

	::आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क:: O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE	 सत्यमेव जयते
	द्वितीय तल, जी एस टी भवन / 2 nd Floor, GST Bhavan रेस कोर्स रिंग रोड / Race Course Ring Road राजकोट / Rajkot - 360 001 Tele Fax No. 0281 - 2477952/2441142 Email: commrappl3-cexamd@nic.in	

DIN20221264SX000000F2D1

अपील / फाइल संख्या / Appeal / File No. GAPPL/COM/CEXP/235/2022	मूल आदेश सं / O.I.O. No. 163/AC / HG / BVR-2/2021-22	दिनांक / Date 28-03-2022
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अपील आदेश संख्या (Order-In-Appeal No.):

BHV-EXCUS-000-APP-114-2022

आदेश का दिनांक /
Date of Order:
09.12.2022

जारी करने की तारीख /
Date of issue: 12.12.2022

श्री शिव प्रताप सिंह, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri Shiv Pratap Singh, Commissioner (Appeals), Rajkot.

- ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर वस्तु एवं 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/ ST / GST, Rajkot / Jamnagar / Gandhidham :
- घ अपीलकर्ता & प्रतिवादी का नाम एवं पता / Name & Address of the Appellant & Respondent :-
M/s. Guru Ashish Ship Breakers, "UB Aggarwal House" 2291/2292-A/1, Hill Drive, Bhavnagar-364001

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 अपीलार्थ न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 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:-
- (ii) 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.
- (iii) उपरोक्त परिच्छेद 1(a) में बतलाए 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- 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) 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, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये 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 रजिस्ट्रार 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/- रुपये 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 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 नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है 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, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये 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 रजिस्ट्रार 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/- रुपये 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 fee of Rs. 1000/- 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/-



- (ii) 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 उप-आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपील की 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 Form 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.
- (iii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील की प्रतिक्रिया (सेट्टल) के प्रति अपील 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 अपील की प्रतिक्रिया 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 8 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपील की प्रतिक्रिया 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 को पुनरीक्षणयाविका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक 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 मूल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। /
In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse
- (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /
In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
- (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
- (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश को आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं 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.
- (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 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.
- (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 आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान उपर्युक्त ढंग से किया जाना चाहिये। इस तथा के हट्टे हुए भी की लिखी पढ़ी कार्य से बचने के लिए यथास्थिति अपील की न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाते हैं। /
In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in application to the Central Govt. As the case may be, is filed 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-1 in terms of the Court Fee Act, 1975, as amended.
- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील की न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों को और भी ध्यान आकर्षित किया जाता है। /
Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.
- (G) उच्च अपील की प्रतिक्रिया को अपील दायित्व 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.



:: अपील आदेश / ORDER-IN-APPEAL ::

M/s. Guru Ashish Ship Breakers, Bhavnagar (hereinafter referred to as "Appellant") has filed the present Appeal against Order-in-Original No. 163/AC/HG/BVR-2/2021-22 dated 28.03.2022 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Central GST, Division, Bhavnagar-2 (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, are that the Appellant holding Central Excise Registration No. AACFG7194BXM001, engaged in manufacture of excisable goods viz. Material obtained from Breaking of Old & Used Ship falling under Chapter 72 to 83 of Section XV of the first schedule to the Central Excise Tariff Act, 1985, availing benefit of Cenvat Credit as per the Cenvat Credit Rules, 2004. During the course of Audit, it was observed that the appellant had cleared excisable goods through different Consignment Agents. Further scrutiny of records revealed that the appellant had availed Cenvat Credit of Rs. 3,71,153/- & Rs. 6,25,490/- as Input Services on GTA in the month of April-2012 and April-2013 respectively and utilized the same towards payment of Central Excise Duty. The availment of Cenvat Credit of Service Tax, paid by their Consignment Agents, on the basis of the documents issued by the Consignment Agents was not legal and proper. A show cause notice No. V/15-114/Dem/HQ/2015-16, dated 19.1.2016 was issued to the appellant by the Joint Commissioner, Central Excise, H.Q. Bhavnagar. The aforesaid Show Cause Notice, after issuance of a corrigendum dated 26.10.2016 in pursuance of CBEC Circular dated 29.9.2016 under which monetary limits for adjudication were revised and as a result, fell under the competence to be adjudicated by the Assistant Commissioner of Central Excise, Rural Division, Bhavnagar. The aforesaid Show Cause Notice was Adjudicated vide Order-In-Original dated 30.12.2016 wherein the Adjudicating Authority confirmed the demand of wrongly availed Cenvat Credit of Rs. 9,96,643/- availed and utilized by the appellant and ordered to its recovery under Rule 14 of Cenvat Credit Rules, 2004 read with Section 11A(4) of the Central Excise Act, 1944 alongwith interest under Section 11AA of Central Excise Act, 1944 and also imposed a general penalty of Rs. 5000/- under Rule 15A of Cenvat Credit Rules, 2004.

