::आयुक्त (अपील्स) का कार्यालय,वस्तु एवं सेवा करऔरकेन्द्रीय 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 – 2477952/2441142Email: commrappl3-cexamd@nic.in

सत्यमेव जयते

रजिस्टर्डडाकए.डी.द्वारा

DIN-20211264SX000000BA91

क	अपील / फाइलसंख्या/ Appeal /File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/107/RAJ/2020	38 to 42/DC/KG/2019-20	29-05-2020

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

RAJ-EXCUS-000-APP-051-2021

आदेश का दिनांक / Date of Order:	30.11.2021	जारी करने की तारीख / Date of issue:	02.12.2021

श्रीअखिलेश कुमार, आयुक्त (अपील्स), राजकोट द्वारा पारित /

Passed by Shri Akhilesh Kumar,Commissioner (Appeals),Rajkot.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/वस्तु एवंसेवाकर,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/ST / GST, Rajkot / Jamnagar / Gandhidham :

घ अपीलकर्ता&प्रतिवादी का नाम एवं पता /Name & Address of theAppellant&Respondent :-

M/s. Kirloskar Engines India Ltd (Plot No. 23154/16 & 2330/31), GIDC, Almighty Gate Road D-4 Metoda, Rajkot-360021, Gujarat, .

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 सवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क आधानयम ,1944 का धारा 35B क अतगत 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- ३८००१६को की जानी चाहिए।/

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016in 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 dutydemand/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 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 Commissionerauthorizing 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 होंगे।/

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 कोपुनरीक्षण आवेदन :**
Revision application to Government of India:

इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलो में, केंद्रीय उत्पाद शुल्क अधिनियम,1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गतअवर 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 छूट (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 समायावधि 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 umbers 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-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 है। /
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. Kirloskar Engines India Limited (formerly known as M/s. Kirloskar Oil Engines Limited M/s KEIL), Plot No. 2315/16 & 2330/31, GIDC, Almighty Gate Road D-4, Metoda, Rajkot (hereinafter referred to as "**appellant**") has filed the present appeals against Order-In-Original No. 38 to 42/DC/KG/2019-20 dated 29.05.2020 (hereinafter referred to as **"impugned order"**) passed by the Deputy Commissioner, Central GST Division- II, Rajkot (hereinafter referred to as "**the adjudicating authority**").

2. During the course of Audit on the records of the Appellant by the officers of Audit Branch of erstwhile Central Excise, HQ, Rajkot on 22/23.12.2009 and 05.01.2010 covering the period from December-2007 to March-2009, and during the scrutiny of records related to accounts as well as availment of the Cenvat Credit of Service Tax paid on outward freight, it was observed that the Appellant has paid service tax on outward GTA pertaining to the clearances made from the factory gate and availed the Cenvat credit paid on such outward GTA. On plain reading of definition of input service, given under Rule 2(l) of the Cenvat Credit Rules, 2004, revealed that such credit of outward transportation service is not allowable as it covers the services eligible for credit - upto the place of removal.

2.1 It appears that outward transportation of final product is a post manufacturing activity and hence credit of input service is not available for such an activity. Rule 2(l) of the Cenvat Credit Rules, 2004 specifically provides for inclusion of activities like advertisement or sales promotion activities. But no such provision was made in the said Rule for outward transportation. On the contrary, it is limited upto the place of removal and therefore, it is clear that no credit can be availed in respect of service tax paid for the outward transportation of goods. The only exception in this case is transportation upto the place of removal i.e. where the goods are cleared from depots or branch offices, the credit of service tax paid on transportation from factory gate to such depots or branch office (place of removal) is available. However, in the present case, goods were sold from 3the factory gate as defined under Section 4 of the Central Excise Act, 1944 and therefore, the credit availed on this account did not appear to be correct.

2.2 A Show Cause Notice No. V.84/AR-VI/Div-I/ADC/118/2013 dated 30.05.2013 was issued by the Additional Commissioner, erstwhile Central Excise, Rajkot, for the period F.Y. 2007-08 to F.Y. 2011-12, demanding recovery of Cenvat Credit of Service Tax of Rs.46,73,392/- under provisions of Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A(1) of the Central Excise Act, 1944 and penalty under Rule 15(2) of the Cenvat Credit Rules, 1994 read with Section 11AC of the Central Excise Act, 1944 and the same was adjudicated confirming demand.

