::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
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
	V2/19 & 20/GDM/2018-19	LTU/MUM/CX/DC/KKP-19/2016-17	30-12-2016

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

KCH-EXCUS-000-APP-130-TO-131-2018-19

आदेश का दिनांक / Date of Order: **11.09.2018** जारी करने की तारीख / Date of issue: **14.09.2018**

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 **Appellant &** Respondent :-

1. **M/s Man Industries (India) Ltd., 485/2, 503/1 & 492, Anjar Mundra Highway,, Village Khedoi, Tal: Anjar, Dist: Kutch-370110, Gujarat.**
2. **M/s Man Industries (India) Ltd., 101, S.V. Road, Ville Parle (W), Mumbai.**

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

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

(i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमावली, 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 माग 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 मामलो 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 पयुक्त 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 (नं 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 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 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 ओर भी ध्यान आकर्षित किया जाता है। /
Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

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

:: ORDER IN APPEAL ::

The below mentioned appeals have been filed by the Appellants (*hereinafter referred to as* "Appellant No.1 to 2") as detailed in the Table below, against Order-in-Original No. LTU/MUM/CX/DC/KKP-19/2016-17 dated 30.12.2016 (*hereinafter referred to as* 'impugned order') passed by the Deputy Commissioner, Central Excise & Service Tax, LTU, Mumbai (*hereinafter referred to as* 'lower adjudicating authority') :-

Sl. No.	Appeal No.	Appellants	Name of the Appellant
1.	V2/19/GDM/2018-19	Appellant No.1	M/s Man Industries (India) Ltd 485/2, 503/1 &492, Anjar Mundra Highway, Village Khedoi, Anjar, District Kutch.
2.	V2/20/GDM/2018-19	Appellant No.2	M/s Man Industries (India) Ltd 101, S.V. Road, Ville Parle(W), Mumbai.

1.1 The brief facts of the case are that Appellant No. 1 having Registration No. AAACM2675GXM003 was engaged in the manufacture of pipes falling under Chapter 73 of the Central Excise Tariff Act, 1985 and was also registered with Service Tax under the category of 'Business Auxiliary Service' having Registration No. AAACM2675GST005. Appellant No. 2 was registered as Input Service Distributor (ISD) under Rule 2(m) of the Cenvat Credit Rules, 2004 (*hereinafter referred to as* "CCR,2004") having Service Tax Registration No. AAACM2675GST004.

1.2. During the course of audit, it was found that Appellant No. 2 had availed Cenvat credit of Service Tax paid on the services like Management, Maintenance or Repair Service, Rental Charges, Business Auxiliary Service etc. amounting to Rs. 12,52,541/- during the period from 11.07.2014 to 31.03.2016 and had distributed this entire credit to Appellant No. 1 who availed it for payment of Service Tax on the services of renting of Dumpsite i.e. storage of finished goods after clearance from the factory on behalf of their clients namely, M/s IOCL, M/s BPCL and M/s HPCL, claiming it as Business Auxiliary Service. It was found that the said credit of services qualify as input service only for providing output service and the said services were not at all related to manufacturing activities of Appellant No. 1 and also were availed beyond 'place of removal'. It was further found that the warehousing charges collected by Appellant No.1 for storage of pipes at Dumpsite were not included in the assessable value of their final products i.e. pipes for the purpose of payment of Central Excise duty. It was alleged that Appellant No. 1 had wrongly availed and utilized the said service tax credit for payment of Central Excise duty on pipes manufactured by

Appellant No. 1 and also alleged that Appellant No. 2 had wrongly distributed Service Tax credit to Appellant No. 1 in contravention of Rule 7(c) of CCR,2004.

2. Show Cause Notice No. 60/ADC(LTU-Audit)Mumbai/2016-17/Group-G dated 09.09.2016 was issued to Appellant No. 1 calling them to show cause as to why Cenvat credit of Service Tax amounting to Rs. 12,52,541/- should not be disallowed and recovered from them along with interest under Rule 14 of the CCR,2004 and also proposing imposition of penalties under Rule 15(4) and Rule 15(A) of CCR,2004 and proposing imposition of penalty upon Appellant No. 2 under Rule 15A of CCR,2004.

3. The Show Cause Notice was adjudicated by the lower adjudicating authority vide the impugned order who hold that Cenvat credit of Service Tax distributed by Appellant No. 2 to manufacturing unit at Anjar is not admissible to them as input services were not related to manufacturing activity and were availed after clearance of finished goods from factory i.e. beyond place of removal; that said input Service Tax credit can be utilized only towards Service Tax payment of output services provided for warehousing services at Dumpsite; that Appellant No.2 wrongly distributed Service Tax credit to the manufacturing unit of Appellant No. 1 in contravention of Rule 7(c) of CCR,2004.

