::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
राजकोट / Rajkot – 360 001
Tele Fax No. 0281 – 2477952/2441142Email: cexappealsrajkot@gmail.com

सत्यमेव जयते

रजिस्टर्ड डाक ए.डी.द्वारा :-

क	अपील / फाइलसंख्या/ Appeal /File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/4/EA2/GDM/2019	**05/Asstt. Commr./2019**	**29/03/2019**

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

KCH-EXCUS-000-APP-043-2020

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 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** :-

Punia Zinox Private Limited, Survey no. 179/2Bhuj- Bhachau Road Village-DhanetiGujarat

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 असार्वा अहमदाबाद- ३८००१६को की जानी चाहिए ।/

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-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 कमें 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 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/- 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 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/- 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 वितीय 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 और भी ध्यान आकर्षित किया जाता है। /
Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

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

:: ORDER-IN-APPEAL ::

The present appeal has been filed by the **Assistant Commissioner, CGST Division-Bhuj** on behalf of the Commissioner, Central GST & Central Excise Gandhidham (hereinafter referred to as **"the Appellant Department"**) against the Order-in-Original No. 05/Asst. Commr./2019 dated 29.03.2019 passed by the Assistant Commissioner, CGST Division, Bhuj (hereinafter referred to as **' the adjudicating authority'**) in the case of **M/s Punia Zinox Pvt. Ltd.** Survey No. 179/2, Bhuj-Bachau road, Village-Dhaneti, Bhuj, Kutch (hereinafter referred to as **'the Respondent').**

2. The brief facts of the case are that during the course of CERA audit, it was observed that during the period from June-2014 to June-2017 the Respondent had availed and utilized the Cenvat credit of Service Tax paid on outward transportation of finished goods beyond the Place of Removal **(hereinafter referred to as "POR")** i.e from the factory gate to the customer's premises to the tune of Rs. 6,30,421/- which was inadmissible. In view of the above observation, a Show Cause Notice dated 01.10.2018 was issued to the respondent proposing to recover the wrongly availed and utilized Cenvat credit of Rs. 6,30,421/- under Rule 14 of the CCR read with Section 11A(4) of the Central Excise Act, 1944 (hereinafter referred to as **'the Act'**) alongwith interest and penalty under Rule 15 of the Cenvat Credit Rules, 2004 (hereinafter read to as the **'CCR'**) read with Section 11AC of the Act. The adjudicating authority, vide impugned order, dropped the proceedings initiated under the said SCN dated 01.10.2018, holding that Rule 2(l) of the CCR makes it clear that the service used by a manufacturer, whether directly/indirectly/in/or in relation to, 'outward transportation of final products up to the POR" is a valid input service for the purpose of taking credit under Rule 3 of the CCR.

3. Being aggrieved by the impugned order, the appellant-department filed the present appeal, *interalia*, on the following grounds:-

3.1 That the issue of 'place of removal' in light of the amended Cenvat Credit Rules vide Notification 10/2008-CE (N.T.) dated 01.03.2008 has been clarified at length by the Hon'ble Supreme Court in the case of

Commissioner of Central Excise & S.Tax Vs M/s Ultra Tech Cement Ltd, reported in 2018(9) G.S.T.L 337 (S.C).

3.2 That the present case pertains to the post amendment Cenvat Credit Rules, 2004, where the 'Input Service' is restricted to service used by the manufacturer for "outward transportation **upto** the place of removal". Prior to the amendment i.e till 2008 'Input Service' was inclusive of services used by the manufacturer for "outward transportation **from** the place of removal"; that the pre-amendment situation has been settled in the case of *Commissioner of Central Excise, Belgaum Vs M/s. Vasavadatta Cements Ltd.* wherein Input service is restricted 'upto the place of removal' i.e the factory and its referable only, such depot, warehouse etc.

3.3 That the 'place of removal' includes only the places which are related to the manufacturer i.e depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory; that the expression 'any other place or premises is stated to be where excisable goods 'are to be sold'; that the place or premises from where excisable goods are to be sold can only be the manufacturer's premises or premises referable to the manufacturer, therefore the buyer's premises can never be a place of removal and cenvat credit of service tax paid on outward transportation upto the buyer's premises is not available to the respondent.

3.4 That the adjudicating authority has erred in relying in Circular No. 1065/4/2018-CX dated 08.06.2018 for determination of the place of removal in the post-amendment era and also in interpreting the case of *M/s Ultra Tech Cement Limited and the case of Commissioner of Cus. & C.Ex., Nagpur, Vs Ispat Industries Limited, reported in 2015 (324) ELT 670 (S.C.),* therefore the impugned order passed by the adjudicating authority is not legal and proper and is required to be set aside.