2.3 For the subsequent period, the Appellant was found to be continuing with same practice. Therefore, the following Show Cause Notices were issued to the Appellant, demanding recovery of Cenvat Credit of Service Tax as detailed in each column of SCN(s), under provisions of Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A(1) of the Central Excise Act,

1944, and penalty under Rule 15(1) of the Cenvat Credit Rules, 1994 read with Section 11AC of the C. Ex. Act, 1944.

Sr. No.	SCN No. & Date	Period cover under SCN	Amount of wrongly availed Cenvat Credit (Rs.)
1	AR-VI/Kirloskar/2011-12, dt.10.06.2013.	May-2012 to June-2012	52,779/-
2	Nil, dt.12.09.2013	July-2012 to August-2012	62,066/-
3	V.84(4)-10/MP/D/2010-11, dt. 03.10.2013	September – 2012 to March-2013	4,34,569/-
4	V.84(4)-02/MP/D/2015-16, dt. 08.07.2015	June-2014 to March – 2015	3,77,512/-
5	V.84(4)-13/MP/D/2016-17, dt. 16.06.2016	April-2015 to March -2016	3,28,865/-
		TOTAL	**12,55,791/-**

2.4 All the 5 (Five) Show Cause Notices, as detailed in table above, were adjudicated by the then Adjudicating authority, i.e. the Assistant Commissioner, erstwhile Central Excise Division-1, Rajkot vide O-I-O No. 27 to 31/D/AC/2016-17 dated 29/30.09.2016, confirming the demand of total amounting to Rs.12,55,791/-, along with interest under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A(1) of the Central Excise Act, 1944 and penalty under Rule 15(2) of the Cenvat Credit Rules, 1994 read with Section 11AC of the C. Ex. Act, 1944.

2.5 Being aggrieved by the O-I-O No.27 to 31/D/AC/2016-17 dated 29/30.09.2016, the Appellant preferred an appeal with the Commissioner (Appeals), Rajkot, who vide OIA No. RAJ-EXCUS-000-APP-094-2017-18 dated 10/12.10.2017, allowed the appeal by way of remand and set aside the impugned OIO dated 29/30.09.2016.

3. The Order in Appeal No. RAJ-EXCUS-000-APP-094-2017-18 dated 10/12.10.2017 was challenged by the Department before the Hon'ble CESTAT, who passed the Final Order No. A/12155-12165/2018 dated 12.10.2018 directing for Denovo proceedings.

4. The adjudicating authority, in the de novo proceedings, decided the impugned SCNs vide impugned order. While passing the impugned order, the adjudicating authority, after considering the submissions made and documents furnished by the Appellant, had observed that the sale effected by the Appellant have not been FOR destination sale and that the same took place at the factory gate and as the place of removal of goods has been found to be at the factory gate, the outward transportation of final product is clearly a post manufacturing activity and hence, Cenvat Credit on such outward GTA is not permissible under the Cenvat Credit Rules, 2004 (herein after referred to as "the CCR, 2004"). In view of above observations, the adjudicating authority vide impugned order has disallowed Cenvat Credit amounting to Rs. 12,55,791/- and confirmed the demand and ordered recovery of the same along with interest. The adjudicating authority also imposed a penalty of Rs. 12,55,791/- under Rule 15 of the CCR, 2004 read with Section 11AC of the Central Excise Act, 1944 (herein after referred to as "the Act").

5. Being aggrieved, the Appellant has filed appeal, inter-alia, contenting that

(i) The sales made by it to its various were on "FOR basis" and not on "Ex-factory basis"; that transit insurance and freight charges were borne by the Appellant and not separately revered from the customers; that such transit insurance and freight charges were inbuilt in the price of the goods on which the Central Excise duty was being paid by the Appellant.

(ii) Since the property /ownership in goods was getting transferred to the customers at the place/ destination of the customers, the sale took place at the Customers' destination in terms of Section 2 of the Act read with relevant provisions of the Sale of Goods Act, 1930.

