

रजिस्टर्ड डाक ए.डी. द्वारा

: आयुक्त (अपील -I) का कार्यालय, केन्द्रीय उत्पाद शुल्क, :
: सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास, :
: आंबावाडी, अहमदाबाद- 380015. :

क फाइल संख्या : File No : V2(72)1/Ahd-III/2015-16/Appeal-I

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-193-16-17

दिनांक Date : 23.12.2016 जारी करने की तारीख Date of Issue _____

श्री उमाशंकर आयुक्त (अपील-I) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals-I) Ahmedabad

ग _____ आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-I आयुक्तालय द्वारा जारी मूल
आदेश सं _____ दिनांक : _____ से सृजित

Arising out of Order-in-Original: AHM-CEX-003-DC-21-2016 Date: 05.02.2016
Issued by: Deputy Commissioner, Central Excise, Din: Kadi, A'bad-III.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Shah Alloys Ltd.

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे
बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as
the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में
पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार,
वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को
की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision
Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building,
Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the
following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने
में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में
चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur 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.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क
कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित
है।

(b) 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.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया
माल हो।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of
duty.



ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) 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 and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इ.ए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी 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.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35- षोबी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

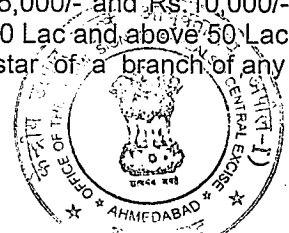
(a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

(ख) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016.

(b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूप 5 लाख या उससे कम है वहां रूप 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूप 5 लाख या 50 लाख तक हो तो रूप 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूप 50 लाख या उससे ज्यादा है वहां रूप 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

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.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / 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 Asstt. Registrar of a branch of any



nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number 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 filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे 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 adjournment authority shall bear a court fee stamp of Rs.6.50 paisa as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1998 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगा।

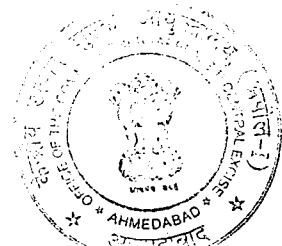
For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten 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.

(6)(i) इस s.dwR me., इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

(6)(i) In view of above, 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."



ORDER-IN-APPEAL

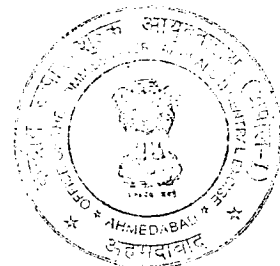
This appeal has been filed by M/s Shah Alloys Limited, Block No. 2221/2222, Shah Industrial Estate, Sola-Kalol Road, Taluka: Kalol, District: Gandhinagar- Gujarat- 382 721 (hereinafter referred as "the appellant") against the Order-in-Original No. AHM-CEX-003-DC-21-2016 Dated 05.02.2016 (hereinafter referred to as "the impugned order") passed by the Deputy Commissioner, Central Excise, Kalol Division, Ahmedabad-III (hereinafter referred to as "the adjudicating authority").

2. Briefly stated the facts of the case is that the appellant is engaged in the manufacturing of excisable goods falling under chapter 72 & 73 of first schedule to the Central Excise Tariff Act, 1985 and availing the credit of service tax paid on input services under the Cenvat Credit Rules, 2004. A show cause notice dated 15.12.2015 was issued to the appellant for denying input service credit, totally amounting to Rs.4,50,271/- in respect of input service credit availed on GTA services on outward transportation and other various inputs services, during the period from December 2014 to May 2015. The said show cause notice was decided by the adjudicating authority vide the impugned order, by disallowing the input service credit demanded and ordered to recover the same with interest. He also imposed penalty of Rs.4,50,271/- under Rule 15(1) of Cenvat Credit Rules, 2004 (CER).

3. Being aggrieved, the appellant has filed the present appeal on the grounds that the input services in question were utilized by them in relation to the activities of business, as contemplated under Rule 2(1) of CER. For the credit of GTA for outward transportation, the freight charges incurred for transportation from factory to ICD was for export and for export, factory gate is not the place of removal. As regards the other services, the adjudicating authority has not considered true scope of Rule 2(1) of CER while denying the credit; that the service tax paid all services were used in relation to manufacture and sale of goods which was legally admissible; that the admissibility of credit has to be judged from the point of view whether the input service is in relation to business undertaken by the manufacturer or not and their case all the activities relating to business were covered under the scope of input service under the Cenvat scheme. The appellant has relied on various case laws in support their claim. They further stated that the action of imposing penalty is unreasonable, arbitrary and high handed in the facts of the present case.

