::आयुक्त (अपील्स) का कार्यालय, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), CENTRAL GST & 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 – 2477952/2441142
Email: cexappealsrajkot@gmail.com

सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/216/RAJ/2017	**72/D/AC/2016-17**	**28-02-2017**

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

RAJ-EXCUS-000-APP-029-2018-19

आदेश का दिनांक / Date of Order:	**16.04.2018**	जारी करने की तारीख / Date of issue:	**23.04.2018**

Passed by **Shri Chandrakant Valvi, Commissioner , Central GST & Excise, Bhavnagar**

अधिसूचना संख्या २६/२०१७-के.उ.शु. (एन.टी.) दिनांक १७.१०.२०१७ के साथ पढ़े बोर्ड ऑफिस आदेश सं. ०५/२०१७-एस.टी. दिनांक १६.११.२०१७ के अनुसरण में, श्री चन्द्रकान्त वलवी, आयुक्त, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क ,भावनगर को वित्त अधिनियम १९९४ की धारा८५, केंद्रीय उत्पाद शुल्क अधिनियम १९४४ की धारा ३५ के अंतर्गत दर्ज की गई अपीलों के सन्दर्भ में आदेश पारित करने के उद्देश्य से अपील प्राधिकारी के रूप में नियुक्त किया गया है.

In pursuance to Board's Notification No. 26/2017-C.Ex.(NT) dated 17.10.217 read with Board's Order No. 05/2017-ST dated 16.11.2017, Shri Chandrakant Valvi, Commissioner , Central GST & Excise, Bhavnagar has been appointed as Appellate Authority for the purpose of passing orders in respect of appeals filed under Section 35 of Central Excise Act, 1944 and Section 85 of the Finance Act, 1994.

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** :-

M/s. Rajendra Industries, Plot No. 2636, Kranti Gate, Lodhika GIDC,, Metoda ,Kalavad Road, Dist : Rajkot

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 अपीलें सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- ३८००१६ 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) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए । इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की माँग ,ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of 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 अंतगत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की माँग ,ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/

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

(i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी । /

The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the 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" 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 को पुनरीक्षण आवेदन :**
Revision application to Government of India:
इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केंद्रीय 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 क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गईं 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 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 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 ::

M/s. Rajendra Industries, Plot No. 2636, Kranti Gate, Lodhika GIDC, Metoda, Kalavad Road, Rajkot (hereinafter referred to as **"the appellant"**) has filed the present appeal against Order-in-Original No. 72/D/2016-17 dated 28-02-2017 / 03-03-2017 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central Excise Division-I, Rajkot (hereinafter referred to as "the lower adjudicating authority").

2. Briefly stated facts of the case are that the appellant holding, Central Excise Registration No. AAKFR4660DXM001, was engaged in manufacture of Box straps falling under Chapter Sub Heading 39211900 of the First Schedule to the Central Excise Tariff Act, 1985. During the course of audit, it was noticed that the appellant has wrongly availed the Cenvat Credit of Rs. 14,70,854/- on the duties paid on imported 'Fully Automatic Strapping Machine' and 'Semi-automatic Strapping Machine', considering them as capital goods, which were subsequently sold in the market, instead of using the same for manufacture of their final product. The said observation culminated into the Show Cause Notice No. V.39/AR-III/RJT-DVN-II/ADC(PAV)/154/2015-16 dated 29-01-2016 to the appellant, which was adjudicated vide the impugned order wherein the lower adjudicating authority has disallowed the Cenvat Credit of Rs. 14,70,854/- and confirmed the demand and ordered to reverse the same under Section 11D(2) of the Central Excise Act, 1944. The lower adjudicating authority has also ordered for recovery of the interest under the provisions of Section 11 DD of the Central Excise Act, 1944. Further, the lower adjudicating authority has also imposed penalty amounting to Rs. 14,70,854/- upon the Appellant under Rule 15 of Cenvat Credit Rules, 2004 readwith Section 11AC of the Central Excise Act, 1944.

