribunal, I note that in the present case also, the appellant has taken credit of repair and maintenance of flooring of warehouses and hence, the appellant is eligible for the credit.

8. I find that the case law cited by the Appellant is squarely applicable to the present case.

9. In view of the factual position, I am able to appreciate that the appellant has received repair and maintenance service and consequently availed credit of service tax paid on the said service, which, in law, is admissible. Since the demand itself does not survive, the point of charging interest and imposing penalty does not arise. Therefore, I allow the appeal of the appellant and set aside the impugned order.

10. अपीलकर्ताओ द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है।

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

संलग्नित

Q

श्री. गोपी नथ  
अधीक्षक (अपील)

Nath 18/3/2020  
(GOPI NATH)  
Commissioner(Appeals)

By RPAD

To

M/s. Mundra Container Freight  
Station Pvt Ltd.  
Bharat CFS Zone-1,  
Gujarat Adani Port Ltd.,  
Mundra (Kutch).

मैसर्स मुंद्रा कंटेनर फ्रेट स्टेशन प्राइवेट  
लिमिटेड  
भारत सीएफएस जोन -1,  
गुजरात अदानी पोर्ट लिमिटेड,  
मुंद्रा (कच्छ)।

**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 Commissionerate.
- 3) The Assistant/ Deputy Commissioner, GST & Central Excise, Mundra Division, Mundra.
- 4) Guard File.