3. Being aggrieved by the impugned order, the Appellant filed appeal No. V2/65/BVR/2017 before Commissioner (Appeals), Central GST & Excise, Rajkot who vide Order-In-Appeal No. BHV-EXCUS-000-APP-055-2018-19 dated 01.05.2018 remanded the matter back to the Adjudicating Authority to verify the entire claim with documentary evidences and to confirm that the goods or services covered by the said documents have been received and accounted for in the books of account of the Appellant.



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4. The Adjudicating Authority vide impugned order confirmed the demand alongwith interest and penalty.

5. Being aggrieved, the Appellant has preferred the present appeal on various grounds as under:

(i) The impugned order is non-speaking and non-reasoned since the Adjudicating Authority has not dealt with the pleas raised by them and hence the impugned order is liable to be set aside.

(ii) The Show Cause Notice is time barred since their records were audited by the officers once but did not find any short-payment from records. The demand is for the month of April, 2012 & April, 2013 and the Show Cause Notice was issued on 19.01.2016 received by them on 02.02.2016.

(iii) They had rightly taken and availed the cenvat credit of Rs. 9,96,643/- of Service Tax on freight (GTA) paid by their consignment agents. The Adjudicating Authority twisted the issue and recorded vague findings. As per Rule 2(1)(d)(B) of the Service Tax Rules, 1994, the Service Tax on GTA is required to be paid by the person who pays the freight either himself or through his agent. In their case, the consignment agents are rendering several services to the Appellant and hence the consignment agent as the agent of the Appellant paid the Service Tax on transportation charges and collected from the Appellant which is as per the Service Tax Rules. There are some minor defect in the consignment notes issued by their consignment agents, which are technical in nature and the fact of duty payment is not in doubt. If all prescribed details are not available in consignment notes on which they had taken the Cenvat Credit, then they requested the Assistant Commissioner to allow Cenvat credit as per proviso to Rule 9(2) of the Rules. There is no intention on their part to defraud the revenue or evade payment of duty and hence they are not liable for penalty.

(iv) The penalty under Rule 15A of the Rules is not imposable since the Adjudicating Authority has not given any grounds in his findings for contravention of which Rule or for what act.

6. The matter was posted for hearing on 29.11.2022. CA Sarju S. Mehta appeared for personal hearing in virtual mode. He reiterated the submissions made in the appeal and those in the written submissions dated 29.11.2022 sent by email. He submitted that the Appellant had rightly taken the Cenvat credit of service tax on GTA paid by their consignment agents. In the absence of any suppression or fraud on their part, extended period cannot be invoked and the demand was time barred. Therefore, he requested to set aside the Order-In-Original and allow consequential relief.

6.1 The CA in his written submission stated that the Show Cause Notice is



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time barred and subsequent the impugned order since there is no evidence or discussion regarding suppression of facts with intent to evade the Central Excise duty and thus, extended period cannot be invoked and Show Cause Notice is time barred. He relied upon the decision in the case of Pahwa Chemicals - 2005 (189) ELT 257, L&T - 2007 (211) ELT 513 and Usha Martin Construction - 2008 (228) ELT 276, MTR Foods Ltd. v/s Commr. of C. Ex., Bangalore reported in 2014(312) ELT 730 (Tri.-Bang.), (ii) SDL Auto Pvt. Ltd. v/s Commr. of C. Ex., Delhi-IV reported in 2013(294) ELT 577 (Tri.-Del.).