4. Personal hearing in the matter was held on 20.12.2016. Smt Shilpa P Dave, Advocate appeared for the same and reiterated the contents of the appeal memorandum and submitted compilation of citations.

5. I have gone through the facts of the case and submissions made by the appellant. The issue to be decided in the present appeal is whether the appellant is eligible for taking credit of service tax paid on input service or otherwise.



[Handwritten signature]

6. As per definitions under Rule 2(1) of CCR, the services which are enumerated in the inclusive clause of the definition of 'input service' are required to have been used up to "place of removal". Therefore, only activities relating to business, which were taxable services and used by the manufacturer in relation to the manufacture of final product and clearance of the final product up to the place of removal would be eligible as 'input services'. After the final products are cleared from the place of removal, there would be no scope for subsequent use of service to be treated as input service. Services beyond the stage of manufacturing and clearance of the goods cannot be considered as input services. Thus, for the purpose of ascertaining the admissibility of CENVAT credit on services, the nature of service availed should be in consonance with the above parameters.

7. In the instant case, I observe that the appellant had utilized the input service in relation to manufacture and clearance of final product for export as well as for domestic sale. The issue involved in present appeal is no more *res-integra*, in view of various decisions of CESTAT, under which the clearance of finished goods for export, "port of export" has been accepted as "place of removal" and for domestic sale "factory gate" has been accepted as "place of removal".

8. In the present case, I observe that a show cause notice dated 15.12.2015 was issued to the appellant for denying input service credit of service tax paid on [1] GTA services on outward transportation; [2] Business Auxilliary Services viz. Export Commission service, sales commission; [3] professional fees; [4] Director Fees [5] Courier Fees; [6] Travel/Air travel agent; [7] Insurance service; [8] House Keeping Service; [9] Share Transfer service; and [10] telephone/mobile service for the 2014 to May 2015. However, vide the impugned order, the adjudicating authority has discussed and denied the credit in respect of [1] GTA services on outward transportation; [2] Business Auxilliary Services viz. Export Commission service, sales commission; [3] professional fees; [4] Director Fees; [5] Courier Fees; [6] Travel/Air travel agent. In other words, in the impugned order, the adjudicating authority has not discussed the eligibility/ineligibility of credit on service tax paid on input service viz. [1] Insurance service; [2] House Keeping service, Share Transfer Service, Telephone/mobile service. In the circumstances, I only take the issue for discussion, where the adjudicating authority has given his findings.

9. I observe that adjudicating authority has rejected the credit of GTA service on outward transportation on the ground that the appellant has utilized the said service in relation to clearance of final products beyond the place of removal i.e factory gate. While rejecting the credit he has relied upon the decision of Hon'ble CESTAT in the case of, (1) Ultratech Cement Ltd reported in 2007 (6) STR 364 (Tri. Ahm); (2) Commissioner of CCX Chennai Vs Sundaram Brake Linings -2010(19)STR 172; and (3) Maruti Suzuki Ltd – 2009 (240) ELT 641-SC. In respect of credit taken on other input services, the adjudicating authority has held that the appellant has failed to establish nexus between the services availed by them and manufacture of the finished goods.



10. I observe that the eligibility of credit of service tax paid on outward transportation, Business Auxilliary Services viz. Export Commission service, sales commission, professional fees, Director Fees, Courier Fees, Travel/Air travel agent has already been decided by me, vide OIA No. AHM-EXCUS-003-APP-020-16-17 dated 25.05.2016 in case of appellant for the period from April 2014 to November 2014. The instant case is pertaining to the period from December 2014 to May 2015.

