



:: आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क ::
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE,



द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,
राजकोट / Rajkot - 360 001

Tele Fax No. 0281 - 2477952/2441142 Email: commrappl3-cexamd@nic.in

रजिस्टर्ड डाक ए.डी. द्वारा :-

DIN- 20230364SX00003883D6

क	अपील / फाइल संख्या / Appeal / File No. V2/67/RAJ/2022	मूल आदेश सं / OIO No. 12/D/AC/2021-22	दिनांक / Date 14-02-2022
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ख अपील आदेश संख्या (Order-In-Appeal No.):

RAJ-EXCUS-000-APP-061-2023

आदेश का दिनांक / Date of Order:	24.02.2023	जारी करने की तारीख / Date of issue:	13.03.2023
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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 / गांधीधामा 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. Skill Precision Balls Pvt Ltd., 374-GIDC, Aji Phase II, Road "O", Aji Vasaht, Rajkot-360003.

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

- (A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है /
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-
- (i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के. पुरम, नई दिल्ली, को की जानी चाहिए /
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.
- (ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असारवा अहमदाबाद- 380016 को की जानी चाहिए /
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above
- (iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) 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, जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 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 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 जहाँ संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /
The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

- (B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 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 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 जहाँ 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 fee of Rs. 1000/- or less Rs.5000/- where the amount of service tax & interest demanded & penalty levied of 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 a copy of 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 रुपये से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
(i) धारा 11 बी 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 स्थान अर्जी एवं अपील को लागू नहीं होगी।
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 कोपनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद भवन, 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 शुल्क 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 किया गया 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 क्रेडिट क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत माल की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (सं. 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 तहत निर्दिष्ट है, इस आदेश के संश्लेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की 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। / In case of revision application, the fee of Rs. 1000/- should be paid. If the amount involved is more than 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 बंध से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पत्र कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order-in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if excise duty is paid with each fee of Rs. 100/- for each.
(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I के अनुसार मूल आदेश के प्रति अपील आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट लगा होना चाहिए। / One copy of application for 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 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 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



अपील आदेश / ORDER-IN-APPEAL

M/s Skill Precision Balls Pvt Ltd, 374-GIDC, Aji Phase-II, Road "O" Aji Vasahat, Rajkot-360.003 (hereinafter referred to as the appellant) has filed appeal against Order-in-Original No.12/D/AC/2021-22 dated 14.02.2022 (hereinafter referred to as the 'impugned order') passed by the Assistant Commissioner, Central GST Division-I, Rajkot (hereinafter referred to as the adjudicating authority).

2. Briefly stated the facts of the case are that during the audit of the records of the appellant it was noticed that the appellant has availed Cenvat credit of service tax paid on outward freight which did not appear to be 'input service' under rule 2(l) of Cenvat Credit Rules, 2004. It further appeared that the appellant has availed taxable service in the category of 'supply of manpower' for which they did not pay service tax under reverse charge mechanism under Notification No.30/2012-ST. It also appeared that the appellant has availed transitional ITC under TRAN-1 with reference to provisions made under Section 139 to 142 of CGST Act, 2017 of Educational Cess and SHE Cess amounting to Rs.26,476/- and Cenvat Credit of Rs.14,191/- on sales return of duty paid goods received in the factory after 30.06.2017. Therefore a show cause notice dated 26.06.2020 was issued to the appellant denying the Cenvat/ITC credit and demanding service tax invoking provisions of Cenvat Credit Rules, 2004 read with Section 11A(4) of the Central Excise Act, 1944, Section 73 of the Finance Act, 1994 and Section 73 and 74 of CGST Act, 2017. The adjudicating authority has disallowed Cenvat credit of Rs.4,16,118/- of the service tax paid on outward freight and imposed penalty of Rs.4,02,365/- under Section 11AC of the Central Excise Act, 1944 read with Rule 15(2) of Cenvat Credit Rules, 2004. He disallowed ITC credit of Rs.26,476/- and Rs.14,191/- and ordered to recover the same under Section 74 of the CGST Act, 2017 and imposed penalty of Rs.26,476/- and Rs.14,191/- under Section 74 of the CGST Act, 2017.

