



::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 / 2nd Floor, GST Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

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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
	V2/275/RAJ/2017	13/Supdt/KCK/C.Ex.Div- I/Rajkot/2016-17	28.03.2017

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

RAJ-EXCUS-000-APP-023-2018-19

आदेश का दिनांक / Date of Order:	18.04.2018	जारी करने की तारीख / Date of issue:	18.04.2018
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**कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot**

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ 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 / Service Tax, Rajkot / Jamnagar / Gandhidham :

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

1. M/s. Bhavani Industries, Ganjiwada Bhavnagar Road Rajkot ,

इस आदेश(अपील) से व्यक्ति 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 असावा अहमदाबाद- 380016 को की जानी चाहिए। /

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

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवाली, 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 मांग, ब्याज की मांग 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 क्रमशः 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 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 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 मांग, ब्याज की मांग 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 क्रमशः 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 Form 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 रुपये 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 अर्ज़ी 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 Cenval Credit taken;
(iii) amount payable under Rule 6 of the Cenval 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 को पुनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामले में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक 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 इयूटी 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 समयावधि 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 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 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 पट्टी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण 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, 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 टिकट 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 ::

M/s. Bhavani Industries, Behind PTD Ground, Ganjiwada, Bhavanagar Road, Rajkot – 360 003 (*hereinafter referred to as 'the appellant'*) has filed the present appeal against Orders-In-Original No. 13/Superintendent/KCK/C.EX.DIV.-1/RAJKOT/2016-17 dated 28.03.2017 as (*hereinafter referred to as "impugned orders"*) passed by the Superintendent, Central Excise, Division-I, Rajkot (*hereinafter referred to as "the lower adjudicating authority"*).

2. The brief facts of the case are that during audit of records of the Appellant revealed that Appellant had wrongly availed Cenvat credit of Service tax of paid on insurance services of "Product Liability & Product Recall Insurance Policy" to insure the goods manufactured by them. The Department was of the view that the insurance policy covered insurance pertaining to Product recall expenses to cover up the financial losses incurred by the Appellant on account of recall of their products already sold to their customers and this was occurring after removal of goods from the factory premises of the Appellant and hence did not fall within the ambit of definition of "input Service" in terms of Rule 2(l) of the Cenvat Credit Rules, 2004 (*hereinafter referred to as "the Rules"*) read with Section 2(f) of the Central Excise Act, 1944 (*hereinafter referred to as "the Act"*). The jurisdictional Range Superintendent called for details of Cenvat Credit of Service Tax on insurance pertaining Product Recall expenses for the subsequent period from March, 2016 to November, 2016 for availment of Cenvat credit of Rs. 4,20,000/- and issued Show Cause Notices demanding wrongly availed Cenvat Credit under Section 11A of the Act read with Rule 14 of the Rules, interest under Section 11AA of the Act and penalty under Rule 15 of the Rules read with Section 11AC of the Act. The lower adjudicating authority adjudicated Show Cause Notice vide the impugned order confirming demand under Section 11A of the Act, read with Rule 14 of the Rules, interest under Section 11AA of the Act and imposed penalty and Rule 15 of the Rules read with Section 11AC of the Act.

3. Being aggrieved with the impugned order, the appellant preferred the present appeal, inter alia, on the following grounds :-

(i) The adjudicating authority has ignored the decision of Hon'ble CESTAT Ahmedabad in the case of M/s. Harsha Engineers Ltd reported as 2012 (27)



STR164 (Tri-Ahmd.) applicable in their case and not followed the binding precedent of various case laws of the higher judicial forum.

(ii) Appellant has taken Cenvat credit of Service Tax paid on insurance policies taken for **Product Liability and Product Recall Insurance Policy**; that the risk is for product recall expenses i.e. to provide for expenses incurred for recall of products or work initiated by the insured to recall that products which may cause body injury or damage to property; that policy covers product recall liability expenses i.e. recall expenses incurred by their customers or third parties subsequent to unconditional acceptance for which Appellant is liable with regard to conditions precedent to liability of the customers, products guarantee, etc; that the policy covered the losses incurred by their customers or by third parties arising due to damages etc.; that the policy also covers recall liability expenses incurred by their customer or by third party subsequent to unconditional acceptance for which the appellant was liable; that policy covered product guarantee which included cost of removal, repair, alteration treatment, detection and analyze (cost of examination) reworking or replacement of any product or part thereof which failed to perform the function for which it was manufactured by the appellant; that the policy was nothing but the product guarantee policy for which risk coverage is borne by the Insurance Company i.e. M/s. National Insurance Co Ltd; that in absence of insurance the Appellant would have to suffer the loss due to damage product, recall expenses and loss incurred by their customers and third parties; that to avoid such losses Appellant has taken the policy.