3.1 The lower adjudicating authority disallowed Cenvat credit of Rs. 12,52,541/- availed by Appellant No. 1 and ordered for its recovery along with interest in terms of Rule 14 of CCR,2004 and imposed penalty of Rs.12,52,541/- under Rule 15(4) of CCR,2004 on Appellant No. 1 and imposed penalty of Rs. 5,000/- upon Appellant No. 2 under Rule 15A *ibid*.

4. Being aggrieved with the impugned order, Appellants No.1 and 2 preferred appeals on the following grounds:-

Appellant No. 1 :-

(i) The impugned order is illegal and unsustainable as adjudicating authority has failed to follow binding judicial precedent and overlooked the law laid down by the Hon'ble High Court of Bombay in the case of S.S. Engineers - 2016 (42) STR 3 which specifically dealt with the issue. It has been held by the Hon'ble High Court that Cenvat credit of inputs, capital goods and input services used for manufacture of goods or provisions of services is available in common pool and same can be utilized for payment of excise duty and/or service tax. Reliance also placed on the case laws of Sumita Tex Spin Pvt Ltd - 2015(39)STR 502, Thangvel & Sons - 2015(37)Service Tax Rules, 1994 144 and Laxmi Technology and Engineering Industries Ltd

- 2011(23) STR 265. The above case laws were specifically urged in its submission before the respondent however the same were not considered.

(ii) The respondent has overlooked the instructions issued by the Board vide Circular No. 381/23/2010/862 dated 30.03.2010.

(iii) The impugned order should have challenged distribution of credit at the end of Distributor and not at the end of Anjar Unit. Once the distribution by the ISD has not been challenged, the credit so distributed to the Anjar Unit can be utilized in accordance of the provisions of Rule 3 of the Cenvat Credit Rules.

(iv) The input service tax credit was correctly distributed by the ISD to Anjar Unit and it was not transfer from one unit to other unit. The Respondent has misconstrued the provisions of Rule 7(3) of the Cenvat Credit Rules, 2004. As per the said provisions, if the input service is wholly consumed by a unit, the same should be distributed to that unit only. In the present case, the input service were wholly used for providing output service- management of warehouse/dumpsite on which service tax was paid by the Anjar Unit, and hence the input service tax credit was distributed by the ISD to Anjar Unit. It was not distributed to any other unit. So there was no contravention of the said provision. The Anjar Unit manufacturer of Steel Pipes as well as service provider of management of warehouse at the dumpsite. As a service provider, the Anjar Unit was recipient of input services, which were used in provisions of output service.

(v) The respondent has wrongly propounded a theory to confine the activities of Anjar Unit within its registered premises. The Law does not restrict the provision of services within the factory only. In fact, the service can be rendered by the Anjar Unit from anywhere including from the dumpsite. Thus, the input service tax credit was rightly transferred by the ISD to Anjar unit.

(vi) Cross utilization of Cenvat credit is permissible under the Law in accordance with Rule 3 of Cenvat Credit Rules, 2004. Since Anjar Unit being both a manufacturer and service provider and having common Cenvat credit account, the cross utilization of input service tax credit for payment of central excise duty and vice versa is permitted since the same are available in a common pool under the Law. There was no restriction as such that the same had to be used only in corresponding output services. It could be used for payment of excise also. Reliance is placed

on the case law of Entraco Power Systems Pvt Ltd-2017-TIOL-866-CESTAT.

(vii) Correlation of input service with place of removal is not relevant as Appellant No. 1 was engaged in providing output services of management of warehouse/dumpsite and the input services were exclusively consumed in providing output service, on which service tax was paid by Anjar Unit. Therefore said services very much qualify for input service for the said output service. Since qualification of service is not disputed, unnecessary stretch made to the meaning assigned to place of removal is erroneous.

(viii) The appellant has not suppressed anything from the Department. There was no deliberate or wilful intention to either avail, distribute or utilize inadmissible credit or to evade payment of duty. Details of Cenvat credit received from ISD has been declared in the ST-3 returns. Hence, extended period of limitation of 5 years for recovery of Cenvat credit does not attract in this case.

(ix) The Anjar unit did not mis-utilize the said credit for payment of excise duty. There was no intention to evade payment of duty of excise. Therefore no penalty can be imposed on the Anjar Unit as well as ISD since the demand itself is not sustainable.

Appellant No. 2 :-

(i) There is no dispute that the services used by Anjar Unit would qualify as input services in respect of output services rendered by Anjar Unit. Hence, the said credit was rightly availed and distributed to the said Unit.

