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(48)33/Ahd-III/2016-17/Appeal-I** 1630-634

ख अपील आदेश संख्या :Order-In-Appeal No.: **AHM-EXCUS-003-APP-255-16-17**

दिनाँक Date : **27.02.2017** 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 _____ दिनाँक : _____ से सृजित

Arising out of Order-in-Original: **AHM-CEX-003-ADC-MLM-048-15-16**Date: **26.02.2016**
Issued by: Deputy Commissioner, Central Excise, Din: Gandhinagar, A'bad-III.

ध **अपीलकर्ता** एवं प्रतिवादी का नाम एवं पता

Name & Address of the **Appellant** & Respondent

M/s. Rushil Décor Limited

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 मामलें 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 डयूटी केडिट 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 दिनाँक 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 रूपये या उससे कम हो तो रूपये 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 अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35– ण्0बी/35–इ के अंतर्गतः–

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 ब्लाँक 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 न्यायाधिकरणें की गई अपील के विरूद्व 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। यंह 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. Registar 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 ओदश 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 हैं।

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 not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 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 रू.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 beer 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 in 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, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१४(२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ 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 होगे।

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 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."

AHMEDABAD
अहमदाबाद

ORDER-IN-APPEAL

M/s. Rushil Décor Ltd., 607-608, GIDC, Mansa, Dist. Gandhinagar, (for short - '*appellant*") has filed this appeal against OIO No. AHM-CEX-003-ADC-MLM-048-15-16 dated 26.02.2016, passed by the Additional Commissioner, Central Excise, Ahmedabad–I (for short - '*adjudicating authority*").

2. Briefly, the facts are that a show cause notice dated 31.07.2015 was issued to the appellant, alleging that [i] they were engaged in exempted service viz. trading activity in addition to manufacturing goods falling under chapter 48 and 85 of Central Excise Tariff Act, 1985 and had availed CENVAT credit in respect of common taxable services but had failed to maintain separate accounts as stipulated in Rule 6 of the CENAT Credit Rules, 2004 (CCR); and [ii] had availed Cenvat credit on Works contract service in relation to the Construction of foundation for boiler and its accessories. This notice was issued based on audit objection. The said show cause notice was proposed for recovery of wrongly availed Cenvat credit amounting to (i) Rs.33,33,794/- in terms of Rule 6(3) of CCR for non maintenance of separate accounts for taxable and exempted service and (ii) Rs.4,35,952/-, in terms of Rule 2(l) of CCR for credit availed on Work contract service with interest and penalty.

3. Vide the impugned OIO dated 26.2.2016, the adjudicating authority decided the aforementioned show cause notice wherein he confirmed the demand along with interest and also imposed penalty under Section 11AC of the Central Excise Act, 1944 (CEA).

4. Feeling aggrieved, the appellant, has filed this appeal on the following grounds:

- The activity undertaken by the appellant is not trading; that they have three manufacturing plant in Gujarat and they procures various raw materials for manufacturing of its finished goods and in case there is requirement of raw materials in one manufacturing plant and if it is there at another plant then that materials is sent to another plant.
- The activity squarely gets covered by provisions of Rule 3(5) of CCR as removal as such; that as per the said provisions, they were required to reverse the credit availed at the time of procurement of such raw material and asking reversal of credit under Rule 6(3) of CCR is illegal.
- The documents provided during audit should always be considered as reference and cannot be blindly followed for intercepting the ultimate substance of any transaction; that it should also consider the facts and the arrangement of the transaction along with the copy of invoice/ledger as nomenclature given to a ledger cannot drive the transaction.
- The amount of credit pertaining to common input services for the plant is much lesser than the total demand issued; that in recent amendment to the said Rule provides that the total credit reversible on account of exempted service should not exceed the total amount of Cenvat Credit availed during the relevant period.
- As regards credit taken on Works Contract Service, the foundation and civil structure of the factory and parts were already in existence and the activity undertaken were only in relation to and in the nature of some alteration and repairs on the existing machinery; that the said service is also be considered as work contract service.
- Extended period cannot be invoked.

- Penalty under Section 11 AC of CEA cannot be imposable as the issue involved is in relation to interpretation of the complex of legal provisions for definition of input service and exempted service; that it cannot be any charge of suppression against them.
- The appellant has relied on various citations in support of their submissions.