3. Being aggrieved by the impugned order, the appellant preferred the present appeal, inter-alia, on the grounds that the impugned order on the ground that the goods in question i.e. 'Semi-automatic Strapping Machine' imported by them were not input or Capital Goods as the same were not used in or in relation to the manufacture of excisable goods is wrong; that they have not availed and utilized the CVD paid on the 'Semi-automatic Strapping Machine' for payment of central excise duty on goods cleared by them; that they have cleared the goods as such from their factory and whatever CVD paid, has been mentioned in the Invoice for clearance of 'Semi-automatic Strapping Machine' and the same has been paid as Central Excise duty on clearance of the said goods; that they have not availed and

utilized the Cenvat credit of CVD paid on such imported goods for payment of Central Excise duty on excisable goods manufactured by them; that as per the abstract of Cenvat Credit Account showing the details of credit and debit of CVD on imported goods viz. 'Semi-automatic Strapping Machine'; that it is clear that they have not utilized Cenvat credit for payment of Central Excise duty on excisable goods manufactured by them; that they have only made entries in the record for their ease and accounting purpose; that there is no wrong availment of Cenvat credit of CVD paid by them and there is no question for recovery of such credit as wrong availment; that Corrigendum/ Addendum to the Show Cause Notice can not be issued after submission of reply by them; that by corrigendum fact / merit of the case has been changed and they did not accept the same; that they relied upon the following case laws wherein it is held that after submission of written submission and after personal hearing, Corrigendum/ Addendum to Show Cause Notice can not be issued;

(i) CENTURY LAMINATING CO. LTD. Versus COMMISSIONER OF C. EX., MEERUT-II2009 reported at (236) E.L.T. 182 (Tn. - Del.)

(ii) CHAWLA TRADING CO. Versus COMMISSIONER OF CUS. (EXPORT), NHAVA SHEVA reported at 2015 (330) E.L.T. 470 (Tn. - Mumbai)

(iii) MAHINDRA 86 MAHINDRA LTD. Versus COMMISSIONER OF C. EX., MUMBAI-V reported at 2006 (196) E.L.T. 62 (Tn. - Mumbai)

4. The appellant further contended that that the case law of MAHINDRA and MAHINDRA LTD. Versus COMMISSIONER OF C. EX., MUMBAI-V reported at 2006 (196) E.L.T. 62 (Tn. - Mumbai) has distinguished in the case of CCE versus Konark Industries; that in the said case the Hon'ble Tribunal has observed that by the way corrigendum to Show Cause Notice the classification of the goods was corrected and the same was prospective in nature; that in this present case no such change has been made, but the entire new facts and grounds were introduced and added besides the original Show Cause Notice, which is not permissible; that the Department has also relied upon case law of CCE Calcutta versus Praduman Steel Ltd., reported in 1996 (82) ELT 441 (Sc) (Exhibit-6), where the Hon'ble Supreme Court has held that 'mere mention of wrong provision of law when power exercised is available even though under a different provision, is by itself not sufficient to invalidate exercise of that power'; that they also agreed that typographical mistakes can be amended and corrigendum of SCN can be issued; that wrong mention of Section or Rule in the Show Cause Notice do not change the merit of the case; that in the present case, by the way of Corrigendum/ Addendum, the merit of the case is changed by introducing new paragraph and by introducing new

Section under Central Excise Act and new set of allegations were made, even after submission of reply to the original Show Cause Notice and after personal hearing, which is not permissible in the law; that under para 6(a) of the Corrigendum/ Addendum dated 04.01.2017, it has been alleged that they have done only trading activity and collected the Central Excise duty from the buyer; that it has also been alleged that as per section 11D of the Central Excise Act, 1944, the Central Excise duty, so collected by them was required to be recovered from them; that they have already paid the amount of Central Excise duty so collected in invoices issued for clearance of the said goods and therefore the department could not recover the same amount again; that the department has alleged in para 6(b) of the Corrigendum that they in unauthorized manner, facilitated the buyer to avail the Cenvat Credit, which is wrong; that as the goods were cleared on payment of Central Excise duty and even if the buyer has taken the credit then the same is revenue neutral; that on the alleged goods, duty has been paid two times; that once, as CVD on importation and again in the form of Central Excise duty, on clearance; that on the alleged goods duty would have been borne one time and credit has to be taken one time; that the effect of payment of duty and cenvat credit is being neutralized and therefore, there is no revenue loss; that they rely on various case laws wherein it is held that even in not manufactured goods/ traded gods, if the same is cleared on payment of Central Excise duty, then there is no requirement of reversal of Cenvat Credit since payment of duty on such goods is as good as reversal of Cenvat Credit; that they rely upon the following case laws;