6.2 He further submits that the entire demand is to be set aside on the ground of limitation only as Revenue authority cannot invoke the extended period of limitation, when the records of Appellant were audited by the officers once but did not find any short-payment from records. The second audit party, doing the audit of same period or over lapping period, cannot allege that the Appellant has misstated or suppressed the facts from the departments. They rely on the case of Trans Engineers India Pvt. Ltd. - 2015 (40) S.T.R. 490 (Tri.-Mum.)

6.3 The Appellant is a ship breaker dispatching M. S. Plates and Waste & Scrap obtained by breaking up of old & used ships by them through their consignment agents. They did not pay the freight, but the consignment agents paid the same. The consignment agents were paying the freight to the transporters and also the consignment agents have discharged their service tax liability on such freight amounts paid by them and in this connection their client has submitted copy of service tax returns of the consignment agents to the adjudicating authority, wherein it can be ascertained that the service tax liability has been discharged by these consignment agents. The consignment agents after deducting the freight and service tax paid thereon from the total amount received from the ultimate buyers paid the remaining amount to the Appellant. In the instant case, Consignment agents are rendering several services to the appellant and hence the consignment agent, as the agent of the appellant, paid the service tax on transportation charges and collected the same from the appellant, which is as per the Service Tax Rules. Hence, they have rightly taken the credit of service tax paid by their consignment agent and received from their client and they rely on Para- 18(a) of the Explanatory Notes on Budget changes 2007-08 circulated vide D.O. F. No. 334/1/2007-TRU dated 28/2/2007. That a liberal view should be taken and allow the credit taken by them. In Para 3.4 of CBE&C circular No. 120/01/2010-ST dated 19/1/2010, it has been clarified that - In case of incomplete invoices, the department should take a liberal view in view of various judicial pronouncements by Courts. They rely on the case of Idea Mobile Communication v/s CCE - (2011) 30 STT 148 (CESTAT) = 2010 (20) S.T.R. 755 (Tri.-Del.). There is no intention to defraud the revenue or



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evade payment of duty and they are not liable for penalty.

7. I have carefully gone through the case records, impugned order and appeal memorandum filed by the Appellant. I find that the issue to be decided in the case on hand is whether the Appellant is eligible to avail Cenvat Credit on consignment sale note issued by their consignment agents or otherwise.

8. I find that the Appellant during April-2012 & April-2013 availed Cenvat credit of input services on Goods Transport Agency on the strength of consignment sale notes issued by their consignment agents through whom the Appellant used to clear their goods to the ultimate consumer. The Service Tax on Goods Transport Agency is covered by reverse charge mechanism and the person who pay the freight is liable to pay Service Tax.

"(d) "person liable for paying service tax", -

(i) In respect of the taxable services notified under sub-section (2) of section 68 of the Act, means,-

(A)

(B) In relation to service provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,-

(I) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);

(II) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;

(III) any co-operative society established by or under any law;

(IV) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;

(V) any body corporate established, by or under any law; or

(VI) any partnership firm whether registered or not under any law including association of persons;

any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage:

It is the contention of the Appellant that the consignment agents have paid the freight and Service Tax to the goods transport agency. On plain reading of the sample copies of consignment sale note issued by the consignment agents of the Appellant, it appears that there is no mention of Service Tax registration number and nor they have produced any evidences in form of S.T.-3 returns of the consignment agents to substantiate they claim. To pay Service Tax, the Service Tax registration is must without which the Service Tax cannot be deposited. Simply calculation and mention of Service Tax amount on freight in the consignment sale note issued by their consignment agents is nothing but an attempt to take undue benefit which is otherwise not available to them. Further, the Appellant had issued invoices to their consignment agents and



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based on which the agents used to issue consignment sale note. For example, Invoice No. EX. 545 dated 09.06.2012 issued by the Appellant to their consignment agent M/s. Global Ispat Link for quantity 35.590 M.T. having gross value of Rs. 11,00,115/- including transportation and excise duty. Based on the said invoice, the consignment agent M/s. Global Ispat Link has issued consignment sale note having Sr. No. 211 without any date, wherein the consignment agent charged Rs. 11,00,087/- by selling the said goods to M/s. Beharilal Steel Co., Mandi Gobindgarh. The consignment agent has mentioned Rs. 86,166/- as expenses towards freight, local cart, kanda, unloading, loading, commissioner, Service Tax and deducted the same from total amount of Rs. 11,00,087/- and hence mentioned the net amount of Rs. 10,13,921/-. On conjoint reading of both, the invoice and consignment sale note, it appears that the value of invoice is higher than the value of consignment sale note. Further, the Appellant has already charged and recovered the transportation charges from their consignment agents in the invoices. The consignment agents simply calculate and mention the Service Tax amount on the transportation charges mentioned by the Appellant. This is a very serious act to defraud the government exchequer.