5. Personal hearing in the matter was held on 17.01.2017. Ms Kushboo Kundalia, Chartered Accountant, appeared on behalf of the appellant and reiterated the arguments made in the grounds of appeal. She further submitted documents viz. a certificate from chartered accountant certificate, certifying that the transaction alleged are actually inter-unit transfer of goods at landed cost and copy of invoices, vide letter dated 23.01.2017.

6. I have gone through the facts of the case, the appellant's grounds of appeal, and submissions made during the course of personal hearing. The issue to be decided is whether the demand of [i] Rs. 33,33,794/-, confirmed in terms of Rule 6 of CCR and [ii] Rs.4,65,643/- confirmed against Cenvat Credit wrongly taken on Work Contract Service along with interest and penalty, is correct or otherwise.

7. As regards [i] above, the dispute as is evident revolves around Rule 6 of the CCR , which is extensively quoted in the show cause notice and the impugned order. The text of the rule is therefore, not re-produced. The adjudicating authority while confirming the demand has held that the appellant is involved in manufacture of Paper Based Decorative Laminated Sheets etc; that the appellant is also engaged in trading activities apart from manufacturing activities; that since the trading activities has been included under the definition of exempted service they had not maintained separate accounts for availing CENVAT credit in respect of common services for manufacturing and trading as required under the said rule; that the appellant has not followed the conditions and limitation laid down in the provisions of Rule 6(3) and 6(3A) of CCR which came to the knowledge of the department during the course of audit conducted by the department.

8. Rule 6(1) of CCR , clearly states that CENVAT credit shall not be allowed on input service used in manufacture of exempted goods or provision of exempted services except in the circumstances mentioned in sub-rule(2). Rule 6(2), *ibid*, puts an obligation on a manufacturer who avails CENVAT credit in respect of inputs and input services, used in both dutiable and exempted final products, to maintain separate records. Rule 6(3), *ibid*, a non-obstante clause, gives a facility to a manufacturer, opting not to maintain separate accounts to either

[a] pay an amount of 6% of the value of exempted goods; or
[b] pay an amount as determined under rule 3A; or
[c] maintain separate accounts and take CENVAT credit as per conditions therein and thereafter, pay an amount as per sub rule 3A of CCR .

9. The appellant argued that they had not carried out any trading activities but only a stock transfer the goods to their other unit taken place, as per its requirement. . The adjudicating has concluded the activity carried out by the appellant as 'trading' on the basis of ledger account and nature of transaction shown in the invoices as sales and purchase. He further held that no further documents are available on record to show that the transaction was on stock transfer basis.

10. Generally, trading is an activity which carries or involves buying and selling of materials or goods on commercial basis. In the instant case, the appellant had purchased materials and sold to their own other unit under the coverage of commercial invoice. It is an undisputed facts that in the ledger records which pertains to such activities, the appellant has clearly recorded as 'internal purchase' and 'internal sale'. I observed from the copy of invoice furnished by them that the transaction has been shown as 'inter sale'. In the circumstances, I am of the opinion that such activities are not a 'stock transfer' but business activities having commercial identity. In the circumstances, the adjudicating authority has correctly concluded that the activities carried out by the appellant is 'trading' and do not require any interference. The appellant argued that they had an option to reverse the credit, as provided under CCR, in case of opting not to maintain separate accounts. This argument is not tenable, looking into the facts and circumstances of the instant case; that the period involved in this case is from 2010 to 2015 and till the records of the appellant was scrutinized by the audit officers, they even not thinks about for reversal of credit though they aware the procedures and provisions of rule. Even after, it was pointed out by the audit officer, they strict to their argument that their activities are not trading. Thus, the argument put forth by them is an afterthought.

11. The appellant, in support of their argument relied on Hon'ble Delhi Tribunal's decision in the case of M/s Sony India Ltd [2000(120) ELT 644], by holding that the transaction of movement of goods from one plant to another plant of same company be construed as stock transfer and not as sale of goods. On perusal of the said decision, I observe that the said decision is not applicable to the facts of the present case; that in the said decision, the case relates to transfer of goods from factory to depot and in the instant case, it relates to movement of goods from factory to factory (appellant's own) under proper entry in books and accounts mentioning as "purchase and sale'. The other decisions viz M/s English Electric Company of India Ltd pronounced by Hon'ble Supreme Court and M/s A.B.Mauri India Pvt Ltd of Hon'ble High Court of Andra Pradesh is also not relevant to this case, looking into the facts as discussed above.

