



::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
	V2/21/GDM/2018-19	LTU/MUM/CX/DC/KKP- 16/2016-17	23-12-2016

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

KCH-EXCUS-000-APP-90-2018-19

आदेश का दिनांक /
Date of Order: **24.07.2018** जारी करने की तारीख /
Date of issue: **26.07.2018**

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 :-**
Welspun Corp. Ltd., Plate & Coil Mills Division,, Survey No. 659 & 665,, Dist: Kutch-370110

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है। /

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए। /

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असारवा 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) नियमवली, 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 नियमवली, 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 For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
- धारा 11 डी के अंतर्गत रकम
 - सेनवेट जमा की ली गई गलत राशि
 - सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा।/
- For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores, Under Central Excise and Service Tax, "Duty Demanded" shall include :
- amount determined under Section 11 D;
 - amount of erroneous Cenvat Credit taken;
 - 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, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, 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:
- 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
 - 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.
 - 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.
 - 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 (न. 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.
 - 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 संश्लेषण 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.
 - पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए।
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय 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, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 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. Welspun Corp Limited, Plate & Coil Mills Division, Survey No. 659 & 665, Village: Varsamedi, Taluka: Anjar, District: Kutch, Pin Code – 370 110 (hereinafter referred to as 'appellant') filed present appeal against Order-in-Original No. LTU/MUM/CX/DC/KKP-16/2016-17 dated 23.12.2016 (hereinafter referred to as 'impugned order') passed by the Deputy Commissioner, Central Excise and Service Tax, Large Taxpayer Unit, Mumbai (hereinafter referred to as 'sanctioning authority').

2. The brief facts of the case are that during the course of audit of records of M/s. Inductotherm (India) Pvt. Ltd. (hereinafter referred to as 'supplier'), it was found that the supplier had removed certain inputs i.e. 'parts of Induction Furnace' as such by showing higher value in invoices and passing on unutilized cenvat credit on enhanced value of such clearance to the appellant; that the appellant availed cenvat credit of central excise duty paid on such goods received from the supplier; that the supplier availed cenvat credit of Rs. 7,036/- on such goods and removed the said goods as such to the appellant valued at Rs. 1,24,999/- involving central excise duty of Rs. 15,450/-, hence, excess central excise duty of Rs. 8,414/- paid by the supplier and availed as cenvat credit by the appellant. Thus, the appellant availed excess cenvat credit of Rs. 8,414/- on the enhanced value of the inputs cleared by the supplier as such. SCN No. C.Ex./GIM/DSCN/12/Welspun Corp./2015-15 dated 13.05.2015 was issued to the appellant for recovery of such excess avilment of cenvat credit of Rs. 8,414/-. The lower adjudicating authority confirmed the demand under Section 11A(4) of the Central Excise Act, 1944 (hereinafter referred to as 'Act') read with Rule 14 of the Cenvat Credit Rules, 2004 (hereinafter referred to as 'Rules') and order to recover interest on confirmed demand under Section 11AA of the Act read with Rule 14 of the Rules and imposed penalty of Rs. 8,414/- under Section 11AC of the Act read with Rule 15 of the Rules.

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

(i) The lower adjudicating authority give reference of Circular No. 940/01/2011-CX dated 14.01.2011 in the impugned order but there is no direct or indirect relevance of the said circular to the instant case; the clarification given in the said circular is meant to debar exempted goods from levy of central excise duty with intent to separate the exempted goods from cenvat chain; the adjudicating authority failed to appreciate definition of exempted goods rendered under Rule 2(B)(d) of the Rules; that the goods involved in the instant case were neither exempted nor chargeable to nil rate of duty whereas only question involved in the present case is extent of duty payable in

respect of 'as such' removal and not applicability of any exemption; even the department has nowhere disputed duty liability in respect of 'as such' removal, accordingly above circular is not applicable at all in present case.