(iii) Appellant submitted that the word "includes" and "such as" as used in the definition of Rule 2(l) of the Rules are illustrative in nature and can not be given restrictive meaning as substantive part of the definition of 'input service' as well as the inclusive part of the definition of 'input service' purport to cover not only services used prior to the manufacture of final products, subsequent to the manufacture of final products but also services relating to the business such as accounting, auditing. etc. Thus, the definition of input service seeks to cover every conceivable service used in the business of manufacturing the final products; that the categories of services enumerated after the expression 'such as' in the definition of 'input service' do not relate to any particular class or category of services, but refer to variety of services used in the business of manufacturing the final products; that definition do not suggest legislation intention to restrict the definition of 'input services' to any particular class or



category of services used in the business and it would be reasonable to construe that the expression 'such as' in the inclusive part of the definition of input service is only illustrative and not exhaustive. The appellant relied upon Hon'ble Bombay High Court judgments in the case of M/s. Coca Cola India Pvt. Ltd reported as 2009 (242) ELT 168 (Bom.), and in the case of M/s. Ultratech Cement Ltd. reported as 2010 (260) ELT 369 (Bom). Appellant also relied upon Hon'ble CESTAT decision in the cases of (i) M/s. Harsh Engineers Ltd -2012 (27) STR 164(Tri-Ahmd) – (ii) M/s Rotork Control (India) Pvt. Ltd (2010) (20) STR 684 (Tri-Chennai).

4. The jurisdictional Superintendent, GST & Central Excise, Division-1, Range-IV, Rajkot, in response to personal hearing notice issued on 13.12.2017, submitted his comments vide his letter F No. C.Ex./AR-IV/FAR-191/Bhavani Ind./2015-16 dated 27.12.2017 wherein he, *inter alia*, submitted as under :-

4.1 The nature of services involved in the instant case is absolutely an after sale activity and have no nexus with the manufacture of the goods; that the services are post manufacturing services and cannot be included in the category of input services under any part of the definition of input services; that CBEC vide Circular No. 97/8/2007-S.T. dated 23.08.2007 clarified that after final products are cleared from the place of removal, there will be no scope of subsequent use of service to be treated as input service. He referred Hon'ble Supreme Court's judgment in the case of M/s. Maruti Suzuki Ltd. reported as 2009 (240) ELT 641 (SC). It was further submitted that Appellant was under the contractual obligation to avail the services and that value of such services already stood included in the Assessable value of the finished goods would not at all be relevant for determination of their eligibility as input services; that CEBC vide Circular No. 137/3/2006-CX.4 dated 02.02.2006 also clarified that availment of Cenvat credit and valuation for payment of duty are two independent issues and valuation aspect is not relevant with admissibility of Cenvat credit and also referred the Hon'ble CESTAT's decision in the case of M/s. Dhananjay Confectionary as reported in 2010 (26) STT 24 (CESTAT) and in the case of M/s. ABB Ltd. reported as 2009 (21) STT 77 (CESTAT).

4.2 It is also submitted that case laws relied upon by the appellant are not relevant in the matter and referred the following case laws against the contention of the appellant :-

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- (a) 2014 (307) ELT 7 (Chhatisgarh);
- (b) 2015 (319) ELT 221 (SC) and
- (c) 2015 (37) STR 567 (Tri-Del).

4.3 Hon'ble Commissioner(Appeals), GST & C. Excise, Rajkot vide Order-in-Appeal No. RAJ-EXCUS-000-APPELLANT-108-TO-109-2017-18 dated 03.11.2017 has upheld the issue in favour of the Department for the pervious period.

5. Personal hearing in the matter was attended by Shri Rahul Gajera, Advocate who reiterated the grounds of appeal and submitted written submission dated 21.02.2018 and emphasized order of the Hon'ble CESTAT in the case of M/s. Neo Foods Pvt. Ltd. reported as 2017-TIOL-316-CESTAT-Bang; that the Product Recall Policy is a pre-condition for sale of goods; that the said order is directly on the issue; that order dated 03.11.2017 of the Commissioner(Appeals), Rajkot needs to be corrected in view of the CESTAT's order which was not brought by them in their previous case decided vide Order dated 03.11.2017. Shri M. A. Somani, Superintendent reiterated comments sent by the Department and stated that appeal needs to be rejected.