3. The appellant filed the present appeal on the following grounds:

- The impugned order denied the Cenvat credit of service tax paid on the transportation of goods under erroneous understanding that Cenvat credit can be availed only upto the factory gate. The department acknowledged the fact that purchase order is prepared by the buyers of the appellant and in which delivery terms mentioned is 'FOR' and freight charges to be borne by the appellant. Appellant has submitted on a sample basis, copies of purchase order and also corresponding Central Excise invoices pertaining to the material period which clearly showed that the transaction was entirely on FOR sale basis.



(Signature)

- It is specifically mentioned at para 3.16 of agreement made on 03.05.2014 that the supplier is responsible for delivery of the contractual products ordered. Goods received in the customer's inward facility are checked with regard to quantity and identity as well as transport and package damage. Thus the appellant's responsibility did not cease at factory gate but at the customer's place.
- Adjudicating authority seriously erred in ignoring CA certificate dated 18.01.2020 which will clearly show that the whole transaction was on FOR basis only in respect of which Cenvat Credit has been availed by the appellant. The adjudicating authority erred in observing that the appellant failed to submit any letter/ certificate issued by the buyers of goods certifying that they have purchased goods from the appellant on FOR basis. The appellant had already submitted various sample purchase orders which was prepared by the buyer itself where it was specifically mentioned the terms of delivery is FOR and freight is borne by supplier.
- Hon'ble CESTAT, Ahmedabad in following cases allowed Cenvat credit of service tax paid on transportation of finished goods from factory gate to the port of export, or place of buyer in case of domestic sales.
 - a) *Ultratech Cement Ltd-2019 (2) TMI 1487-CESTAT-AHM*
 - b) *Sanghi Industries Ltd-2019 (2) TMI 1488-CESTAT-AHM*
 - c) *Salasar Copper-2019 (4) TMI 11-CESTAT-AHM*
 - d) *GMM Pfaudler Ltd-2019 (5) TMI 1406-CESTAT-ahm*
 - e) *Panoli Intermediates India Pvt Ltd-2019 (5) TMI 1405-CESTAT-AHM*
- Notwithstanding and without prejudice to the above, there is no reason to deny Cenvat credit of service tax paid on transportation of goods, once the assessable value of the goods was inclusive of transportation charges.
- It is trite law that Cenvat credit follows duty/ tax payment irrespective of whether such tax or duty was correctly paid or not. Once the duty has been paid on transportation element, the Cenvat credit of service tax paid on such transportation ipso facto becomes available to the assessee. They relied upon the following decisions.
 - a) *Sneh Silicate Inds - 2005 (181) ELT.58 (Tri-Del)*
 - b) *Vinayak Industries-2003 (159) ELT.456 (Tri-Mumbai)*
 - c) *Vickers System International Ltd-2008 (229) ELT.298 (Tri-Mum).*
- As the appellant agreed with the audit objections and paid entire amount along with applicable interest under Section 50 and relaxed penalty thereon, there is no question of disallowing the same amount twice and charging interest and disallowing relaxed penalty. The adjudicating authority erred in misinterpreting Section 74(5) of CGST Act and taken up the words in harsh way. The concept of the section is not just limited to informing the proper officer about the payment.



- The adjudicating authority acknowledged the fact that appellant had paid the ineligible credit claimed in TRAN-1. It is also not disputed that the said payment which was made through challan was not utilized against any other GST liability.

4. Chartered Accountant Dipesh Lalwani appeared for personal hearing on 12.01.2023 and reiterated the submissions in the appeal. He submitted that as their contract is on FOR basis, the freight upto customer's premises is included in the value on which duty has been paid. Hence, appellant is eligible for its credit. Other issue is regarding not allowing credit of cess and TRAN-1 and credit of duty paid on goods which are returned after rollout of GST. He submitted that if credit is not allowed in these cases, the refund should be granted to them. The appellant has already paid the amount towards credit of cess though GST challan but the department is not accepting it as it is not paid through DRC-03. Moreover, the adjudicating authority has charged penalty equal to 100% of this amount. The same is not correct. Therefore, he requested to set aside the order-in-original and allow the appeal.

5. I have carefully gone through the facts of the case on record and the submissions made in grounds of appeal as well as at the time of personal hearing. Two issues to be decided in the present are (i) whether the appellant is eligible for Cenvat credit of service tax paid on outward freight on goods cleared under FOR basis and (ii) whether the denial of ITC claimed under TRAN-1 was proper and justifiable.