(ii) There is no dispute about credit availed by Appellant No. 2 and subsequently distributed to Anjar Unit. What is under dispute is utilization of credit by Anjar Unit. Hence, penalty under Rule 15A is unsustainable and unwarranted.

4.1 In Personal Hearing, Shri Ankur Upadhyay, Advocate appeared on behalf of both the Appellants on 17.07.2018 and reiterated the grounds of appeals and submitted that CBIC vide Circular No. 1065/4/2018-Cx dated 08.06.2018 has clarified about place of removal at Para 3 under General Principles at Page 2 of the Circular; that Cenvat credit of input, capital goods and services can be used for payment of Central Excise duty and / or Service Tax as common pool as clarified by CBEC vide Circular No. 381/23/2010/862 dated 30.03.2010 and CESTAT's order in the case of Entraco Power Systems Pvt. Ltd - 2017-TIOL-866-CESTAT-Mum and Hon'ble Bombay High Court in the case of S.S. Engineers - 2016 (42) STR 3; that no penalty is imposable on Appellant No. 2 for distribution as

there is no wrong distribution but correct distribution as per Rule 7(c) of the Cenvat Credit Rules, 2004; that their Mumbai Office is corporate office and hence, Rule 12A(4) of CCR, 2004 is not applicable.

Findings:-

5. I have carefully gone through the facts of the case, the impugned order, written as well as oral submissions made by the Appellants. The issue to be decided is whether Appellant No. 1 was eligible to avail Cenvat credit of Service Tax distributed by Appellant No. 2 or otherwise.

6. I find that Appellant No. 2 in their capacity of Input Service Distributor had availed credit of Service Tax paid on warehousing charges paid by them for the warehouses/dumpsites where the pipes manufactured by Appellant No. 1 were stored after being cleared from their factory on payment of Central Excise duty but these charges were not included in the assessable value of the pipes for payment of Central Excise duty. Appellant No. 1 collected charges from their buyers for warehousing along with Service Tax payable on the said charges under the category of 'Business Auxiliary Service'. The lower adjudicating authority disallowed the Cenvat credit of service tax availed and utilized by Appellant No. 1 for payment of Central Excise duty on the grounds that the said input services were received beyond the place of removal and these services were not related to the manufacturing activity, hence the said credit is not admissible to manufacturing unit of Appellant No. 1. On the other hand, Appellant No. 1 has argued that correlation of input service with place of removal is not relevant as Appellant No. 1 was engaged in providing output services of management of warehouse/dumpsite and the said input services were exclusively consumed in providing output service, on which service tax was paid by Anjar Unit; hence, the said services qualify for input service for the said output service. Appellant No. 1 further argued that when qualification of service is not disputed, unnecessary stretch made to the meaning assigned to place of removal is erroneous. I do not find any merit in the argument put forth by Appellant No.1. It is on record that their pipes i.e. final products were cleared from the factory on payment of Central Excise duty and same were stored at dumpsite by Appellant No. 1 on behalf of their buyers as duty paid goods. So, the place of removal in the present case was factory gate in terms of Rule 2(qa) of CCR,2004. It was Appellant No. 2 who had availed input services relating to said dumpsite and distributed to Appellant No. 1. Thus, it is cleared that the said input services were availed after clearance of goods from the factory. Hence, I am of the view that any services availed by Appellant No. 2 subsequent to the clearance of goods from factory of Appellant No.1 would not be covered under

the definition of input service for Appellant No. 1 under Rule 2(l) of CCR,2004. Further, there is no dispute that the charges collected by Appellant No.1 from their buyers for storage of goods at dumpsite were not included in the Assessable Value of their final products i.e. pipes. Thus, the said input services had no nexus with the manufacturing activities inasmuch as the said services were not related, directly or indirectly, in or in relation to the manufacturing of the pipes. Appellant No. 1 has not been able to justify as to how the said input services which were availed after clearance of the goods from their factory were in any way related to the manufacturing of their finished goods.

7. Appellant No. 1 argued that their Anjar Unit, being both a manufacturer and service provider and having common Cenvat credit account, the cross utilization of input service tax credit for payment of central excise duty and *vice versa* is permitted since the same are available in a common pool under the Law. They further argued that there was no restriction as such that the input service tax credit had to be used only in corresponding output service. They relied upon various case laws and Board's Circular No. 381/23/2010/862 dated 30.03.2010. I find that utilization of Cenvat credit is not the issue involved in the present case. The lower adjudicating authority has held that Cenvat credit of Service Tax credit was inadmissible to Appellant No. 1. So availment of Cenvat credit is the issue involved and not its utilization. I have also gone through case laws and Board's Circular No. 381/23/2010/862 dated 30.03.2010 relied upon by Appellant No.1. I find that the said case laws are regarding cross utilization of Cenvat credit i.e. whether Cenvat credit of Service Tax can be used for payment of Central Excise duty and *vice versa*. However, availment of Cenvat credit was not in dispute in the said case laws. Hence, the said case laws are not applicable to the facts of the present case. Similarly, Board's Circular *supra* is also regarding cross utilization of Cenvat credit and hence not applicable to the present case.