5.1 In the written submission made during personal hearing the appellant submitted that the services in question availed by the appellant are pre-requisite for carrying out manufacturing of the excisable goods as the appellant could not have secured the contract for manufacture and supply of the goods in absence of insurance policy on Product Recall. The appellant also relied upon the decision of Hon'ble CESTAT in the case of M/s. India Cements Ltd. reported as 2014 (313) ELT 714 wherein at Para 6.3 it is held as under :-

"6.3 A close reading of the above definition clearly indicate that the term "Input services" clearly include services relating to setting up, modernization, renovation or repairs of a factory. It inter alia includes services received in connection with security. Insuring plant and machinery to safeguard against interruption /destruction/break-down and to cover loss of profit due to stoppage of work due to perils like fire, riot, terrorist attack, damages etc. is necessarily a precautionary measure to safeguard against any unwarranted situation of the business. The security of a company does not merely depend upon the physical security and insurance against such perils definitely assures the financial security of the business."

5.2 Relying upon the above case, the appellant contended that the services provided falls under the expression "directly or indirectly in or in relation to the

manufacture of final product.”, that the appellant relied upon the judgment of the Hon’ble Larger Bench of Supreme Court in the case of M/s. Ramala Sahakari Chini Mills Ltd. reported as 2016-TIOL-20-Hon’ble Supreme Court-CX-LB which states that the word “include” in the statutory definition is generally used to enlarge the meaning of the preceding words and therefore services in question would qualify as ‘input service’ in terms of Rule 2(l) of the Rules.

5.3 The appellant also contended that they were registered with the Department and were regularly filing returns in which availment of Cenvat credit was duly reflected and therefore it cannot be said that there was any position act of suppression or mis-statement on the part of the appellant and therefore lower adjudicating authority has erred in imposing penalty; that issue involved in pertaining to interpretation of law and therefore in light of the decision of M/s. Paswara Papers Ltd. reported as 2004(178) ELT 317 no penalty can be imposed on them.

FINDINGS :-

6. I have carefully gone through the facts of the case, the impugned order and submissions made by the appellant in grounds of appeals and written as well oral submissions made during the personal hearing. The issue to be decided in the present appeal is that whether appellant has correctly availed Cenvat Credit of Service Tax paid on Product Recall Insurance Services under Rule 2(l) of the Rules or not.

6.1 I find that the definition of “input service” under Cenvat Credit Rules, 2004 with effect from 01.04.2011 reads as under:-

“Rule – 2 (l) ‘input service’ means any service, -

- (i) used by a provider of output service for providing an output service; or*
- (ii) used by a 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 modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality

control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal; but excludes services, -

.....
.....”

(Emphasis supplied)

6.2 I find that Appellant has contended that the Services covers risk and liabilities after manufacturing of final products and covers financial losses after sales. Thus, it is not in dispute that the said insurance services are meant for use after the clearance and removal of finished goods from the place of removal and that too after sale of the goods. Therefore, I am of the considered view that the services in dispute cannot be held as connected directly or indirectly in relation to the manufacture of the finished goods to justify appellant’s claim that the services falls within the purview of the first part of the definition of Input Services under Clause 2(l) (ii).

7. The appellant has contended that the given services are essentially required to secure purchase orders and for the financial security of the business and hence, services are covered under second part of clause (ii) of definition of “Input Service” i.e. used in relation to. I find that Clause (ii) of the above definition reveals that ‘input service’ is restricted to services used up to the place of removal and availed and utilized when the goods exported are lying in the factory. However, I find that the said insurance taken by the appellant for the goods already sold to their customers. Services in dispute covers risk or consequent liabilities post clearance from the factory gate of the Appellant. It has been argued that it relates to Sales and hence relating to sales promotion. I find that the definition of Input services phrases used are “Advertisement and Sales Promotion” which is in context of services in relation to nature of marketing, publicity etc. being utilized prior to sale of finished goods and this category mentioned in the definition is no way connected to the insurance of finished goods for the purpose of financial security of the Appellant for damages subsequent to sale of goods. I find that legislation has put the word and phrases “upto the place of removal” not only first part of the Clause (ii) but it is used in second part of Clause (ii) also such as “storage upto the place of removal’ and ‘Transportation upto the place of removal” making it explicit that all services referred therein must be used up to place of removal, which is not the case here. The Hon’ble Supreme Court vide judgment dated 01.02.2018 in the case of



M/s. Ultratech Cement Ltd reported as 2018-TIOL-42-SC-CX. has held that Cenvat credit upto the place of removal is only available and therefore, decision of the Hon'ble CESTAT in the case of M/s. Neo Foods Pvt. Ltd. reported as 2017-TIOL-316-CESTAT-BANG is in conflict with the judgment of the Hon'ble Supreme Court.