(i) M/s Vickers Systems International Ltd Vs CCE, Pune-I reported in 2008-TIOL-300-CESTAT-MUM(Exhibit-7)

(ii) M/s Bhusan Steel Ltd., versus Commissioner of Central Excise, reported in 2014 (299) ELT 254 (Tn.- Dl)

(iii) Commissioner of C. Excise versus Narmada Chematur Pharmaceuticals Ltd., reported in 2005 (179) ELT 276

5. That considering the above facts and circumstances, they reiterate that even, any Cenvat credit of CVD availed on imported goods and the same are cleared as such on payment of duty, it is nothing but one kind of reversal and there is no need to recover the said amount again; that demanding reversal of amount of Cenvat credit of CVD paid on imported goods viz. 'Semi-automatic Strapping Machine' is not legal and not correct; that the allegation made in the Show Cause Notice for wrong availment of Cenvat credit and the order for reversal and demand of Rs. 14,70,854/- during the period Apri1,2012 to February,2014 was required to be quashed and set aside; that extended period could not be invoked in this case;

that they have not mis-declared or suppressed any fact which was required to be declared before the department; that they have filed monthly return ER-1, time to time wherein they have already shown the amount of CVD paid on imported goods viz. 'Semiautomatic Strapping Machine' and they have paid the same amount as Central Excise duty, while clearing the imported goods, as such; that they have been clearing the imported goods as under invoice, declaring all facts and on payment of Central Excise duty; that they have not suppressed any material fact from the department; that from these facts, the demand is also hit by limitation of time as per provisions contained in Section 11A of the Central Excise Act, 1944; that invocation of extended period in the present Show-Cause Notice under Section 11A of the Central Excise Act, 1944 is not correct and lawful; that they reply upon the following case laws;

(i) Central Warehousing Corporation versus Commissioner of Service Tax, Ahmedabad, reported in 2016 (41) S.T.R. 106 (Tri.- Ahmd)

(ii) Saurin Investment Pvt. Ltd. versus Commissioner of Service Tax, Ahmedabad, reported in 2009 (16) S.T.R. 446 (Tri-Ahmd)

(iii) Chandra Shipping 86 Trading Service versus versus CCE Visakhapaatnam-II, reported in 2009 (13) S.T.R. 655 (Tr,- Bang)

(iv) Momentum Strategy Consultants P. Ltd versus Commr. Of S.T. Bangalore, reported in 2007 (7) S.T.R. 187 (Tn.- Bang)

(v) PUSHPAM PHARMACEUTICALS COMPANY Versus COLLECTOR OF C. EX., BOMBAY, reported in 1995 (78) ELT 401 (S.C.)

(vi) SARABHAI M. CHEMICALS Versus COMMISSIONER OF CENTRAL EXCISE, VADODARA, reported in 2005 (179) ELT 3 (S.C.)

(vii) COMMISSIONER OF CENTRAL EXCISE, MUMBAI Versus C.M.S. COMPUTERS P. LTD, reported in 2005 (182) ELT 20 (S.C.)