(iii) It was availing Cenvat Credit of input service i.e., Outward transportation of the goods from its factory to the customers premises i.e., "up to the place of removal' as provided and permissible in terms of the definition of "input service" contained in Rule 2(l) of CCR, 2004;

(iv) Despite above undisputed factual and legal position and furnishing all the supporting evidences like copy of Customer's order, invoice, lorry receipts of the sample transactions as well as copy of insurance policy , the adjudicating authority confirmed the demand ;

(v) The adjudicating authority while passing the impugned order has relied upon Hon'ble Supreme Court's judgment in the case of Ultratech Cement Limited (2018 (9) GSTL337(SC) . However, this judgment is not applicable in its case; that post this judgment Board has issued a Circular No. 1065/4/2018-CX dated 08.06.2018; that the adjudicating authority while passing the impugned order has unjustifiably ignored/distinguished the binding instructions of Board as contained in aforesaid circular.

(vi) During the relevant period involved in the present case, the instructions/ clarifications issued by Board by circular dated 23.08.2007 and 22.12.2014 were in force and the same clearly applied in respect of the subject transactions entered by the Appellant. Therefore, assuming without admitting that the subsequent Circular dated 08.06.2018 issued by Board was not relevant, the earlier Circulars dated 23.08.2007 and 22.12.2014 were already in force and cannot be ignored and department was bound by it. ; that the availment of Cenvat Credit by it on outward transportation of goods in respect of the sale goods on FOR destination basis during the relevant period was in accordance with law as also in keeping with the guidelines contained in Circulars dated 23.08.2007 and 22.12.2014 ;

(vii) The reliance is placed upon the following judgments (1) Ultratech Cement Ltd Vs. CCE(2019-TIOL-1420-CESTAT-AHD(2) Genus Extrusions Ltd Vs. Commr of GST & C.Ex. (2019-TIOL-2560-CESTAT-MAD (3) G.K.N. Driveline India Pvt Ltd Vs. Commr of GST & C.Ex. (2019-TIOL-2762-CESTAT-MAD (4) Lucas TVS Ltd Vs. Commr of GST & C.Ex. (2019-TIOL-2982-TIOL-CESTAT-MAD

(viii) The findings recorded by the adjudicating authority at Para-8.5 of the impugned order has wrongly and improperly concluded that in the Appellant's case the sale

of goods has taken place at the factory gate; that merely because the VAT or CST liability is discharged by the Appellant on the sales made by them on the date given in the tax invoice, it cannot be inferred, as has been done erroneously by the adjudicating authority that the sale has taken place at the factory gate; that subject sales under dispute were all on "FOR Destination basis" and this character of the sales is neither lost nor can be presumed to have been lost merely because the VAT/CST liability is discharged on the basis of the date of the tax invoice ; that transaction has to be ascertained primarily from the intention of the parties with reference to the terms of the contract, the conduct of parties and the circumstances of the case, a principle embodied in clause (a) of Section 19 of the Sale of Goods Act, 1930 .

(ix) The risk in transit in respect of the goods remained with them as seller till the goods are accepted by the buyer; that this evident from the perusal of the Insurance Policy issued by TATA AIG General Insurance Company Limited ;

(x) The adjudicating authority failed to appreciate that the Insurance Policy placed on records by the Appellant was an "Open Policy " covering all types of goods as described under the heading "INTEREST INSURED" and sold/supplied/sent/traded in by the Appellant during the financial year mentioned therein ;

(xi) The adjudicating authority failed to appreciate that the transit insurance and transit charges were built in the price of the goods on which central excise duty is paid by the Appellant ; that as the sales are on "FOR Destination basis" , Appellant has included the transit insurance and transit charges borne by them for the purpose of determining the "assessable value" in terms of Section 4 of the Act and not claimed any deduction on that count clearly establish that the said charged formed part of the assessable value on which the duty was paid by the Appellant ;

(xii) The adjudicating authority has completely but conveniently ignored the OIA dated 07.06.2017 passed by the Commissioner (Appeals), Pune-II in respect of their plant at Kagal, Kolhapur, Maharashtra, wherein the facts and issue involved were identical.;

(xiii) The invocation of the penal provisions of Rule 15 of the CCR, 2004 read with Section 11AC of the Act and imposition of penalty thereunder on them in the is unjustified; that even if it is assumed without admitting that the availment of Cenvat Credit by the Appellant on outward transportation of goods was not correct, the issue certainly involved the interpretation of statutory provisions ; Moreover, there have been conflicting judgments of the Hon'ble Tribunal and the Hon'ble High Courts on this issue and the matter had travelled upto the Hon'ble Supreme Court; that the Circular dated 23.08.2007 and 22.12.2014 of Board on the issue continued to hold the field and remained operative and the Appellant had acted in keeping with the guidelines contained in the said Circulars only;