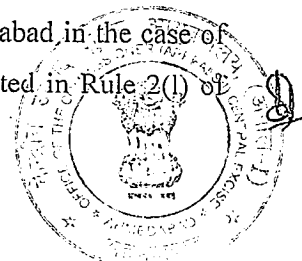
11. Vide the said Order-in-Appeal, in respect of credit of service tax on outward transportation, I hold that the appellant has utilized the service for export of their goods and this issue is no more res- integra in view of various decisions of CESTAT, under which the clearance of finished goods for export, "port of export" has been accepted as "place of removal". Further, I also hold that the case laws relied on by the adjudicating authority are pertains to goods cleared for home consumption, whereas the present case relates to the goods cleared for export. I further relied on the decision in the case of C.C.E., Ahmedabad V/s Fine Care Biosystems-2010 (17) S.T.R. 168 (Tri-Ahmd.), Hon'ble Tribunal has held that:

"I find that now the Larger Bench in the case of ABB Limited v. CCE [2009 (15) S.T.R. 23 (Tribunal - LB) = 2009-TIOL-830-CESTAT-BANG.-LB] has held that the expression 'activities relating to business' as appearing in the definition of input services, has a wide import and includes both essential and auxiliary activities of business including outward transportation. As such, services received for outward transportation of goods from the place of removal has been held to be input services. By applying the ratio of the decision to the facts of the present case, no infirmity is found in the order passed by Commissioner (Appeals). I, accordingly, reject the appeals filed by the Revenue. Stay petition also get disposed off."

12. As regards the admissibility of credit in respect of Business Auxiliary Service viz. export commission service, the appellant stated that they had paid commission to sales commission agent and service sales commission has direct relation to the manufacturing and clearance of their final products. The adjudicating authority has rejected the credit on the said service on the grounds that the service provided by such commission agent would not fall within the purview of the main or inclusive part of the definition of input service as laid down in rule 2(l) of the Cenvat Credit Rules 2004. The definition under Rule 2(l) of CCR has been amended vide Notification No.02/2016 CX (NT) dated 03.02.2016. Vide the said Notification, in Rule 2, clause (l), after sub-clause (C), the following Explanation has been inserted:-

"Explanation: For the purpose of this clause, sales promotion includes services by way of dutiable goods on Commission basis"

In view of above amendment, the issue regarding admissibility of Cenvat credit of Service Tax paid on the commission paid to commission agents is no more *res-integra* and as per the said amendment the appellant is eligible to avail Cenvat credit on input service paid on commission paid to their sales commission agent. Now, the question arises whether the admissibility of such credit shall be effective from the date of existence of notification dated 03.02.2016 or retrospectively. The appellant contended that the Hon'ble CESTAT, Ahmedabad in the case of M/s ESSAR Steel Ltd V/s CCE Surat-II has held that the explanation inserted in Rule 2(l) of



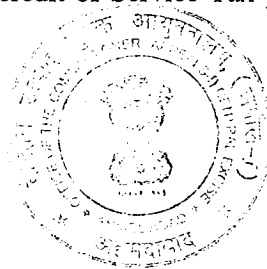
CCR, 2004, vide Notification No.02/2016 CE(NT), should be effective retrospectively. I observe that he said decision was not accepted by the department authority and challenged before the Hon'ble High Court of Gujarat. In the circumstances, I am of the opinion that the matter may be kept pending till the outcome received from Hon'ble High Court. Therefore, for this particular issue, I remand the matter to the adjudicating authority to keep the case in call book and decide as and when the outcome of department appeal received.

13. As regards Professional fees, the appellant stated that such fees are paid to legal consultant, accounts consultants, business consultants. I find that services availed by the appellant is a part of manufacturing or business activities and directly or indirectly linked with manufacture or business activities. Hence the same is within the ambit of definition of input service as specified in Rule 2(l) of CER and eligible to the appellant. As regards Director's fees, the appellant stated that such services are essential for undertaking activities in regard to purchase, manufacture and sales of goods and other matters relating to litigation, guidance. The Director of the company is a paid employee of the company for dealing such activities. Therefore, the said argument is not tenable.

14. As regard, Courier Service, the appellant has submitted that courier/postage service utilized by them for delivering documents to the buyers in relation to business activity thus same is admissible. The activity of sending documents is also a part of business activity, thus courier service are in the nature of activities relating to business because their business of manufacturing and selling goods could continue and flourish only if they use courier service. Merely saying that the courier/postage service is not as input service cannot be proper to disallowing the credit. In this regard, the appellant has place reliance upon the decisions in respect of (i) CESTAT Order No. A/1194-1195/WZB/AHD/2010 in case of M/s Dishman Pharmaceuticals & Chemicals Ltd (ii) Order dated 21.04.2011 of Gujarat High Court, in case of M/s Ambalal Sarabhai Enterprises Ltd. (iii) 2012(280) E.L.T. 453 (Tri. Del.)- Kodak India P. Ltd. (iv) 2012(278) E.L.T. 625 (Tri. Ahmd.)-Parle International P. Ltd. in their favour in this regard. I find that said judgments support their claim very much. The Hon'ble CESTAT, WZB, Ahmedabad in case of Tufropes Pvt. Ltd V/s C.C.E., Vapi reported at 2012 (277) E.L.T. 359 (Tri. - Ahmd.) has held that:-