7.1 Para 4 of CBEC Circular No. 999/6/2015-CX, dated 28-2-2015 issued under F.No. 267/13/2015-CX. 8 has clarified that Cenvat credit would not be allowed once the goods are handed over to the transporter for the purpose of onward transmission to the buyer as reproduced below :-

"4. In most of the cases, therefore, it would appear that handing over of the goods to the carrier/transporter for further delivery of the goods to the buyer, with the seller not reserving the right of disposal of the goods, would lead to passing on of the property in goods from the seller to the buyer and it is the factory gate or the warehouse or the depot of the manufacturer which would be the place of removal since it is here that the goods are handed over to the transporter for the purpose of transmission to the buyer. It is in this backdrop that the eligibility to Cenvat Credit on related input services has to be determined."

7.1.1 I find that in the case on hand, insurance services are extended beyond the time and place of "removal" as it is meant for insurance of goods already sold by the Appellant. The services of Product Recall would come into play only when any product after reaching the premises of the Appellant has to be returned back. Obviously, such services are well beyond scope of input services as defined in Rule 2(l) of the Rules. I am, therefore, of the considered view that appellant is not eligible for credit of service tax paid on such insurance services.

7.2 Regarding reliance placed by the Appellant on various decision, I find that the definition of 'input services" has been changed w.e.f. 01.04.2011 vide Notification No. 3/2011-CE(N.T.) dated 01.03.2011. Prior to 01.04.2011, words and phrase "*activities relating to business*" was included in the inclusive part of the definition of Input Service and the decisions of the Hon'ble Bombay High Court in the Case of M/s. Coca Cola India Pvt. Ltd reported as 2009(15) STR 657 (Bom.) and in the case of M/s. Ultratech Cement Ltd reported as 2010 (260) ELT (369) and of the Hon'ble CETSTAT in the cases of M/s. India Cement Ltd reported as 2014 (313) ELT714(Tri- Chennai) and M/s. Harsh Engineers Ltd - 2012 (27) STR 164(Tri-Ahmd) were delivered in that background. I find that decisions of the Hon'ble CESTAT, Chennai in the case of M/s. Rotork Control (India) Pvt. Ltd reported as 2010 (20) STR 684 (Tri- Chennai) is in relation to



insurance for Laptop computer used in the factory premises and hence, cannot be made applicable to the case on hand. As regards decision of Commissioner (Appeals), Rajkot under OIA No RAJ-EXCUS-000-APP-208-16-17, I am of the view that the decision is not a binding precedent in light of the discussions in foregoing paras.

7.3 I, therefore, uphold the impugned order disallowing Cenvat credit of Rs. 4,20,000/- under Rule 14 of the Rules read with Section 11A of the Act. As a natural consequence, interest under Section 11AA is also upheld.

8. Since, Cenvat credit of Rs. 4,20,000/- has been taken wrongly, the appellant is liable to be imposed penalty under Rule 15 of the Rules in terms of clause (a) of sub-Section (1) of Section 11AC of the Act, which says the person should be liable to pay penalty not exceeding 10 % of duty so determined. Therefore, imposition of penalty of Rs. 42,000/- under Rule 15 of the Rules read with Section 11AC(1)(a) of the Act which is 10% of duty determined, is appropriate and is required to be upheld.

9. In view of the foregoing discussions, I reject the appeal filed by the appellant and uphold the impugned order.

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

9.1 Appeal filed by the appellant is disposed off in above terms.

सहायक,
निम्न है, राजकोट
अधीन (राजकोट)

(Signature)
18/11/2018
(कुमार संतोष)
आयुक्त (अपील्स)

By R.P.A.D.

To,

M/s. Bhavani Industries, Ganjiwada, Bhavanagar Road, Rajkot.	मेसर्स भवानी इंडस्ट्रीस गंजीवाड़ा, भावनगर रोड, राजकोट.
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Copy to for information and necessary action : -

1. The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad for his kind information.
2. The Commissioner, GST & Central Excise, Rajkot Commissionerate, Rajkot.
3. The Assistant Commissioner, GST & Central Excise Division-1, Rajkot.
4. The Superintendent, GST & Central Excise, Rajkot.
5. Guard File.