4. The Respondent vide letter dated 30.01.2020 submitted Memorandum of Cross Objections, inter alia, submitting as under:

4.1 That their case is covered by para 4 captioned as "Exceptions" of CBEC Circular No. 1065/4/2018-CX, dated 08.06.2018 that was issued in the wake of decision of Hon'ble Supreme Court in the case of Ultra Tech

Cement Ltd. dated 01.02.2018; that according to para 4 ibid, the general principal for determination of place of removal laid by the Hon'ble Supreme Court in the case of CCE Vs Ispat Industries Ltd., would apply to all situations except where the ownership risk in transit, remained with the seller till goods are accepted by buyer on delivery and till such time of delivery, seller alone remained the owner of goods retaining the right of disposal; that the adjudicating authority has categorically held in para 12.3 of the impugned order that the right of disposal is reserved with the seller (Respondent) until the goods are approved and taken delivery of by the buyer; that the finding concluded that place of removal is the buyer's premises has nowhere been disputed by the appellant-department; that the appeal is contrary to CBEC Circular referred above and therefore, the same is liable to be rejected.

4.2 That the decision of Hon'ble Supreme Court in the case of CCE Vs Ispat Industries Ltd. was with regard to valuation and not Cenvat credit; that even if the same is applied to decide cases involving cenvat credit issues, their case is squarely covered by para 4 of the above Circular dated 08.06.2018.

4.3 That as per para 5 of Circular dated 08.06.2018, the Hon'ble Supreme Court in the case of Ultra Tech Cement Ltd. has held that Cenvat credit on GTA service availed for transportation of goods from the place of removal to buyer's premises was not admissible; that after the amendment in the definition of 'input service' under Rule 2(l) of the CCR, 2004, effective from 01.03.2008, the service is treated as input service only 'upto the place of removal'; that at para 6, the Circular directs the field formation to examine individual cases based on facts and circumstances of each of the case.

4.4 That as per para 11 of the Hon'ble Supreme Court's judgment in the case of Ultra Tech Cement Ltd., the definition of 'place of removal' and the conditions which are to be satisfied have to be in the context of 'upto' the place of removal; that the adjudicating authority has concluded that they had availed the outward GTA service upto the place of removal, i.e buyer's premises and the same is as per para 4 of the Circular dated 08.06.2018; that the contention of the appellant-department to deny the Cenvat credit is devoid of merit and must be quashed and set aside.

5. The Appellant-department did not appear for the personal hearing.

5.1 In Hearing, Shri Vikas Mehta, Consultant and authorized representative of the Respondent appeared on behalf of the respondent for the personal hearing. He reiterated the submissions already made and requested to set aside the impugned order and disallow the appeal filed by the Department.

6. I have carefully gone through the facts of the case, the impugned order, appeal memorandum of the Appellant-department and cross objections filed by the Respondent. The limited issue to be decided in the present appeal is whether the respondent is eligible for cenvat credit of service tax paid on outward transportation of final product from the factory gate to the customer's premises or not.

7. I find that the issue in the present case is covering the period June-2014 to June-2017 i.e the period pertaining to the amended definition of 'input service' w.e.f. April 1, 2008. The definition of 'input service' as contained in Section 2(l) of the Cenvat Credit Rules, 2004 for the period after April 1, 2008 reads as under:

2(l) "input service" means any service, -

(i) used by a provider of taxable service for providing an output service; or

(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products ***upto*** *the place of removal,*

and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, 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"

7.1 In the main definition, the expression "*clearance of final products*

from *place of removal"* was replaced by the expression *"clearance of final product* ***upto*** *the place of removal"*. Thus, it is only 'upto the place of removal' that the service is treated as input service. The said amendment has changed the entire scenario. The benefit, which was admissible even beyond the place of removal, now gets terminated at the place of removal and doors to the Cenvat credit of input tax paid gets closed at that place. This credit cannot travel therefrom. It becomes clear from the plain reading of this amended Rule, which applies to the period in question (June-2014 to June-2017), that the Goods Transport Agency service used for the purpose of outward transportation of goods, i.e. from the factory to customer's premises, is not covered within the ambit of Rule 2(l)(i) of Rules, 2004.

7.2 Thus, I hold that once the final products are cleared from the factory premises, extending the credit beyond the point of clearance of final product is not permissible under Cenvat Credit Rules and post clearance use of services in transport of manufactured goods cannot be input service for the manufacture of final product. The credit of service tax used by the respondent for transportation of their final product cannot be considered to have been used directly or indirectly in relation to clearance of goods from the factory viz. place of removal in terms of Rule 2(l) of the Rules and as such cannot be considered as input service to avail Cenvat credit. In this regard, I place reliance in the Civil Appeal No. 11261 of 2016 in the Supreme Court of India in the case of **Commissioner of Central Excise and Service Tax Vs M/s Ultratech Cement Ltd.** wherein the Apex Court held clearly that *'Cenvat Credit on goods transport agency service availed for transport of goods from place of removal to buyer's premises was not admissible to the respondent after the said amendment.'*

7.3 Thus, I hold that the credit of service tax paid on outward transportation is not available to the respondent as held by the Supreme Court on February 2018 in the case of **Commissioner of Central Excise and Service Tax Vs M/s Ultratech Cement Ltd.** in the Civil Appeal No. 11261 of 2016.