(xiv) The demand also covered the normal period of limitation and the subject SCNs were merely in the nature of a follow-up to the earlier SCNs issued on the same

issue and were covering subsequent period; that there was not even a whisper in the said notice which would justify the invocation of the provisions of Rule 15 of CCR, 2004 read with Section 11AC of the Act;

(xv) Not only that the subject 5 SCNs were in the nature of "follow-up demand notices " and issued for the normal period, the same did not even invoke Section 11AC of the Act read with Rule 15(2) of CCR, 2004; that the adjudicating authority could not have invoked the said provisions of Section 11AC of the Act read with Rule 15 of CCR, 2004 and imposed a penalty thereunder ;

(xvi) The adjudicating authority failed to appreciate that in the same matter in earlier round of adjudication, her predecessor had, vide his OIO dated 30.09.2016 even while confirming the demand, imposed a penalty to the extent of 10 % of the total amount of credit disallowed under Rule 15(1) of CCR, 2004;

(xvii) As the demand towards Cenvat Credit availed by them on outward transportation of goods raised and confirmed against them is not sustainable in law it is not liable for payment of any interest under Rule 15 of CCR, 2004 read with Section 11 AA of the Act.

6. Personal hearing in the matter was conducted on 17.08.2021. Mr. Shailesh Seth, Advocate and Mr. Yogesh Pandya, Senior Officer Taxation, appeared on behalf of the Appellant. He reiterated the submissions made in appeal memorandum. He relied upon various case laws in support his contention.

6.1 The Appellant vide letter dated 18.09.2021 filed another submission wherein it was, inter-alia, contended that:-

(i) They had also been served with separate SCN dated 25.04.2014 by the Additional Commissioner, Central Excise, Rajkot proposing recovery of Rs. 7,79,058/- for the period from April-2013 to March-2014 on identical grounds; that demand raised vide this notice was confirmed by the authority concerned against which the Appellant filed appeal before the Commissioner (Appeal) , who vide OIA No. RAJ-EXCUS-000-APP-14-15-16 dated 30.04.2015 allowed the appeal filed by the Appellant; that the department had not challenged this OIA before the Hon'ble Tribunal; that when on an identical issue involved for the intervening period has been decided in favor of the Appellant and the decision is accepted by the department it is not permissible in law to take a contrary stand ;

(ii) The reliance is placed upon following cases laws 1) Ultratech Cement Ltd Vs. CCE(2019-TIOL-1420-CESTAT-AHD(2) Commr Vs. Ultratech Cement Ltd (2020-TIOL-1638-HC-AHM-CX(3) Mahindra Reva Electric Vehicles P Ltd Vs. CCE (2016-TIOL-2963-CESTAT-BANG (4) Genus Extrusions Ltd Vs. Commr of GST & C.Ex. (2019-TIOL-2560-CESTAT-MAD)(5) C.G.Power & Industrial Solutions Ltd Vs. Commissioner (2020-TIOL-763-CESTAT-Del(6) Rane Brake India Ltd Vs. Commissioner (2019-TIOL-3696-CESTAT-MAD (7) Lucas TVS Ltd Vs. Commr of GST & C.Ex. (2019-TIOL-2982-TIOL-CESTAT-MAD (8)

G.K.N. Driveline India Pvt Ltd Vs. Commr of GST & C.Ex. (2019-TIOL-2762-CESTAT-MAD

(iii) The appellant also furnished relevant documents in support of his above contention.

8. I have carefully gone through the facts of the case, the impugned order, and submissions made in appeal memorandum as well as oral submissions made during the course of personal hearing. It is observed that the issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority disallowing the cenvat credit of Rs. 12,55,791/- confirming demand of the same along with interest and also imposing penalty of Rs. 12,55,791/- under Rule 15 of CCR, 2004 read with Section 11AC of the Act is correct, legal and proper or not.

