

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)65 /Ahd-III/2015-16/Appeal-I 30 to 34

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-020-16-17

दिनांक Date : 25.05.2016 जारी करने की तारीख Date of Issue 13/6/16

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-13-2015 Date: 26.10.2015
Issued by: Deputy Commissioner, Central Excise, Din: Kalol, 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
पूवोक्त 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।

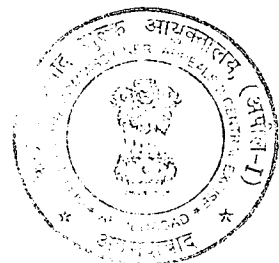
(ii) In case of any loss of goods where the loss occur in transit from a factory to a
warehouse or to another factory or from one warehouse to another during the course of
processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(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 इए-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- णबी/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

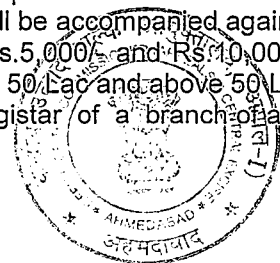
(a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

(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, मेघानी 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 इए-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 ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 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 पढी 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 अनुसूचि-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 (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) 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,

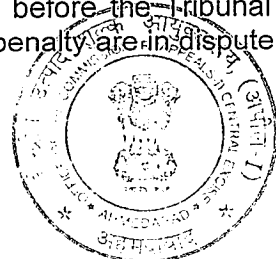
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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 संदर्भ में, 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."

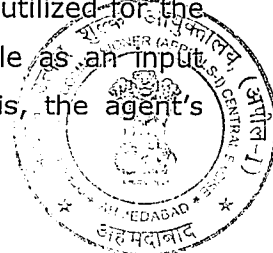


ORDER-IN-APPEAL

This appeal is 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-13-2015 Dated 26.10.2015 (hereinafter referred to as "the impugned order") passed by the Joint Commissioner, Central Excise, 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. On scrutiny of the details submitted by the appellant, it was observed they had availed CENVAT credit of service tax paid on **GTA services of outward transportation and various input service viz., Business Auxilliary Services (Export Sale commission) Sale Commission, Professional fee , Director fees, courier service, Travel Agent, etc** during the period from April 2014 to November 2014. Since the credit on said input services is inadmissible as per definition of Rule 2(1) of Cenvat Credit Rules, 2004, a show cause notice dated 10.04.2015 was issued to the appellant, by denying and demanding of total credit amounting to **Rs.2,06,510/-** with interest and proposal of penalty under Rule 15 (1) of Cenvat Credit Rule. The said show cause notice was decided by the adjudicating authority vide the impugned order as under. The adjudicating authority has disallowed the said Cenvat Credit and order for recovery with interest and also imposed penalty of **Rs.1,00,000/-** under Rule 15(1) *ibid*.

3. Being aggrieved, the appellant have filed the present appeal contending, *interalia*, that there is grave error by not considering the services like GTA (Outward) service and other services as input service; that the input service in question were utilized by the in relation to the activities of business as contemplated under Rule 2(1) of the Rules. 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 courier service, the activity of sending documents is a part of business activity, hence such activities fall under input service of the Cenvat credit scheme. The issue has finally decided by the court of law viz Cestate Order No.A/1194-1195/WZB/AHD/2010 dated 12.08.20120 in the case of M/s Dishman Pharmaceuticals & Chemicals Ltd, High Court's order in the case of Kodak India Pvt Ltd reported in 2012(280) ELT 453 and Parle International Pvt Ltd reported in 2012 (278) ELT 625. The service tax paid under business auxilliary service is for the services provided by the foreign commission agent which has been utilized for the marketing of the goods manufactured by them and it is admissible as an input service; that the goods are sold by an agent on commission basis, the agent's



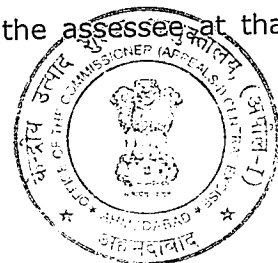
service in the nature of marketing expenses for the manufacturer and therefore, they are entitled to avail credit of tax paid on such service. They have relied various citation viz. Cestat's decision in the case of Bhilai Auxiliary Industries reported in 2007 (7) STR 82 and DSCL Sugar reported in 2012 (25) STR 599.

3.1 As regards professional fees and director's fees, such services are essential for undertaking activities in regard to purchase, manufacture and sales of goods and other matters relating to litigation, guidance etc. Professional fees are paid to legal consultant, accounts consultants, business consultants etc. and eligible for Cenvat as per definition of Rule 2 (1); that the admissibility of credit has to be judged from the point of view whether the input service was relatable to business undertaken by the manufacturer or not, whereas all the activities relating to business were covered under the scope of input service under the Cenvat scheme. The appellant has placed reliance of various Cestat's decision to support their claim. 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 conducted on 23.05.2016 and Aditya S Tripathi, advocate appeared for the same. He reiterated the contents of the appeal memorandum and submitted compilation of citations.

5. I have considered the facts of the case and submissions made by the appellant. The main issue to be decided in the present appeal is whether the Cenvat Credit of Service Tax paid for on **GTA services of outward transportation and various input service viz., Business Auxilliary Services (Export Sale commission) Sale Commission, Professional fee , Director fees, courier service, Travel Agent etc** during the period from April 2014 to November 2014 are admissible under Rule 2(1) of Cenvat Credit Rules or otherwise.