8. Further, I find that the respondent has heavily relied on the Board's Circular No. 1065/4/2018-CX, dated 08.06.2018 with reference to "Place of removal".

I find that the issue of 'place of removal' in light of the amended CCR vide Notification No. 10/2008-CE (N.T.) dated 01.03.2008 has been clarified at length by the Hon'ble Supreme Court in the case of **Commissioner of Central Excise and Service Tax Vs M/s Ultratech Cement Ltd.** wherein it has been held that:

7. It may be relevant to point out here that the original definition of 'input service' contained in Rule 2(l) of the Rules, 2004 used the expression 'from the place of removal'. As per the said definition, service used by the manufacturer of clearance of final products 'from the place of removal' to the warehouse or customer's place etc., was eligible for Cenvat Credit. This stands finally decided in Civil Appeal No. 11710 of 2016 (Commissioner of Central Excise Belgaum v. M/s. Vasavadatta Cements Ltd.) vide judgment dated January 17, 2018. However, vide amendment carried out in the aforesaid Rules in the year 2008, which became effective from March 1, 2008, the word 'from' is replaced by the word 'upto'. Thus, it is only 'upto the place of removal' that service is treated as input service. This amendment has changed the entire scenario. The benefit which was admissible even beyond the place of removal now gets terminated at the place of removal and doors to the cenvat credit of input tax paid gets closed at that place. This credit cannot travel therefrom. It becomes clear from the bare reading of this amended Rule, which applies to the period in question that the Goods Transport Agency service used for the purpose of outward transportation of goods, i.e. from the factory to customer's premises, is not covered within the ambit of Rule 2(l)(i) of Rules, 2004. Whereas the word 'from' is the indicator of starting point, the expression 'upto' signifies the terminating point, putting an end to the transport journey.

.....

11. As can be seen from the reading of the aforesaid portion of the circular (i.e 2007), the issue was examined after keeping in mind judgments of CESTAT in Gujarat Ambuja Cement Ltd., 2007(6) S.T.R. 249 and M/s. Ultratech Cement Ltd., 2007(6) S.T.R. 364 (Tribunal-Ahmedabad). Those judgments, obviously, dealt with unamended Rule 2(l) of Rules, 2004. The three conditions which were mentioned explaining the 'place of removal' as defined under Section 4 of the Act, there is no quarrel upto this stage. ***However, the important aspect of***

the matter is that Cenvat Credit is permissible in respect of 'input service' and the Circular relates to the unamended regime. Therefore, it cannot be applied after amendment in the definition of 'input service' which brought about a total change. Now, the definition of 'place of removal' and the conditions which are to be satisfied have to be in the context of 'upto' the place of removal. It is this amendment which has made the entire difference. That aspect is not dealt with in the said Board's circular, nor it could be."

I find that the present case pertains to the post amendment Cenvat Credit Rules, 2004, where the 'Input Service' is restricted to service used by the manufacturer for 'outward transportation **upto** the place of removal". Prior to the amendment i.e till 2008, "input service" was inclusive of services used by the manufacturer for 'outward transportation from the place of removal'.

Further, I find that 'place of removal' in the case of Commissioner of Cus. & C.Ex., Nagpur Vs Ispat Industries Limited, as reported in 2015 (324) ELT 670 (S.C.) the Hon'ble Supreme Court has held that-

"22. To complete the picture, by an Amendment Act with effect from 14.5.2003, Section 4 was again amended so as to re-include sub-clause (iii) of old Section 4(3)(b) (pre 2000) as Section 4(3)(c)(iii). This amendment reads as follows:-

"(3)(c)(iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory;"

Also, Rule 5 of the Central Excise Rules was substituted, with effect from 1.3.2003, to read as follows:

*"**Rule 5.** Where any excisable goods are sold in the circumstances specified in clause (a) of sub-section (1) of section 4 of the Act except the circumstances in which the excisable goods are sold for delivery at a place other than the place of removal, then the value of such excisable goods shall be deemed to be the transaction value, excluding the cost of transportation from the place of removal upto the place of delivery of such excisable goods.*

Explanation 1 - "Cost of transportation" includes -

(i) the actual cost of transportation; and

(ii) in case where freight is averaged, the cost of transportation calculated in accordance with generally accepted principles of costing.