9 I find that the Appellant had availed Cenvat Credit of service tax paid on outward GTA service during the period from May, 2012 to March, 2016. The adjudicating authority disallowed said Cenvat credit of service tax on the ground that outward GTA service was availed by the Appellant for transportation of their finished goods from their factory to customer's premises i.e. beyond place of removal, and hence, not covered under definition of "input service" in terms of Rule 2(l) of CCR, 2004. The Appellant has contested that entire sale was on FOR basis and hence, the buyer's premises was required to be treated as a place of removal.

9.1 I find that definition of "input service" as provided under Rule 2(l) of Cenvat Credit Rules, 2004 during the relevant period reads as under:-

> "(l) "input service" means any service,-
>
> (i) used by a provider of taxable service for providing an output service; or
>
> (ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,
>
> and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal;".

9.2 On perusal of the above legal provisions, it is observed that "input service" means any service used by the manufacturer, whether directly or indirectly, in or in relation to manufacture of final products and clearance of final products upto the place of removal, with the inclusion of outward transportation upto the place of removal. It is, therefore, evident that as per main clause - the service should be used by the manufacturer, which has direct or indirect relation with the manufacture of final products and clearance of final products upto the place of removal and the inclusive clause restricts the outward transportation upto the place of removal. As per Section 4(3)(c) of the Act, "place of removal" means a factory or any other place or premises of production or manufacture of excisable goods; a warehouse or any other place of premises wherein the excisable goods have been permitted to be stored without payment of duty or a depot, premises of

a consignment agent or any other place or premises from where the excisable goods are to be sold.

9.3 During the appeal proceedings, the appellant have submitted five set of customer order format, corresponding sales invoice and transportation document. I have perused these documents and find them to be as under:

(i) Goods against the Customer Order Format No. 1200003925 were cleared under Invoice No. 72131100422 dated 10.06.2012 to M/s Kataria Machinary Store, Udaipur wherein the freight is stated as Paid. I find that the rate per piece in the invoice and purchase order is the same. The consignment note of transportation of goods also indicate Invoice No. 72131100422 and freight as Paid.

(ii) Goods against the Customer Order Format No. 1200004106 were cleared under Invoice No. 72131100836 dated 16.08.20212 to M/s Royal Enterprises, Indore wherein the freight is stated as Paid. I find that the rate per piece in the invoice and purchase order is the same. The consignment note of transportation of goods also indicate Invoice No. 72131100836 and freight as Paid.

(iii) Goods against the Customer Order Format No. 1200004673 were cleared under Invoice No. 72131102727 dated 30.03.2013 to M/s Industrial Equipment Co., Yamunanagar wherein the freight is stated as Paid. I find that the rate per piece in the invoice and purchase order is the same. The consignment note of transportation of goods also indicate Invoice No. 72131102727 and freight as Paid.

(iv) Goods against the Customer Order Format No. 1200005977 were cleared under Invoice No. 72151100388 dated 25.06.2014 to M/s Shri Maruti Boring Works and pipes, Surat wherein the freight is stated as Paid. I find that the rate per piece in the invoice and purchase order is the same. The consignment note of transportation of goods also indicate Invoice No. 72151100388 and freight as Paid.

(v) Goods against the Customer Order Format No. 1200007143 were cleared under Invoice No. 72161101072 dated 26.03.2016 to Esquire Machines Pvt. Ltd., Vadodara wherein the freight is stated as Paid. I find that the rate per piece in the invoice and purchase order is the same. The consignment note of transportation of goods also indicate Invoice No. 72161101072 and freight as Paid.

9.4 From the above set of documents, I find that the rate per piece mentioned in the Invoice and the Customer Order Format are same. The freight is mentioned as Paid in the invoice and the Customer order format and the consignment note of the transporter also indicate that the freight charges are borne by the appellant.

9.5 Further, the appellant has also produced the copy of certificates of cost accountant Parkhi Limaye and Co, certifying that the appellant is availing the facility of transport contractor for delivering goods to customer gate. The bills raised by the transport contractor for the financial years 2010-11 to 2012-13 and 2014-15 to 2015-16 and the Transit Insurance for goods dispatched to customers during Financial year 2014-15 to 2015-16, are paid by M/s KOIL and are not charged separately to customers. These charges form part of total cost of sales of the products.