6. In this regard, I find that the adjudicating authority has denied the Cenvat credit of service tax paid on outward freight on the premises that the appellant has failed to establish that they sold the goods to the buyers on FOR basis. On perusal of the impugned order, I find that the appellant had produced copy of purchase order which clearly mentioned delivery terms as FOR and also certificate of Chartered Accountant Shri Hardik H. Kalaria to the effect that the appellant sold goods at a rate inclusive of all expenses up to the buyer's premises on FOR basis and cost of transportation upto the buyer's premises is born by the appellant and therefore considered for costing of the final products. However, the adjudicating authority has discarded these evidences. As there remained ambiguity in the issue related to 'place of removal' as divergent views were expressed by various Tribunals and courts, CBIC has issued a clarification vide Circular No.1065/4/2018-CX dated 08.06.2018 as under:

Attention is invited to Boards circular no. 97/8/2007-CX dated 23.08.2007, 988/12/2014- dated 20.10.2014 and 999/6/2015-CX dated 28.02.2015. Attention is also invited to the judgment of Hon'ble Supreme Court in the case of CCE vs M/s Roofit Industries Ltd 2015(319) ELT 221(SC), CCE vs Ispat Industries Ltd 2015(324) ELT670 (SC), CCE, Mumbai-III vs Emco Ltd 2015(322) ELT 394(SC) and CCE & ST vs. Ultra Tech Cement Ltd dated 1.2.2018 in Civil Appeal No. 11261 of 2016. In this regard, references have been received from field



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formations seeking clarification on implementation of aforesaid circulars of the Board in view of judgments of Hon'ble Supreme Court.

2. In order to bring clarity on the issue it has been decided that Circular no. 988/12/2014-CX dated 20.10.2014 shall stand rescinded from the date of issue of this circular. Further, clause (c) of para 8.1 and para 8.2 of the circular no. 97/8/2007-CX dated 23.08.2007 are also omitted from the date of issue of this circular.

3. **General Principle:** As regards determination of 'place of removal', in general the principle laid by Hon'ble Supreme Court in the case of CCE vs Ispat Industries Ltd 2015(324) ELT670 (SC) may be applied. Apex Court, in this case has upheld the principle laid down in M/s Escorts JCB (Supra) to the extent that 'place of removal' is required to be determined with reference to 'point of sale' with the condition that place of removal (premises) is to be referred with reference to the premises of the manufacturer. The observation of Hon'ble Court in para 16 in this regard is significant as reproduced below:

"16: It will thus be seen where the price at which goods are ordinarily sold by the assessee is different for different places of removal, then each such price shall be deemed to be normal value thereof. Sub-clause (b) (iii) is very important and makes it clear that a depot, the premises of a consignment agent, or any other place or premises from where the excisable goods are to be sold after their clearance from the factory are all places of removal. What is important to note is that each of the premises is referable only to the manufacturer and not to the buyer of excisable goods. The depot or the premises of the consignment agent of the manufacturer are obviously places which are referable to the manufacturer. Even the expression "any other place of premises" refers only to a manufacturer's place or premises because such place or premises is to be stated to be where excisable goods "are to be sold". These are key words of the sub-section. The place or premises from where excisable goods are to be sold can only be manufacturer's premises or premises referable to the manufacturer. If we were to accept contention of the revenue, then these words will have to be substituted by the words "have been sold" which would then possibly have reference to buyer's premises."

4. **Exceptions:** (i) The principle referred to in para 3 above would apply to all situations except where the contract for sale is FOR contract in the circumstances identical to the judgment in the case of CCE, Mumbai-III vs Emco Ltd 2015(322) ELT 394(SC) and CCE vs M/s Roofit Industries Ltd 2015(319) ELT 221(SC). To summarise, in the case of FOR destination sale such as M/s Emco Ltd and M/s Roofit Industries where the ownership, risk in transit, remained with the seller till goods are accepted by buyer on delivery and till such time of delivery, seller alone remained the owner of goods retaining right of disposal, benefit has been extended by the Apex Court on the basis of facts of the cases.

(ii) Clearance for export of goods by a manufacturer shall continue to be dealt in terms of Circular no. 999/6/2015-CX dated 28.02.2015 as the judgments cited above did not deal with issue of export of goods. In these cases otherwise also the buyer is located outside India.