Explanation 2 - For removal of doubts, it is clarified that the cost of transportation from the factory to the place of removal, where the factory is not the place of removal, shall not be excluded for the purposes of determining the value of the excisable goods."

23. It is clear, therefore, that on and after 14.5.2003, the position as it obtained from 28.9.1996 to 1.7.2000 has now been reinstated. Rule 5 as substituted in 2003 also confirms the position that the cost of transportation from the place of removal to the place of delivery is to be excluded, save and except in a case where the factory is not the place of removal.

24. ***It will thus be seen that, in law, it is clear that for the period from 28.9.1996 up to 1.7.2000, the place of removal has reference only to places from which goods are to be sold by the manufacturer, and has no reference to the place of delivery which may be either the buyer's premises or such other premises as the buyer may direct the manufacturer to send his goods."***

Thus, I find that the place of removal includes only the places which are related to the manufacturer i.e depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory. A depot, the premises of a consignment agent, or any other place or premises from where the excisable goods are to be sold after their clearance from the factory are all places of removal. Each of these premises is referable only to the manufacturer and not to the buyer of excisable goods. The depot, or the premises of a consignment agent of the manufacturer are places which are referable only to the manufacturer. The expression 'any other place or premises' refers only to the manufacturer's place or premises because such place of premises is stated to be where excisable goods 'are to be sold'. Therefore, I agree with appellant-department and hold that the buyer's premises can never be a place of removal and Cenvat credit of service tax paid on outward transportation upto the buyer's premises is not available to the

respondent.

9. Further, I find that the determination of place of removal in the post-amendment era has been clarified by the Hon'ble Supreme Court in the case of **Commissioner of Central Excise and Service Tax Vs M/s Ultratech Cement Ltd.** wherein it has been held that-

"Secondly, if such a circular is made applicable even in respect of post amendment cases, it would be violative of Rule 2(l) of Rules, 2004 and such a situation cannot be countenanced."

The said case was affirmed in 2018(13) G.S.T.L. J101(S.C.) wherein the Hon'ble Apex Court on 24.04.2018 dismissed the review petition filed by Ultratech Cement Ltd. and held that –

".....We have carefully gone through the Review Petition and the connected papers. We find no error much less apparent in the order impugned. The Review Petition is, accordingly, dismissed."

Therefore, I find that the reliance placed by the respondent on Circular no. 1065/4/2018-CX dated 08.06.2018 does not hold good as the words, "clearance of final products *from* the place of removal" appearing in the definition of "input service" under Rule 2(l) of the Rules of 2004 prior to 1-3-2008 were amended by Notification No. 10/2008-C.E. (N.T.), dated 1-3-2008 by substituting the same with the words, "clearance of final products *upto* the place of removal". The Adjudicating authority has erred to notice this change in the definition while deciding the present case, while the case has been decided in the context of the earlier definition of "input service". Thus, I find that since the question raised in the present case is squarely covered by the judgment of the Supreme Court in the case of *Commissioner of Central Excise and Service Tax* v. *Ultra Tech Cement Ltd.* (Civil Appeal No. 11261 of 2016 decided on 1-2-2018) [2018 (9) G.S.T.L. 337 (S.C.)], the wrongly availed and utilized cenvat credit amounting to Rs. 6,30,421/- under Rule 14 of the CCR, read with Section 11A(4) of the Act alongwith interest is liable to be recovered from the respondent under Rule 14 of the CCR, read with Section 11AA of the Act. The respondent is also liable for penalty amounting to Rs. 6,30,421/- under Rule 15 of the Cenvat Credit Rules, 2004 read with

Section 11AC of the Act.

10. In view of the above discussion supported by the judicial pronouncement of the Apex Court, all the submissions/ reliance placed by the respondent do not hold good.

11. In view of my above discussions, I set aside the impugned order and allow the appeal filed by the department.

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

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

(Gopi Nath)
Commissioner (Appeals)

By Regd. Post AD
To,

M/s Punia Zinox Pvt. Ltd., Survey No. 179/2, Bhuj-Bhachau road, Village-Dhaneti, Bhuj, Kutch	**मे. पूनिया ज़िनोक्स प्राइवेट लिमिटेड,** सर्वे नो. 179/2, भुज-भचाउ रोड, गाऊँ-धनेटी, भुज, कच्छ् ।

Copy to:

1) The Principal Chief Commissioner, CGST & Central Excise, Ahmedabad Zone, Ahmedabad.
2) The Commissioner, CGST & Central Excise Commissionerate, Kutch-Gandhidham.
3) The Deputy Commissioner, CGST & Central Excise, Division-Bhuj.
4) Guard file.