9.6 Further, the appellant has also produced the year-wise copies of the Insurance Policies issued by TATA AIG General Insurance Company Limited. I find that these policies are "Open Policies "covering all types of goods including the transportation of finished goods as described under the heading "INTEREST INSURED", by all means of conveyance including Sea/Air/Rail/Roads etc's . I also find some force in the Appellant's argument that it is not possible for them to take transit insurance consignment wise and hence, they have opted for "Open Policy". I further find that in the certificate furnished by the Appellant, the Cost Accountant concerned has certified that the cost of transit insurance has also been borne by the Appellant and not charged from their customers.

9.7 Hence, it is apparent that the terms of sale in respect of consignments in question are FOR sales at buyer's place. Since the sale of the finished goods by the appellant is on FOR buyers' destination, the place of removal would be the buyer's destination, where the ownership of the goods changes from the appellant to the buyer. Therefore, the services used for clearance of the finished goods till the buyer's destination would qualify as input service as per Rule 2 (l) of the CCR, 2004 discussed above.

9.8 I also find that the Hon'ble Tribunal, Ahmedabad had in the case of Ultratech Cement Ltd Vs. Commissioner of C.Ex., Kutch (Gandhidham) reported as 2019-TIOL-1420-CESTAT-AHM involving the same issue, held at Para 5 of their judgement that :

> 5. We find that the Chartered/ Cost Accountant has certified that the goods were sold on FOR basis by the Appellant and the freight/ damages in transit was responsibility of Appellant till the goods reached the doorstep of the Customers. Also we find that the consignment notes were raised upon the Appellant and they did not charge any amount except price of the goods from the customers. Thus in the light of above circular we find that as the ownership of the goods remained with the Appellants till the goods reached to the customer's doorstep and the freight charges as well as damage to the goods till destination were borne by the Appellants, hence they are eligible for the credit of service tax paid by them on outward freight. In case of *CCE & CU Vs. Roofit Industries Ltd. 2015 (319) ELT 221 (SC) = 2015-TIOL-87-SC-CX* the Hon'ble Apex Court held as under:
>
> > *12. The principle of law, thus, is crystal clear. It is to be seen as to whether as to at what point of time sale is effected namely whether it is on factory gate or at a later point of time, i.e., when the delivery of the goods is effected to the buyer at his premises. This aspect is to be seen in the light of provisions of the Sale of Goods Act by applying the same to the facts of each case to determine as to when the ownership in the goods is transferred from the seller to the buyer. The charges which are to be added have put up to the stage of the transfer of that ownership inasmuch as once the ownership in goods stands transferred to the buyer, any expenditure incurred thereafter has to be on buyer's account and cannot be a component which would be included while ascertaining the valuation of the goods manufactured by the buyer. That is the plain meaning which has to be assigned to Section 4 read with Valuation Rules.*
> >
> > *13. In the present case, we find that most of the orders placed with the respondent assessee were by the various Government authorities. One such order, i.e., order dated 24-5-1996 placed by Kerala Water Authority is on record. On going through the terms and conditions of the said order, it becomes clear that the goods were to be delivered at the place of the buyer and it is only at that place where the acceptance of supplies was to be effected. Price of the goods was inclusive of cost of material, Central Excise duty, loading, transportation, transit risk and unloading charges, etc. Even transit damage/breakage on the assessee account which would clearly imply that till the goods reach the destination, ownership in the goods*

remain with the supplier namely the assessee. As per the 'terms of payment' clause contained in the procurement order, 100% payment for the supplies was to be made by the purchaser after the receipt and verification of material. Thus, there was no money given earlier by the buyer to the assessee and the consideration was to pass on only after the receipt of the goods which was at the premises of the buyer. From the aforesaid, it would be manifest that the sale of goods did not take place at the factory gate of the assessee but at the place of the buyer on the delivery of the goods in question.

14. The clear intent of the aforesaid purchase order was to transfer the property in goods to the buyer at the premises of the buyer when the goods are delivered and by virtue of Section 19 of Sale of Goods Act, the property in goods was transferred at that time only. Section 19 reads as under:

> *"19. Property passed when intended to pass. - (1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.*
>
> *(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.*
>
> *(3) Unless a different intention appears, the rules contained in Sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer."*

15. These are clear finding of facts on the aforesaid lines recorded by the Adjudicating Authority. However, the CESTAT did not take into consideration all these aspects and allowed the appeal of the assessee by merely referring to the judgment in the case of Escorts JCB Ltd. Obviously the exact principle laid down in the judgment has not been appreciated by the CESTAT.