6. The appellant further contended that the imposition of penalty under rule 15 of the Cenvat Credit Rules, 2004 read with Section 11 AC of the Central Excise Act, 1944 in the present Show Cause Notice was baseless and not lawful under the provisions of the Central Excise Act, 1944 and the Cenvat Credit Rules, 2004; that the penalty under Rule 15 ibid was attractable where the assessee has availed and utilized the Cenvat Credit by breaching of any Rules made under the Cenvat Credit Rules,2004 or under the provisions of the Central Excise Act,1944; that it is established that they have not availed any credit by breaching any provisions made under the Cenvat Credit Rules, 2004 and/or the Central Excise Act, 1944 hence they were not liable for any penalty under Rule 15 of the Cenvat Credit Rules,2004;

that even there is no scope of penalty under Section 11D of the Central Excise Act, 1944; that imposition of penalty under Rule 15 ibid in the present case is required to be quashed and set aside; that they rely upon the case law of M/s. Indian Oil Corporation Ltd Vs Commissioner Of Central Excise and Service Tax, Vadodara-I reported in 2014-TIOL-1066-CESTAT-AHM; that there was no violation of any provisions of the Cenvat Credit Rules, 2004 and therefore, the demand of interest on such credit is not sustainable and required to be dropped; that the amount of Cenvat Credit which is required to be paid/ reversed has been already paid as Central Excise duty while clearing the goods as such; that the department can not made two allegations at a time, order for reversal of Cenvat amount of Rs. 14,70,854/- and also demand of Rs. 14,70,854/- under Section 11D (2) is not proper; that they have acted as a pure trader, they imported the goods, paid the CVD portion on their clearance and while clearing the same into DTA, they just passed on the CVD portion to their customers; that there is no revenue loss in this case and therefore the order is required to be set aside.

7. Personal hearing in the matter was held on 06-03-2018, which was attended to by Shri Moiz M. Dhankot, Chartered Accountant of the appellant and reiterated their written submission and further submitted written submission wherein he contended that they are engaged in the manufacture of 'Box Straps' falling under Chapter 39 of First Schedule to the Central Excise Tariff Act.1985; that they have imported 'Fully Automatic Strapping Machines' and 'Semi automatic Strapping Machine', which were necessarily to be supplied along with the 'Box Strap' for the purpose of packing; that they have cleared the goods as such from their factory and whatever CVD paid has been mentioned in the Invoice for clearance of 'Semi-automatic Strapping Machine' and the same has been paid as Central Excise duty on clearance of the said goods; that OIO has been passed for recovery of wrongly availed and utilized the Cenvat credit to the tune of Rs. 14,70,854/- under Rule 14 of the Cenvat Credit Rules. 2004 read with Section 11A(5) of the Central Excise Act, 1994; that OIO also passed confirming the demand of an amount of Rs. 14,70,854/- under section 11D (2) of the Central Excise Act. 1944 and ordered recovery of the same; that on single issue demand has been raised on two different ways i.e. one for reversal of Cenvat Credit and another for Demand of Duty; that in both ways nothing is required to be paid or reversed by the appellant as the appellant has been clearing the goods on payment of duty and the same is nothing but reversal of credit or payment of duty; that the appellant relied upon the case law of M/s Vickers Systems International Ltd Vs CCE. Pune I reported in 2008-TIOL-300- CESTAT-MUM and M/s Bhusan Steel Ltd.. vrsus Commissioner of Central Excise,

reported in 2014 (299) ELT 254 (Tn.- DI) and Commissioner of C. Excise versus Narmada Chematur Pharmaceuticals Ltd., reported in 2005 (179) ELT 276 (S.C.); that extended period could not be invoked; that all the facts were well within knowledge of the department; that the Appellant have not mis-declared or suppressed any fact which was required to be declared before the department; that they have filed monthly return ER-1, time to time wherein they have already shown the amount of CVD paid on imported goods viz. 'Semiautomatic Strapping Machine' and they have paid the same amount as Central Excise duty, while clearing the imported goods as such; that the order passed by the lower adjudicating authority may be set aside.

8. I have carefully gone through the facts of the case, impugned order, appeal memorandum and the submissions made by the appellant. The limited issue to be decided in the present appeal is whether the Lower Adjudicating Authority's orders disallowing the Cenvat Credit amounting to Rs. 14,70,854/- and demand of Rs. 14,70,854/- confirmed alongwith interest and penalty is, correct or otherwise.

8.1 It is noticed that during the course of audit, it was observed that the appellant had availed credit amounting to Rs.14,70,854/- on 'Fully Automatic Strapping Machine' and 'Semi-automatic Strapping Machine' imported by them. The appellant availed Cenvat Credit on 'Fully Automatic Strapping Machine' and 'Semi-automatic Strapping Machine' by considering them as capital goods, which were subsequently sold in the market, instead of using the same for manufacture of their final product.