(ii) If at all any allegation arises out of the transaction in question, it may be supplier's obligation to comply the provisions under Rule 3(4)(b) or 3(4)(c) of the Rules, as the case may be; that there is no dispute that the appellant on his part paid full amount of central excise duty as charged by the supplier; the supplier vide letter dated 12.10.2015 confirmed that they paid central excise duty through cenvat credit to the tune of cenvat credit availed and alleged excess duty paid through PLA; that the lower adjudicating authority erroneously disregarded these facts and issued the impugned order.

(iii) It has been held in the following cases that if excise duty is discharged on higher transaction value, the same is sufficient compliance of Rule 3(4) of the Rules and no further reversal/action is required to be taken by the department:

- BPL Technovision Pvt. Ltd. reported as 2016 (344) ELT 348 (Tri. Bang)
- Crystic Resins (I) Pvt. Ltd. reported as 2016 (337) ELT 604 (Tri.Del)

(iv) In view of above facts, revenue is neutral in the instant case insofar as loss of revenue is concerned inasmuch as both, the supplier as well as the appellant were operating under cenvat chain; the cenvat credit availed by the appellant was only to the tune of duty actually charged and paid by them in the instant transaction; there is no contravention of Section 11D of the Act insofar as duty of excise has actually been paid to the Government exchequer account.

(v) Allegation of contravention of Rule 9(5) of the Rules in the impugned order is baseless as they have maintained proper records of cenvat credit availed.

(vi) for invoking extended period of limitation prescribed under the proviso to Section 11A(1) of the Act, the department has to establish fraud, collusion, willful suppression or mis-statement of facts or contravention of any provision of law with intent to evade payment of duty, which did not happen in the present case; the appellant purchased the said goods in question from the supplier in August, 2012 under purchase order and invoices; the appellant regularly filed ER-1 returns and audit conducted by the department for period from April, 2011 to February, 2013 wherein period of alleged excess cenvat credit availed was included; that the contention of the department that the information of availment of alleged excess cenvat credit was suppressed by the appellant is not correct; hence, invoking extended period of limitation has no merit.

4. Personal Hearing in the matter was attended to by Shri Dinesh Kalantri, Vice President, who reiterated the grounds of appeals and submitted that the impugned

order is not correct and may be set aside in view of said CBEC Circular is not applicable in the instant case and provisions of law is very clear.

Findings:-

5. I have carefully gone through the facts of the case, the impugned order, the appeal memorandum and submissions made during the personal hearing. The issue to be decided is whether the impugned order, in the facts and circumstances of the case, denying availment of cenvat credit of Rs. 8,414/- is correct or not.

6. The lower adjudicating authority held that the supplier while clearing inputs as such to the appellant paid central excise duty on enhanced value and hence duty paid was higher than the cenvat credit availed by the supplier; that even if supplier paid central excise duty through PLA, those excess duty paid can not be treated as central excise duty in terms of Rule 3(5) of the Rules. Therefore, the excess duty paid is not duty but excess amount and hence availment of cenvat credit (by the appellant) of that excess amount was not correct as per Rule 3 of the Rules.

6.1 The appellant vehemently contested the impugned order stating that they are eligible for cenvat credit of central excise duty paid by them as they availed cenvat credit of central excise duty paid on the excisable goods i.e. 'parts of Induction Furnace' on strength of invoices issued by the supplier – M/s. Inductotherm (India) Pvt. Ltd. and they were eligible for availment of cenvat credit on the basis of invoices issued by the input supplier and the said invoices are authentic and valid document as per Rule 9 of the Rules to avail cenvat credit.

6.2 I find that as per Rule 3(5) of the Rules, when the inputs on which cenvat credit availed are removed as such from the factory premise, the supplier shall pay an amount equal to the credit availed in respect of such inputs. In other words, the supplier has to reverse/pay the cenvat credit so availed in case received inputs are subsequently removed. In this case supplier paid more central excise duty, by adopting transaction value of the said inputs, at the time of goods removed as such, by debiting cenvat credit account and paid excess duty through PLA. I find that the cenvat credit availed by the supplier is paid. I also find that the appellant was under bonafide belief that whatever duty they have paid is as charged by the supplier in the invoices. Hence, I am of the considered view that cenvat credit availed by the appellant is well within the provisions of the CCR, 2004 and there is no case of excess availment of cenvat credit. My views are supported by the decision of the Hon'ble CESTAT in the case of Belson Steel reported as 2016 (339) ELT 279 (Tri. Chan.) wherein Hon'ble CESTAT has held as under:

"6. In this case the penalty under Rule 26 of the Central Excise Rules, 2002 was sought to be imposed on the appellant on the allegation that appellant passed excess Cenvat credit to the manufacturer/buyer. The appellant has passed the Cenvat credit of the duty which they have paid to the manufacturer supplier and the appellant was under bona fide belief, that whatever duty, they have paid is the correct duty. In that circumstances, penalty under Rule 26 of the Central Excise Rules, 2002 is not imposable to the appellant, therefore, I set aside the impugned imposition of penalty on the appellant under Rule 26 of the Central Excise Rules, 2002."

(Emphasis supplied)

7. The lower adjudicating authority relied on Board's Circular No. 940/1/2011-CX. dated 14.01.2011 and held as under:

"The rationale of the above circular is very much applicable to the present case. As per the said circular, ever if the supplier pays any amount which can not be treated as any duty as mentioned under Rule 3 of the CCR, 2004, then even if the same amount has been collected from the buyer of those goods, units at the downstream i.e. buyer of those goods will not be eligible to avail cenvat credit of those amount either as input or capital goods, in terms of Rule 3 of CCR, 2004."

7.1 I would like to reproduce the said Circular dated 14.01.2011 for better understanding of the said circular, which reads as under:

"Circular No. 940/1/2011-CX., dated 14-1-2011

Subject : Application of provisions of Section 5A(1A) of the Central Excise Act, 1944 - Regarding.

Attention is invited to Board's Circular No. 937/27/2010-CX., dated 26-11-10 issued from F. No. 52/1/2009-CX1 (Pt.) [2010 (260) E.L.T. T3], wherein based on the opinion of the Law Ministry, it was clarified that in view of the specific bar provided under sub-section (1A) of Section 5A of the Central Excise Act, 1944, the manufacturer cannot opt to pay the duty in respect of unconditionally fully exempted goods and he cannot avail the CENVAT credit of the duty paid on inputs.

2. It is further clarified that in case the assessee pays any amount as Excise duty on such exempted goods, the same cannot be allowed as "CENVAT Credit" to the downstream units, as the amount paid by the assessee cannot be termed as "duty of excise" under Rule 3 of the CENVAT Credit Rules, 2004.

3. The amount so paid by the assessee on exempted goods and collected from the buyers by representing it as "duty of excise" will have to be deposited with the Central Government in terms of Section 11D of the Central Excise Act, 1944 . Moreover, the CENVAT Credit of such amount utilized by downstream units also needs to be recovered in terms of the Rule 14 of the CENVAT Credit Rules, 2004."

(Emphasis supplied)

7.2 In view of above, it can be seen that the said circular specifically discussed availment of cenvat credit on unconditionally fully exempted goods so as to exclude exempted goods from levy of central excise duty with intention to separate the exempted goods from cenvat chain. Whereas, in the present appeal, there is no transaction of exempted goods between the supplier and appellant and hence, the



said circular is not applicable to the facts and circumstances of the present case.

8. In view of above, I set aside the impugned order and allow appeal.

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

9. The appeal filed by the appellant is disposed off as above.

आयुक्त,
अ.पी.सी. शाह
(अपीलकर्ता)

26/03/2018

(कुमार संतोष)
आयुक्त (अपीलस)

By RPAD

To,

M/s. Welspun Corp Limited, Village:
Varsamedi, Taluka: Anjar, District: Kutch

मे. वेलस्पन कोर्प ली.,

गाँव: वरसामेडी, तालुका: अंजार, जिल्ला:

कच्छ.

Copy for information and necessary action to:

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone Ahmedabad for his kind information.
- 2) The Commissioner, CGST & Central Excise Kutch Commissionerate, Gandhidham.
- 3) The Deputy Commissioner, CGST & Central Excise Anjar-Bhachau Division, Gandhidham.
- 4) Guard File.