9. Further, to avail Cenvat credit, the legislation has described the types of documents on which same can be availed. As per Rule 9 of the Cenvat Credit Rules, 1994,

"RULE -9: Documents, Records and Returns Statutory Provisions

(1) The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely :-

(a) an invoice issued by-

(i) a manufacturer for clearance of -

(i) inputs or capital goods from his factory or depot or from the premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer;

(ii) inputs or capital goods as such;

(ii) an importer;

(iii) an importer from his depot or from the premises of the consignment agent of the said importer if the said depot or the premises, as the case may be, is registered in terms of the provisions of Central Excise Rules, 2002;

(iv) a first stage dealer or a second stage dealer, as the case may be, in terms of the provisions of Central Excise Rules, 2002; or

(b) a supplementary invoice,

Explanation.- For removal of doubts, it is clarified that supplementary invoice shall also include challan or any other similar document evidencing payment of additional



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amount of additional duty leviable under section 3 of the Customs Tariff Act; or

(bb) a supplementary invoice,

(c) a bill of entry; or

(d) a certificate issued by an appraiser of customs in respect of goods imported through a Foreign Post Office; or

(e) a challan evidencing payment of service tax, by the service recipient as the person liable to pay service tax; or

(f) an invoice, a bill or challan issued by a provider of input service on or after the 10th day of, September, 2004; or

(g) an invoice, bill or challan issued by an input service distributor under rule 4A of the Service Tax Rules, 1994.

Provided that the credit of additional duty of customs levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975 (51 of 1975) shall not be allowed if the invoice or the supplementary invoice, as the case may be, bears an indication to the effect that no credit of the said additional duty shall be admissible;

(2) No CENVAT credit under sub-rule(1) shall be taken unless all the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994, as the case may be, are contained in the said document:

Provided that if the said document does not contain all the particulars but contains the details of duty or service tax payable, description of the goods or taxable service, assessable value, central excise or service tax registration number of the person issuing the invoice, as the case may be, name and address of the factory or warehouse or premises of first or second stage dealers or provider of output service, and the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, is satisfied that the goods or services covered by the said document have been received and accounted for in the books of the account of the receiver, he may allow the CENVAT credit."

Further, Rule 4A of the Service Tax Rules, 1994 states that:

Rule 4A. Taxable service to be provided or credit to be distributed on invoice, bill or challan-

"(1) Every person providing taxable service, [not later than [thirty] days from the date of [completion] of such taxable service or receipt of any payment towards the value of such taxable service, whichever is earlier, shall issue an invoice, a bill or, as the case may be, a challan signed by such person or a person authorized by him in respect such taxable service provided or [agreed]to be provided and such invoice, bill or, as the case may be, challan shall be serially numbered and shall contain the following, namely :-

(i) the name, address and the registration number of such person;

(ii) the name and address of the person receiving taxable service;

(iii) description and value of taxable service provided or agreed to be provided; and

(iv) the service tax payable thereon."

On conjoint reading of the provisions of Rule 9 of the Cenvat Credit Rules, 1994



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and the Service Tax Rules, 1994, it is amply clear that there is no mention of consignment sale note as valid document for availing or distributing the Cenvat Credit. Further, there is no mention of Service Tax Registration number, description of goods, address of the person receiving taxable service i.e. the Appellant. All these missing vital ingredient lead towards the conclusion that the Appellant is not eligible to avail Cenvat Credit of input service on Goods Transport Agency on the basis of improper documents i.e. consignment sale notes issued by their consignment agents. Further, the consignment agents are not the goods transport agency who have issued invoices and/or consignment notes based on which the Appellant have taken Cenvat Credit. Therefore, I am of the considered view that the Cenvat Credit taken on invalid documents is not available to the Appellant and accordingly I order so.