9. To ascertain as to whether the goods covered under the definition of Capital Goods or otherwise, I have gone through the definition of 'capital goods' provided under rule 2(a)(A) of the Cenvat Credit Rules, 2004, which is reproduced as under:

> *(a) "capital goods" means,-*
> *(A) the following goods, namely:-*
> *(i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804 of the First Schedule to the Excise Tariff Act;*
> *(ii) pollution control equipment;*
> *(iii) components, spares and accessories of the goods specified at (i) and (ii);*
> *(iv) moulds and dies, jigs and fixtures;*
> *(v) refractories and refractory materials;*
> *(vi) tubes and pipes and fittings thereof; and*
> *(vii) storage tank,*
> *Used- (1)....."*

10. It is noticed from the above definition that the goods classified under Chapter 82, 84, 85, 90, Sub-Heading 6805 and 6804 or pollution control equipment, components, spares and accessories of the goods specified above, moulds and dies, jigs and fixtures, refractory and refractory materials, tubes and pipes and fittings thereof and storage tank, qualify as "capital goods" and Cenvat credit is available on such good, provided that they are used in the factory of the manufacturer for manufacture of final products. Whereas, in the present case, it appears that the goods under question i.e. "Fully Automatic Strapping Machine" and "Semi Automatic Strapping Machine", imported by the Noticee have been classified under Central Excise Tariff Chapter Sub Heading No. 3921900. Further, it appears that the said goods were not used in the factory of the Noticee for manufacture of their final product i.e. box straps, instead these machines were sold out under cover of invoices. Thus, the said goods viz. "Fully Automatic Strapping Machine" and "Semi Automatic Strapping Machine" does not cover under the definition of capital goods as given under rule 2(a) of the Cenvat Credit Rules, 2004.

11. Now, to examine as to whether the "Fully Automatic Strapping Machine" and "Semi Automatic Strapping Machine" are inputs for the appellant or otherwise, I have gone through the definition given at Rule 2 (k) of the Cenvat Credit Rules, 2004, which reads as under :-

(k) "input" means-

(i) all goods used in the factory by the manufacturer of the final product; or

(ii) any goods including accessories, cleared along with the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products; or

(iii) all goods used for generation of electricity or steam for captive use; or

(iv) all goods used for providing any output service; but excludes -

(A) light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol;

(B) Any goods used for –

(a) Construction 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 any taxable service specified in sub-clauses (zn), (zzl), (zzm), (zzq), (zzzh) and (zzzza) of clause (105) of section 65 of the Finance Act;

(C) capital goods except when used as parts or components in the manufacture of a final product;

(D) motor vehicles;

(E) any goods, such as food items, goods used in a guesthouse, residential colony, club or a recreation facility and clinical establishment, when such goods are used primarily for personal use or consumption of any employee; and

(F) any goods which have no relationship whatsoever with the manufacture f a final product.

Explanation....."

12. Thus, on plain reading of the above definition, it is noticed that the "Fully Automatic Strapping Machine" and "Semi Automatic Strapping Machine", imported by the appellant, cannot be considered as "input" also in as much as these machines have not been used in or in relation to the manufacture of their final product. Thus, it is evident that "Fully Automatic Strapping Machine" and "Semi Automatic Strapping Machine" could not qualify as "inputs" under rule 2(k) of the Cenvat Credit Rules, 2004. Further, "Fully Automatic Strapping Machine" and "Semi Automatic Strapping Machine" neither covered under the Capital Goods in terms of rule 2(a)(A) ibid nor covered under the Inputs in terms of rule 2(k) ibid, therefore, I hold that the appellant has wrongly availed Cenvat credit on "Fully Automatic Strapping Machine" and "Semi Automatic Strapping Machine".