8. Appellant No. 1 has contended that impugned order should have challenged distribution of credit at the end of Input Service Distributor and not at the end of Anjar Unit; that once the distribution by the ISD has not been challenged, the credit so distributed to the Anjar Unit can be utilized in accordance of the provisions of Rule 3 of the Cenvat Credit Rules. I do not agree with the contention of Appellant No. 1. I find that as per Rule 9(5) of CCR, 2004, burden of proof regarding admissibility of the Cenvat credit is upon the manufacturer or provider of output service taking such credit. Hence, it was obligatory on the part of Appellant No. 1 to check admissibility of credit before taking the credit.

9. Appellant No. 1 has argued that extended period of limitation could not be invoked as they have not suppressed anything from the Department; that there was no deliberate or wilful intention to avail or utilize inadmissible credit or to evade payment of duty; that details of Cenvat credit received from Appellant No. 2 has been declared in the ST-3 returns. I find that wrong availment of Cenvat credit by Appellant No. 1 was detected during Audit of the records of Appellant No.1. The fact of availment of Cenvat credit of services would not have come to the knowledge of the Department and Appellant No. 1 would have continued to avail and utilize inadmissible credit, had the records of Appellant No. 1 not audited. Mere filing of returns and showing consolidated Cenvat credit data would not bring this to the knowledge of the Department. I am of the considered view that in era of self assessment, onus is upon assessee to comply with law on their own. Hence, required ingredients of suppression of facts for invoking extended period is existing in the present case. I, therefore, hold that extended period of limitation has been rightly invoked in the present case.

10. In view of above, I hold that Appellant No. 1 is not eligible to avail and utilize disputed Cenvat credit of Service Tax distributed by Appellant No. 2. I, therefore, uphold the confirmation of demand under Rule 14 of CCR,2004. Since demand is confirmed, it is natural that the confirmed demand is required to be paid along with interest at applicable rate under Rule 14 *ibid.* I, therefore, uphold the order to pay interest on confirmed demand.

11. Regarding imposition of penalty under Rule 15(4) of CCR,2004, Appellant No. 1 has contended that the Anjar unit did not mis-utilize the said credit for payment of excise duty; that there was no intention to evade payment of duty of excise, therefore no penalty can be imposed on the Anjar Unit since the demand itself is not sustainable. I find that Appellant No. 1 has wrongly availed Cenvat credit of input services which were consumed after clearance of finished goods from place of removal as discussed in detail above. Further, Appellant No.1 has suppressed the material facts of availment of inadmissible Cenvat credit, hence, Appellant No.1 is rightly held liable for imposition of penalty under Rule 15(4) of CCR,2004. I, therefore, uphold imposition of penalty under Rule 15(4) *ibid.*

12. Regarding imposition of penalty upon Appellant No. 2 under Rule 15A of CCR,2004, I find that Appellant No. 2 wrongly distributed Cenvat credit of Service Tax to the manufacturing unit of Appellant No. 1, in contravention of Rule 7(c) of CCR,2004 and thereby facilitated Appellant No.1 in wrongly availing and utilizing the said Cenvat credit. I, therefore, uphold imposition of penalty

upon Appellant No. 2 under Rule 15A of CCR,2004.

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

12.1 The appeals filed by the Appellants are disposed off as above.

सत्यापित ,

विपुल शाह
अधीक्षक (अपील्स)

(कुमार संतोष) 11/9/2018
आयुक्त (अपील्स)

By R.P.A.D.

To,

1. M/s Man Industries (India) Ltd,
   485/2, 503/1 &492,
   Anjar Mundra Highway,
   Village Khedoi, Anjar,
   District Kutch.

2. M/s Man Industries (India) Ltd,
   101, S.V. Road,
   Ville Parle(W),
   Mumbai.

Copy to:-

1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone Ahmedabad for kind information please.
2) The Commissioner, GST & Central Excise, Gandhidham Commissionerate, Gandhidham for necessary action.
3) The Dy. Commissioner, Central Excise & Service Tax, LTU, GLT-8, 29th floor, World Trade Centre, Cuffe Parade, Mumbai for information.
4) F No. V2/20/GDM/2018-19.
5) Guard File.