10. It is the contention of the Appellant that liberal view should be taken and allow the credit taken by them. On this, as discussed in above paras, the Cenvat Credit taken on invalid documents is contrary to statutory provisions. The jurisdictional Assistant Commissioner/Deputy Commissioner is empowered to allow the credit subject to his satisfaction. But here, the document is not a valid document for availing Cenvat Credit and not to the satisfaction of JAC/DC. Further, it is not forthcoming whether, the Appellant in terms of Rule 9(2) of the Cenvat Credit Rules, have applied to the jurisdictional Assistant Commissioner/Deputy Commissioner to his satisfaction to determine the parameters thereunder or otherwise. The liberal view as discussed in CBEC Circular No. 120/01/2010-ST dated 19.01.2010 or allowed in catena of judgments can be allowed only and only on the basis of incomplete valid documents and not on invalid documents.

11. It is the contention of the Appellant that the Show Cause Notice is time barred. On this, I find that during the audit conducted by the Departmental officers, the wrong availment of Cenvat credit was noticed. The observation was brought to notice of the Appellant vide Final Audit Report No. 280/2013-14 dated 01.05.2014 followed by numbers of letters issued by the jurisdictional Range Superintendent, but the Appellant has not accepted the same and hence the Department was left with no option but to issue Show Cause Notice. The Appellant have availed Cenvat Credit on invalid documents which is not available to them. Simply mention of Cenvat Credit in ER-1 returns is not the disclosure of all the material facts to the Central Excise Department. It was noticed only during the audit of the records of the Appellant. Had the audit not been conducted, the irregularity would have gone unnoticed. The Appellant is well within the knowledge of availment of Cenvat Credit on invalid documents and also knowing the procedure under Rule 9(2) of the Cenvat Credit Rules, 2004 which the jurisdictional Assistant Commissioner/ Deputy Commissioner is



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empowered to allow the Cenvat credit subject to his satisfaction but they have not taken this route since they were aware that they have wrongly availed Cenvat Credit on invalid documents which is otherwise not available to them. Therefore, the Appellant suppressed the material facts from the Department and hence the Show Cause Notice covering the period April-2012 & April-2013 issued on 19.01.2016 is well within the extended period of 5 years as envisaged under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A(4) of the Central Excise Act, 1944. Once the suppression is proved, the Appellant is liable for penalty as imposed vide the impugned order.

11.1 It is on record that the then Commissioner (Appeals) vide Order-In-Appeal dated 01.05.2018 remanded the matter back to the Adjudicating Authority after observing the discrepancies in the sample copy of the consignment sale note at para 5.4.3 of the said Order-In-Appeal. The Commissioner (Appeals) also directed the Appellant to co-operate with the Adjudicating Authority by attending the personal hearing and providing the required documents. The Adjudicating Authority vide impugned order recorded that out of 8 consignment agent, the Appellant provided copies of documents and not original one, of only one consignment agent viz. Yashodha Traders only despite sufficient time and opportunity was given to them. It is on record that first personal hearing was given to the Appellant by the Adjudicating Authority on 12.03.2020. Due to request of the Appellant as well as Corona pandemic, the personal hearing was re-fixed many times and lastly the same was done on 23.02.2022. Thus, a time span of two years has been taken to complete the personal hearing. Even then, the Appellant has not taken pain to produce the required original documents pertaining to their consignment agents. This shows their motive to evade payment of wrongly availed CENVAT credit by not following the directions in the previous order of the Appellate Authority.

12. In view of discussions and findings, I uphold the impugned order and reject the appeal filed by the Appellant.

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

13. The appeal filed by Appellant is disposed off as above.

सत्यापित / Attested

[Signature]

Superintendent

Central GST (Appeals)
Rajkot

[Signature]

(शिव प्रताप सिंह) (Shiv Pratap Singh),

आयुक्त (अपील) / Commissioner (Appeals)

By R.P.A.D.

To, M/s. Guru Ashish Ship Breakers, "UB Aggarwal House, 2291/2292-A-1, Hill Drive, Bhavnagar-364001	सेवा में, मे. गुरु आशीष शिप ब्रेकर्स, "UB अगारवाल हाउस" 2291/2292-A-1, हिल ड्राइव, भावनगर-364001 ।
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प्रतिलिपि :-

- 1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को आवश्यक कार्यवाही हेतु।
- 2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
- 3) अपर आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर को आवश्यक कार्यवाही हेतु।
- 4) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर मण्डल-2 को आवश्यक कार्यवाही हेतु।
- 5) गार्ड फाइल।