13. Also, on going through the provisions of Rule 3(1) of Cenvat Credit Rules, 2004, it is noticed that a manufacturer or producer of final product or a provider of taxable service can avail / take CENVAT Credit of various duties/taxes leviable under different provisions of law, which is reproduced as below :-

> ***"RULE 3. CENVAT Credit.*** *- (1) A manufacturer or producer of final products or a provider of taxable service shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of -*
>
> *(i) the duty of excise specified in the First Schedule to the Excise Tariff Act, leviable under the Excise Act;*
>
> *(ii) the duty of excise specified in the Second Schedule to the Excise Tariff Act, leviable under the Excise Act;*
>
> *(iii) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act,1978 (40 of 1978);*
>
> *(iv) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);*
>
> *(v) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001);*
>
> *(vi) the Education Cess on excisable goods leviable under section 91 read with section 93 of the Finance (No.2) Act, 2004 (23 of 2004);*
>
> *(via) the Secondary and Higher Education Cess on excisable goods leviable under section 136 read with section 138 of the Finance Act, 2007 (22 of 2007);*
>
> *(vii) the additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under clauses (i), (ii), (iii), (iv), (v) (vi) and (via);*
>
> *(viia) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act,*
>
> *Provided that a provider of taxable service shall not be eligible to take credit of such additional duty;*

(viii) the additional duty of excise leviable under section 157 of the Finance Act, 2003 (32 of 2003);

(ix) the service tax leviable under section 66 of the Finance Act;

(ixa) the service tax leviable under section 66A of the finance Act;

(ixb) the service tax leviable under section 66B of the finance Act;

(x) the Education Cess on taxable services leviable under section 91 read with section 95 of the Finance (No.2) Act, 2004 (23 of 2004),

(xa) the Secondary and Higher Education Cess on taxable services leviable under section 136 read with section 140 of the Finance Act, 2007 (22 of 2007); and

(xi) the additional duty of excise leviable under section 85 of Finance Act, 2005 (18 of 2005)

paid on-

(i) any input or capital goods received in the factory of manufacture of final product or by the provider of output service on or after the 10th day of September, 2004; and

(ii) any input service received by the manufacturer of final product or by the provider of output services on or after the 10th day of September, 2004,

including the said duties, or tax, or cess paid on any input or input service, as the case may be, used in the manufacture of intermediate products, by a job-worker availing the benefit of exemption specified in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 214/86- Central Excise, dated the 25th March, 1986, published in the Gazette of India vide number G.S.R. 547 (E), dated the 25th March, 1986, and received by the manufacturer for use in, or in relation to, the manufacture of final product, on or after the 10th day of September, 2004."

14. In view of above, it noticed that the manufacturer can avail the credit of any capital goods or inputs received in their factory subject to such capital goods or inputs should be received for use in, or in relation to the manufacture of final product. However, it is noticed that in the present case, since the 'Fully Automatic Strapping Machine' and 'Semi-automatic Strapping Machine' neither qualify as 'capital goods' nor qualify as 'inputs', therefore, on this count also, the appellant is not eligible to avail Cenvat Credit on the same and I hold that the Cenvat credit of Rs. 14,70,854/-, availed by the appellant, is not admissible to them.

15. With regard to the plea of the appellant that corrigendum / addendum to show cause notice can not be issued, it is noticed that the lower adjudicating authority has correctly elaborated the issue at para 14 of the impugned order and in view of citations in case of M/s. Cauvery Iron and Steel (India) Ltd. v/s. CCE ,Hyderabad 2012(11)LCX 0043 and CCE, Calcutta v/s. Pradyuman Steel Ltd. reported at 1996 (82) ELT 441 (SC), and accordingly, I hold that corrigendum can be issued before adjudication of the show cause notice.

16. Further, to ascertain as to whether the appellant could collect Central Excise duty from their buyers considering their sale of 'Fully Automatic Strapping Machine' and 'Semi-automatic Strapping Machine' as "as such sale" or not, I have gone through the Rule 3(5) of the said Rules, which is reproduced herein below : -

> *Rule 3(5) When inputs or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in rule 9:*
>
> *Provided that such payment shall not be required to be made where any inputs or capital goods are removed outside the premises of the provider of output service for providing the output service :*
>
> Provided further that if the capital goods, on which CENVAT Credit has been taken, are removed after being used, the manufacturer or provider of output services shall pay an amount equal to the CEN VAT Credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of taking the CENVAT Credit, namely:-
>
> (a) for computers and computer peripherals: for each quarter in the first year @ 10%, for each quarter in the second year @ 8% for each quarter in the third year @5%, for each quarter in the fourth and fifth year @1%
> (b) for capital goods, other than computers and computer peripherals @ 2.5% for each quarter.