"2. Learned counsel submits that courier service has been utilized for sending documents/invoices etc. to various customers other plants and offices and submits that all these documents/invoices are relatable to the manufacture of the products by the appellants and therefore credit is admissible. I find that sending documents/invoices to various customers, other plants, offices is definitely relatable to manufacture and therefore credit is admissible. The learned counsel relied upon the decision of the Tribunal in the case of Hindalco Industries Ltd. vide Order No. A/2147/WZB/AHD/11, dated 2-12-2011. Since I find that appellants are eligible for the benefit, the appeal is allowed with consequential relief to the appellants."

Accordingly, courier service was directly concerned with in relation prospective customer in relation to sale of goods manufacture by the appellant and there is no dispute on the fact that this service was availed by the appellant for the same, hence was in the nature of an input service. Therefore, respectfully following the above decision, I allow the credit of Service Tax paid on



courier/ postage service. Accordingly, respectfully following the above judgment, I allow the credit of Service Tax paid on courier/postage service.

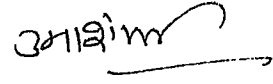
15. As regard Travel agent/Air Travel agent, I find that the Hon'ble CESTAT, Principal Bench, New Delhi in case of Goodluck Steel Tubes Ltd V/s C.C.E, Noida reported at 2013(32)S.T.R. 123 (Tri.-Del.) has held that :-

"2. I find that the issue is no more res integra and stand settled by various decisions. One such reference can be made to Tribunal's decision in the case of Commissioner of Central Excise, Ahmedabad v. Fine Care Biosystems reported as [2009 (16) S.T.R. 701 (Tri.-Ahmd) = 2009 (244) E.L.T. 372 (Tri.-Ahmd.)] wherein by following the Larger Bench decision of the Tribunal in the case of ABB Ltd. [2009 (15) S.T.R. 23 (Tri.-LB)], it was held that the air travel was performed for the purpose of company business. The Service Tax paid on the said air travel agent service is admissible as credit. As such, I find legal issue stand decided in favour of the appellant."

16. In respect of eligibility of credit on service tax paid on input service viz. Insurance service, House Keeping service, Share Transfer Service, Telephone/mobile service, I observe that the adjudicating authority has not discussed the admissibility/inadmissibility of credit of such services in the impugned order, though the demand was proposed in the show cause notice. I find that in a catena of decision, House Keeping service and Telephone/mobile services have been allowed as input service, therefore, I allow the same, however for remaining services, I would like the jurisdictional Deputy/Assistant Commissioner to pass a speaking order. Therefore, I remand this issue to the adjudicating authority to examine the eligibility and pass a fresh order after granting principles of natural justice.

17. Regarding penalty under Rule 15(1) of Central Excise Act, 1944, I hold that the question of imposition of penalty does not arise where the credit of input service allowed. As regards the credit not admissible, i.e Director's fees, I find that there was no malafide intention on behalf of the appellant to avail the Cenvat Credit wrongly. Accordingly, I set aside the penalty.

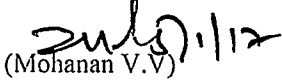
18. In view of above discussion, the appeal filed by the appellant is partially allowed. The appeal stands disposed of in above terms.



(UMA SHANKER)
COMMISSIONER (APPEAL-I)

Date: 23/12/2016

Attested


(Mohanan V.V)

Superintendent (Appeal-I)
BY R.P.A.D

To,
M/s Shah Alloys Limited,
Block No.2221/2222,Shah Industrial Estate,
Sola-Kalol Road, Taluka: Kalol, District: - Gandhinagar,
Copy to:-

1. The Chief Commissioner, Central Excise Zone, Ahmedabad.
2. The Commissioner, Central Excise, Ahmedabad-III
3. The Addl./Joint Commissioner, (Systems), Central Excise, Ahmedabad-III
4. The Dy. / Asstt. Commissioner, Central Excise, Division- Kalol, Ahmedabad-III
5. Guard file.
6. P.A file.

