



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

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सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क अपील / फाइल संख्या /
Appeal / File No.
V2/257/BVR/2017

मूल आदेश सं /
O.I.O. No.
82/Excise/Demand/16-17

दिनांक /
Date
31.03.2017

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

BHV-EXCUS-000-APP-052-2018-19

आदेश का दिनांक /
Date of Order: 20.04.2018

जारी करने की तारीख /
Date of issue: 27.04.2018

27.04.2018

Passed by **Dr. Balbir Singh, Additional Director General (Taxpayer Services), Ahmedabad Zonal Unit, Ahmedabad.**

अधिसूचना संख्या २६/२०१७-के.उ.शु. (एन.टी.) दिनांक १७.१०.२०१७ के साथ पढे बोर्ड ऑफिस आदेश सं. ०५/२०१७-एस.टी. दिनांक १६.११.२०१७ के अनुसरण में, डॉ. बलबीर सिंह, अपर महानिदेशक करदाता सेवाएँ, अहमदाबाद जोनल यूनिट को वित्त अधिनियम १९९४ की धारा ८५, केन्द्रीय 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 17.10.2017 read with Board's Order No. 05/2017-ST dated 16.11.2017, Dr. Balbir Singh, Additional Director General of Taxpayer Services, Ahmedabad Zonal Unit, Ahmedabad 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 Jai Bharat Steel Industries, Plot No. 204,,GIDC-II, Sihor Dist : Bhavnagar

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 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 मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

- (B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is 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 प्रतियों 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

- (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 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 :

- (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 मामले 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 प्रसस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। /
In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse
- (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /
In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
- (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
- (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए हैं। /
Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
- (v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। /
The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.
- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए। /
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पंढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण 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, 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 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

M/s. Jai Bharat Steel Industries, Plot no. 204, GIDC-II, Sihor, Dist. Bhavnagar (hereinafter referred to as "the appellant") having Central Excise Registration No. AACFJ1919KXM001 as manufacturer of excisable goods falling under Chapter 72 of the First Schedule of Central Excise Tariff Act, 1985 and availing CENVAT Credit facility under CENVAT Credit Rules, 2004 (hereinafter referred to as "CCR, 2004"), has filed this appeal against the OIO No. 82/Excise/Demand/2016-17 dated 31.03.2017 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central Excise City Division, Bhavnagar (hereinafter referred to as "the adjudicating authority").

2/- Briefly stated, the facts are that during the course of audit of the appellant, it was noticed that there was a difference in the amount of Cenvat Credit to the tune of Rs. 3,64,390/- shown in the Closing balance of ER-1 return for the month of March, 2013 as compared to the books of accounts for the F.Y. 2012-13. The Board's Circular No.783/16/2004-CX dated 28.04.2004 with regard to treatment of unutilized Cenvat Credit balance at the year end and simultaneously treating the same as expenditure in the Profit & Loss account giving unintended double benefit under the Income Tax and Central Excise Laws was taken into consideration in the instant case. Accordingly, a Show Cause Notice dated 19.09.2014 was issued alleging that the appellant had thus wrongly availed / utilised Cenvat Credit of Rs. 3,64,390/- which was recoverable under Rule 14 of the CCR, 2004 read with proviso to sub Section 4 of the Section 11A of the Central Excise Act, 1944 along with applicable interest under Rule 14 of the CCR, 2004 read with Section 11AA of the Central Excise Act, 1944. The SCN also proposed penalty under Rule 15(1) & 15(2) of the CCR, 2004 read with Rule 25(1) of the Central Excise Rules, 2002 with the provision of Section 11AC of the Central Excise Act, 1944.

3/- This Notice was adjudicated vide OIO No. 19/D/Excise/2014-15 dated 28.02.2014 by the Assistant Commissioner, Central Excise City Division Bhavnagar wherein the adjudicating authority denied the said CENVAT Credit amounting to Rs. 3,64,390/- under Rule 14 of CCR, 2004 read with Section 11A of the Central Excise Act, 1944 and ordered to recover interest under Rule 14 of the CCR, 2004 read with Section 11AA of Central Excise Act, 1944 and imposed equal amount of penalty upon the appellant under Rule 15 of the CCR, 2004 read with Section 11AC of the Central Excise Act, 1944.