17. It is noticed that Rule 3(5) is applicable only when inputs or capital goods are removed as such from the factory of the manufacturer. In the present case, the goods viz. 'Fully Automatic Strapping Machine' and 'Semi-automatic Strapping Machine' removed by the appellant were neither inputs nor capital goods. Thus, I find that, Rule 3(5) is not applicable in the instant case.

18. The appellant contended that, the allegation of wrong availment and utilization of Cenvat credit was not acceptable to them, as they had not availed and utilized the CVD paid on 'Fully Automatic Strapping Machine' and 'Semi-automatic Strapping Machine' for payment of Central Excise duty on goods cleared by them. I find that, all of Cenvat credit availed by the appellant on account of CVD paid by them for import of "Fully Automatic Strapping Machine" and "Semi-Automatic Strapping Machine", the appellant been utilized the said CVD so availed, for payment of so called "Excise duty" while clearing the goods to their buyers. In the present case, the appellant has imported the 'Fully Automatic Strapping Machine' and 'Semi-automatic Strapping Machine' and sold such brought out items separately under cover of invoices to their buyers, which is nothing but "trading". Excise duty cannot be collected on such trading activity in view of Section 3 of Central Excise Act, 1944. The appellant in the present case has sold the 'Fully Automatic Strapping Machine' and 'Semi-automatic Strapping Machine' and also

charged and collected Central Excise duty thereon. Thus, the appellant has wrongly charged / collected the Central Excise duty from their buyers. Therefore, I hold that such amount of Central Excise duty charged / collected by the appellant on 'Fully Automatic Strapping Machine' and 'Semi-automatic Strapping Machine' is required to be confirmed under Section 11D of the Central Excise Act, 1944. Once, the demand itself has been confirmed, I also hold the confirmation of recovery of interest thereon.

19. With regard to the imposition of penalty under Rule 15 readwith Section 11AC of the Central Excise Act, 1944, I find that the appellant have contended that penalty should not be imposed upon them. It is noticed that the appellant is a registered Central Excise assessee, working under the self-assessment regime and hence they are well aware of the provisions of the Act, as well as the Cenvat Credit Rules, 2004. Despite this, they have wrongly taken Cenvat Credit of Rs. 14,70,854/- on the 'Fully Automatic Strapping Machine' and 'Semi-automatic Strapping Machine' imported by them as discussed hereinabove. The incidents came into the knowledge of the Department, during the course of Audit. Therefore, I find that this is a clear case of suppression of facts and deliberate violation of the provisions of Rule 15 of the Cenvat Credit Rules, 2004, that must be visited with penalty under Section 11AC of the Central Excise Act, 1944. Consequently, I hold that the appellant is liable for penalty under the provisions of Rule 15 of the Cenvat Credit Rules, 2004 readwith Section 11AC of the Central Excise Act, 1944.

20.1 In view of the discussion held, I uphold the impugned order *in toto* and reject the appeal filed by the appellant.

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

20.2 The appeal filed by the appellant assessee stands disposed off in above terms.

सत्यापित,
23/5
विपतेश रथारेतिया
अधीक्षक (अपील्स)

(चंद्रकान्त वलवी)
आयुक्त 16/4/18

By Regd. Post AD

To

M/s. M/s. Rajendra Industries, Plot No. 2636, Kranti Gate, Lodhika GIDC, Metoda, Kalavad Road, Rajkot	मेसर्स राजेन्द्र इंडस्ट्रीज, प्लॉट नंबर २६३६, क्रांति गेट, लोधीका जी.आय.डी.सी., मेटोडा, कालावाड रोड, राजकोट