5.3. As per definitions under Rule 2(l) 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. I find that issue involved in present appeal is no more res- integra in view of Tribunals various decisions under which the 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" and any service utilized by the assessee at that



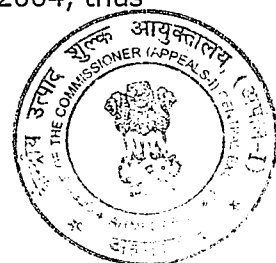
moment can be considered as input service and Cenvat credit can be availed of such service tax by the service providers.

5.4 In the present case, as per annexure to the show cause notice, the appellant has taken Cenvat credit of service tax paid on GTA services on **GTA services of outward transportation and various input service viz., courier service, Travel Agent, Professional fee , Director fees, Business Auxilliary Services (Export Sale commission) Sale Commission, etc** Therefore, I would like to discuss the admissibility of the credit categorically.

5.5 I find that adjudicating authority has rejected the credit **GTA service on outward transportation** on the ground the services were related to their finished goods and which are in or 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 of Hon'ble CESTAT viz., (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 Tri and (3) Maruti Suzuki Ltd - 2009 (240) ELT 641-SC. In the instant case I find that that there is no dispute that the appellant had exported their goods and the sale is taken place at the port/airport. If term of delivery of a transaction is on F.O.B that means the cost of movement of goods on board of ship is borne by the seller. Hence, the credit of service tax paid on the out ward transportation received by the appellant after the clearance of goods from factory up to the place of sale and transfer of property in goods (in terms of the definition as under section 2 of the Central Excise Act, 1944 as also in terms of the provisions under the Sale of Goods Act, 1930) would be admissible for availment of Cenvat credit. Further I also gone through above case laws relied in the impugned order and find that the said decisions are pertains to goods cleared for home consumption, whereas the present case relates to the goods cleared for export, in which case the place of removal is considered to be 'load port' as has been held in various other decisions of Hon'ble CESTAT. In 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."

In view of above decisions of Hon'ble Tribunal's, dispute of admissibility in respect of GTA service on outward transportation is no more res-integra and covered under the definition of input service under Rule 2(I) of the Cenvat Credit Rules, 2004, thus appellant is eligible to avail the Cenvat credit paid on said services.



5.6 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 can not 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:-

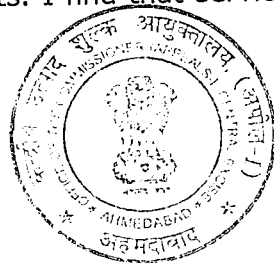
"2. Learned counsel submits that courier service has been utilized for sending documents/invoices etc. to various customers other plants and offices and submits that all these documents/invoices are relatable to the manufacture of the products by the appellants and therefore credit is admissible. I find 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.

5.7 As regard **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."

5.8 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. Therefore, such services are directly or indirectly linked with manufacture or business activities, hence the same are covered by the definition of input services. 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.

5.3 Finally, the admissibility of credit in respect of **Business Auxiliary Service (Sales Commission -export and domestic sales)**. 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(I) of the Cenvat Credit Rules 2004. The definition under Rule 2(I) of CCR has been amended vide Notification No.02/2016 CX (NT) dated 03.02.2016. Vide the said Notification, in Rule 2, clause (I), 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 **inter-gracia** 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. During the course of personal hearings in the above referred appeals, the appellant cited the decision of the Hon'ble Tribunal in the case of M/s ESSAR Steel Ltd V/s CCE Surat-II, wherein it has been held that the explanation inserted in Rule 2(I) of CCR, 2004, vide Notification No.02/2016 CE(NT), should be effective retrospectively. However, the said decision has not accepted by the department authority and appeal is being preferred before 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.

6. In view of above discussion, I hold that the Cenvat credit on **outward transportation and input service viz., courier service travel agent, Professional fee** are allowed and disallowed the credit on input services viz., **Director's fees**. As regards Cenvat Credit on **Sales Commission**, I remand back the case to the adjudicating authority as discussed above.



3. Regarding penalty under Rule 15(I) of Central Excise Act, 1944, I find that in cases, where the appeal is allowed, the question of imposition of penalty on the said amount of services does not arise. 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 wrongly avail the Cenvat Credit. Accordingly, penalty imposed on the appellant under the provisions of Rule 15 (1) of the Cenvat Credit Rules, 2004 is required to be set aside and, I do so.

4. In view of above discussion, the appeal filed by the appellant is partially allowed. Accordingly, the appeal is disposed off in above terms.

Uma Shanker
(UMA SHANKER)

COMMISSIONER (APPEAL-I)
CENTRAL EXCISE, AHMEDABAD

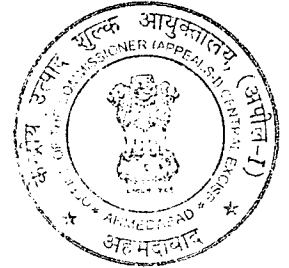
Attested

Date: 25/05/2016

Mohanan V.V.
(Mohanan V.V)

Superintendent (Appeal-I)
Central Excise, Ahmedabad
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.