5. **CENVAT Credit on GTA Services etc:** The other issue decided by Hon'ble Supreme Court in relation to place of removal is in case of CCE & ST vs. Ultra Tech Cement Ltd dated 1.2.2018 in Civil Appeal No. 11261 of 2016 on the issue of CENVAT Credit on Goods Transport Agency Service availed for transport of goods from the 'place of removal' to the buyer's premises. The Apex Court has allowed the appeal filed by the Revenue and held that CENVAT Credit on Goods Transport Agency service availed for transport of goods from the place of removal to buyer's premises was not admissible for the relevant period. The Apex Court has observed that after amendment of the definition of 'input service' under Rule 2(l) of the CENVAT Credit Rules, 2004, effective from 01.03.2008, the service is treated as input service only 'up to the place of removal'.

6. **Facts to be verified:** This circular only bring to the notice of the field the various judgments of Hon'ble Supreme Court which may be referred for further guidance in individual cases based on facts and circumstances of each of the case. Past cases should accordingly be decided.

7. **No extended period:** Any new show cause notice issued on the basis of this circular should not invoke extended period of limitation in cases where an alternate interpretation was taken by the assessee before the date of the Supreme Court judgment as the issue is in the nature of interpretation of law."

7.1 As per the above clarification, it is evident that in case of FOR sale, the place of removal is the destination of buyer and the assessee is eligible for taking Cenvat credit of service tax paid on transportation charges upto the destination

In the present case, as per the purchase order and Chartered



Accountant's certificate produced by the appellant, it is clear that the appellant has sold goods at a rate inclusive of all expenses up to the buyer's premises on FOR basis and cost of transportation upto the buyer's premises is born by the appellant. As such, the appellant has correctly availed Cenvat credit on such outward transportation services and the impugned order denying the credit needs to be set aside on merits.

7.2 I also find that as per the above circular dated 08.06.2018, it is instructed not to invoke extended period of limitation when show cause notice is issued after issue of the said circular. In the present case, I observe, the show cause notice was issued on 26.06.2020, i.e. after issue of the said circular, proposing to deny and recover Cenvat credit availed during the period December 2014 to June 2017 invoking extended period of limitation. As such, the show cause notice was *ab initio* bad and demand is not sustainable on the ground of limitation also.

8. Coming to the issue of denial of ITC on TRAN-1 filed by the appellant, it is noticed that the same falls under the provisions of CGST Act, 2017 for which separate appeal was required to be filed as provided under CGST Act, 2017 and CGST Rules, 2017. Since the present appeal is filed under Section 35 of the Central Excise Act, 1944, the appeal with regard to GST matter is not maintainable.

9. In view of the above findings, I set aside the demand of Rs.4,16,118/- (Rupees four lakh sixteen thousand one hundred eighteen only) confirmed under Rule 14 of Cenvat Credit Rules, 2004 read with Section 11A of the Central Excise Act, 1944. I also set aside the penalty of Rs.4,02,365/- (Rupees four lakh two thousand three hundred sixty five only) imposed under Section 11AC of the Central Excise Act, 1944 read with rule 15 of Cenvat Credit Rules, 2004. The impugned order stands modified to the above extent only.

१०. अपीलकरता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

10. The appeal filed by the Appellant is disposed off as above.

सत्यापित / Attested

[Signature]

[Signature]
24-02-23

भार. अ.स. बोरीचा / R. S. BORICHA
अधीक्षक / Superintendent
के. व. एवं सेवा कर अपील, राजकोट
CGST Appeals, Rajkot

(शिव प्रताप सिंह/ SHIV PRATAP SINGH)
आयुक्त (अपील)/Commissioner (Appeals)

By R.P.A.D.

To, स्क्रिल प्रिसेशन बाल्स प्राइवेट लिमिटेड 374, GIDC, अजी फेस-II राज. ओ, अजी वसाहत Rajkot-360 003	To M/s Skill Precision Balls Pvt Ltd, 374-GIDC, Aji Phase-II, Road "O" Aji Vasahat, Rajkot-360 003
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प्रतिलिपि :-

- 1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद।
- 2) प्रधान आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट।
- 3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्कमण्डल राजकोट - I।
- 4) गार्ड फाइल।