16. As a result, order of the CESTAT is set aside and present appeal is allowed restoring the order passed by the Adjudicating Authority.

From the above judgment, it is, thus, clear that till the goods are handed over to the buyer, the cost is borne by the assessee or in other words where the goods are cleared on FOR basis the freight paid on outward transportation would qualify as "Input Service". As regard reliance placed upon by the revenue on the judgment of the Apex Court in case of Ultratech supra, we find that the Hon'ble Supreme Court was concerned only with the "place of removal" but did not go into the aspect of "Point of sale" or the FOR price destination issue. Hence the said judgment is not applicable in the facts of the present case.

9.9 I also find that, the Hon'ble Tribunal, Ahmedabad had in the case of Sanghi Industries Ltd Vs. Commissioner of C.Ex., Kutch (Gandhidham) reported in 2019 (369) ELT 1424 (Tri.-Ahmd), involving the same issue, held at Para 5 of their judgement that :

> "From the above judgment it is thus clear that till the goods are handed over to the buyer, the cost is borne by the assessee or in other words where the goods are cleared on FOR basis the freight paid on outward transportation would qualify as "Input service". As regard reliance placed upon by the Revenue on the judgment of the Apex Court in case of *Ultratech* supra, we find that the Hon'ble Supreme Court was concerned only with the "place of removal" but did not go into the aspect of "Point of sale" or the FOR price destination issue. Hence the said judgment is not applicable in the facts of the present case."

9.10 Consequently the Hon'ble Tribunal held that :

> "8. In view of our above findings we hold that the appellants are eligible for the credit of service tax paid on outward freight. Accordingly, the impugned

order is set aside. We allow the appeals with consequential reliefs, if any MA (ORS) also stand disposed of."

10 I find that the ratio of both the above referred judgments is squarely applicable in the facts and circumstances of the present case. The judgement in the above cases is that of the jurisdictional Tribunal at Ahmedabad. It is settled legal position that the order of a higher appellate authority is binding on the lower Appellate Authority. Therefore, following the principles of judicial discipline, I rely upon the decisions of the Hon'ble Tribunal in the case cited supra and hold that impugned Cenvat Credit availed by the Appellant is admissible as the sale effected to the customers is on FOR destination basis.

11. I also find that in identical matter involving Cenvat Credit of Service Tax in respect of outward freight of Rs. 46,73,392/-, for the period F.Y. 2008-09 to March-2012 pertaining to the appellant, the then appellate authority vide OIA No. RJT-EXCUS-000-APP-217-14-15 dated 09.10.2014 has allowed the appeal filed by the appellant. Further, the department preferred appeal in the matter before the Hon'ble Tribunal, Ahmedabad, who vide Order No. A/11711/2017 dated 01.08.2017, had dismissed the appeal. The Department thereafter filed Tax Appeal No. 390 of 2018 against the said order of the Tribunal before the Hon'ble High Court. The Hon'ble High Court of Gujarat vide Order dated 31.07.2018 dismissed the appeal on monetary ground. Hence, the issue in the case has been decided against the Department for previous period.

12. In view of above findings I set aside the impugned order and allowed the appeal filed by the Appellant.

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

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

Superintendent
Central GST (Appeals)
Rajkot

30th November, 2021

(Akhilesh Kumar)
Commissioner (Appeals)

Date: .11.2021.

By RPAD

To	प्रति
M/s. Kirloskar Engines India Limited Plot No. 2315/16 & 2330/31, GIDC, Almighty Gate Road D-4, Metoda. Rajkot	श्री किर्लोसकर ईंजिंस इंडिया एलटीडी, प्लॉट नंबर -2315/16 तथा 2330/31, जीआईडीसी , ओलमाईटी गेट , रोड डी -4 मेटोडा- राजकोट

प्रतिलिपि :-

1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।

2) प्रधान आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क,राजकोट आयुक्तालय,राजकोट को आवश्यक कार्यवाही हेतु।

3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, मंडल -II, राजकोट को आवश्यक कार्यवाही हेतु।

4) गार्ड फ़ाइल।