4/- An appeal filed by the appellant against the above OIO dated 28.02.2014 was remanded back by the Commissioner (Appeals-III), Central Excise, Rajkot vide OIA No.BHV-EXCUS-000-APP-135-15-16 dated 28.02.2015 on the grounds that the lower adjudicating authority has not critically examined the claim of the appellant in light of the Board's Circular dated 28.04.2004 as to how the passing of C.Ex. Duty and VAT through the P&L Account is not correct although the relevant documents viz. Audit Report for the year 2012-13 and Certificate issued by the CAs dated 21.01.2015 were submitted. The Appellate Authority has further stated that as the relevant documents were not produced before him, the same needs verification whether the Cenvat Credit balance has been shown as expenditure in the P&L Account of the year or otherwise. And, whether there was any violation of the Rule 14 of the CCR, 2004 with regard to availment and utilisation of the Cenvat Credit by the appellant or otherwise.

5/- Subsequently, the impugned order bearing no.82/Excise/Demand/2016-17 against which this appeal has been filed was issued on 31.03.2017. The adjudicating authority reiterated the findings stated in the initial OIO dated 28.02.2014 and after considering the comments offered by the OIA dated 28.02.2015, denied the Cenvat Credit of Rs. 3,64,390/- under Rule 14 of the CCR, 2004 read with Section 11A of the Central Excise Act, 1944; ordered to recover Interest under Rule 14 of the CCR, 2004 read with Section 11AA of Central Excise Act, 1944 and imposed equal penalty of Rs. 3,64,390/- under Rule 15 of the CCR, 2004 read with Section 11AC of the Central Excise Act, 1944.



6/- Feeling aggrieved, the appellant filed this Appeal on the following grounds:-

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- That the Books of accounts for the year 2012-13 were prepared on the basis of Mercantile System of Accounting for the purpose of Income Tax Law and the provisions of the IT Law are different and not squarely applicable with the Central Excise Laws. There have been no material evidences to establish that the appellant has availed 'double benefit' under provisions of two laws.
- That Section 145(A) of the Income Tax Act, 1961 pertaining to method of accounting in certain cases explains that 'any tax, duty, cess or fee actually paid or incurred to bring the goods to the place of its location and condition as on the date of valuation shall include all such payment'.
- That the High Court in case of Commissioner of IT, Pune-III Vs. Loknete Balasaheb Desai SSK Ltd. reported in 2015-315-ELT-534 (Bom) has held that the expression 'incurred by the assessee' in Section 145(A) of the Income Tax Act relates to liability determined as tax, duty, cess or fee payable in bringing the goods to the location which makes it clear that the income chargeable under the head profits and gains shall be adjusted by the amount paid in tax, duty, cess, etc.
- That the CA have issued a certificate on 21.01.2015 that they have followed an inclusive system of accounting as per Section 145(A) of the IT Act, 1961 and the figures of Sales, Purchase and Stock are inclusive of Excise duty and VAT. The Excise duty and VAT etc are passed through P&L Account.
- That the appellant has not considered the Cenvat Credit in question under the Head 'Expenditure Side' but the such amount was shown in the purchase of Raw Materials, etc. and considered the amount shown in the said bills under the Head of 'Expenditure Side'.
- That in light of Board's Circular No.783/16/2004-CX dated 28.04.2004 the department was only required to inform the concerned IT authorities to safe guard Govt. Revenue. The intention of the Circular is to avoid availment of double benefit which may escape the notice in case the Cenvat Credit balance has been treated as expenditure in the P&L Account and has not been written off in the books of accounts.
- That the contravention of any Rules of the CCR, 2004 and the ER-I return was not challenged by the adjudicating authority.
- That the subject case has been decided by the impugned order out of the purview of the Central Excise Laws as there is no specification with regard to the so called 'double benefit'. The present case is directly connected to the IT Act, 1961 which is not an issue of the Central Excise Department with regard to mentioning of the wrong closing Cenvat Credit balance under dispute.
- That the appellant is not liable to pay penalty so imposed as there is no wrong availment of Cenvat Credit.

7/- The appeal was filed before the Commissioner (Appeals), Rajkot. The undersigned has been nominated as Commissioner (Appeals) / Appellate Authority as regards to the case of appellant vide Board's Order No. 05/2017-Service Tax dated 16.11.2017 issued by the Under Secretary (Service Tax), G.O.I, M.O.F, Deptt of Revenue, CBEC, Service Tax Wing on the basis of Board's Circular No. 208/6/2017-Service Tax dated 17.10.2017.

8/- Personal hearing was held on 28.03.2018. The appellant's representative appeared for the PH and reiterated the submissions to set aside the impugned order. He also submitted that in the instant case, action was required to be taken by the department to intimate the concerned Income Tax authorities and no Demand SCN was required to be issued.

9/- I have carefully gone through the facts of case as cited in the initial OIO dated 28.02.2014, OIA dated 28.02.2015 issued by the Commissioner Appeals-III, Rajkot, the impugned order, grounds mentioned in the appeal and the submissions made by the appellant. The question to be decided in this appeal is as to whether the appellant has availed double benefit of Income Tax and Central Excise in terms of Board's Circular No.783/16/2004-CX dated 28.04.2004 and whether the appellant is eligible for the amount

of Cenvat Credit of Rs.3,64,390/- shown as closing balance in the ER-1 return for the month of March 2013 viz-a-viz the amount treated in the Balance Sheet for the year 2012-13 or otherwise. au

10/- I find that the impugned order reiterates that while issuing the OIO dated 28.02.2014, the original adjudicating authority has mentioned that the Audit Report for the year 2012-13 and the Certificate of the CA were examined stating that the appellant's CA through oversight had not mentioned the correct fact at Sr.No21 in the Tax Audit Report in Form 3CD and the CA has also certified / audited / examined the statutory records of the appellant that the Excise Duty, VAT, etc. is passed through the P&L Account as per Section 145(A) of the Income Tax Act, 1961. I agree to the fact that the adjudicating authority has verified the documents which were necessary to be critically examined in the instant case.

11/- I also find a genuine observation of the adjudicating authority at para 9.5 of the impugned order that while the appellant was fully aware of the subject Board's Circular dated 28.04.2004 and the fact that due to oversight of the CA, the correct fact at Serial No.21 of the Tax Audit Report in Form 3CD was not mentioned, the same should have been brought to the notice of the auditors. But, after a lapse of about 10 months, the appellant produced a letter dated 21.01.2015 issued by their CA in the above regard. I find that such lapse of time in providing such certificate, intentional or unintentional creates reasonable doubts. Further, the possibility of issuing a revised Tax Audit Report rectifying the said mistake to justify their grounds was never explored by the appellant.

12/- The Commissioner Appeals-III, Rajkot, vide OIA No. No.BHV-EXCUS-000-APP-135-15-16 dated 28.02.2015 has stated that in absence of the documents, viz. The Audit Report for the year 2012-13 and the Certificate of the CA dated 21.01.2015, the case was required to be remanded back to the original adjudicating authority as the same needed verification whether the balance of the Cenvat Credit was shown as expenditure in their P&L Account for the year 2012-13 and whether there was any violation of Rule 14 of the CCR, 2004. In this regard, I agree with the adjudicating authority's stand and I find that the contentions pointed out in the OIA dated 28.02.2015 have been examined.

13/- To add to my above findings, I find that the subject Board's Circular dated 28.04.2004 explains about the unintended double benefit that can be taken in case when Cenvat Credit balance is treated as expenditure in P&L Account and has not been written off in the books of accounts. The meaning of sensitizing the officers of the department means such double benefit cannot be allowed to be taken. Hence, the appellant in the instant case cannot be allowed to avail such benefit only by virtue of a Certificate of the registered CA besides the other contentions that has been put forth by them.

14/- In view of the above, I find that the appellant ^{is} not eligible for the Cenvat Credit of Rs.3,64,390/-. Hence, the impugned order is upheld as detailed at para 5 of this order and the Appeal filed by the appellant hereby stands disposed off in the above terms.


(Dr. Balbir Singh)

Additional Director General (DGTS)

AZU, Ahmedabad

F.No. V2/257/BVR/2017

Date: /04/2018

BY RPAD.

To,
M/s. Jai Bharat Steel,
Plot no. 204, GIDC-II,
Sihor, Dist. Bhavnagar

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Copy to :

1. The Chief Commissioner, CGST & Central Excise, Ahmedabad Zone.
2. The Commissioner, CGST & Central Excise, Bhavnagar / Commissioner (Appeals), Rajkot.
3. The Jurisdictional Dy. / Assistant Commissioner, Central Excise & Service Tax Bhavnagar.
4. The Jt/Addl Commissioner , Systems, CGST, Rajkot
5. Guard File.