12. The appellant further contended that the demand cannot be more than the CENVAT Credit, availed. I observe that in view of amended provisions of Rule 6 (3) of CCR, the Joint Secretary (TRU) has issued a letter no. 334/8/2016-TRU dated 29.2.2016 which states that:

(h) Rule 6 of Cenvat Credit Rules, which provides for reversal of credit in respect of inputs and input services used in manufacture of exempted goods or for provision of exempted services; is

being redrafted with the objective of simplifying and rationalizing the same without altering the established principles of reversal of such credit.

(i) sub rule (1) of rule 6 is being amended to first state the existing principle that CENVAT credit shall not be allowed on such quantity of input and input services as is used in or in relation to manufacture of exempted goods and exempted service. The rule then directs that the procedure for calculation of credit not allowed is provided in sub-rules (2) and (3), for two different situations.

(ii) sub-rule (2) of rule 6 is being amended to provide that a manufacturer who exclusively manufactures exempted goods for their clearance up to the place of removal or a service provider who exclusively provides exempted services shall pay (i.e. reverse) the entire credit and effectively not be eligible for credit of any inputs and input services used.

(iii) sub-rule (3) of rule 6 is being amended to provide that when a manufacturer manufactures two classes of goods for clearance upto the place of removal, namely, exempted goods and final products excluding exempted goods or when a provider of output services provides two classes of services, namely exempted services and output services excluding exempted services, Page 33 of 38 then the manufacturer or the provider of the output service shall exercise one of the two options, namely, (a) pay an amount equal to six per cent of value of the exempted goods and seven per cent of value of the exempted services, subject to a maximum of the total credit taken or (b) pay an amount as determined under sub-rule (3A).

(iv) The maximum limit prescribed in the first option would ensure that the amount to be paid does not exceed the total credit taken. The purpose of the rule is to deny credit of such part of the total credit taken, as is attributable to the exempted goods or exempted services and under no circumstances this part can be greater than the whole credit.

However, this amendment reflects the interpretation and intent of the Government. In-fact Joint Secretary himself states that the rules are *being redrafted with the objective of simplifying and rationalizing the same without altering the established principles of reversal of such credit.* . Even otherwise to demand an amount under Rule 6 which is more than the CENVAT credit availed would clearly be against the spirit of reversal. Though the above referred amendment has made in a clarification nature and not specified any retrospective effect, the intent of the Government is very clear.

13. In view above, I hold that the activity carried out by the appellant is falling within the meaning of 'exempted service' as defined under Rule 2(e) of CCR. It is not under dispute that the appellant had availed Cenvat credit on input/input services which were used in relation to both dutiable and exempted activity. Therefore, it was imperative on the appellant, to either, not take CENVAT credit in respect of input service used in trading activity or maintain separate accounts as per Rule 6(2), *ibid.* However, as is already mentioned, the appellant took CENVAT credit in respect of input service used in trading activity and also failed to maintain separate accounts. Therefore, the provisions of Rule 6 (3) of CCR clearly attracts in appellant's case. However, looking into the spirit of Board's circular as referred to above, I hold that the Cenvat credit demanded is not more than the credit availed. In the instant case, I observe that the demand was raised on the basis of percentage of trading value. Therefore, the Cenvat credit availed on such exempted service is required to be determined. In the circumstances, I feel that this issue is required to be considered by the adjudicating authority for determining the Cenvat credit availed by the appellant on such exempted service, as such, I remand the issue to the adjudicating authority for considering the matter in view of above discussion.

14. Now, I come to the second issue regarding availment of Cenvat credit amounting to Rs.4,35,952/- towards service tax paid on Works Contract service.

15. The definition of "input service" under Rule 2(l) of Cenvat Credit Rule states that:

(l) "input service" means any service,-

(i) used by a provider of taxable service for providing an output service; or
(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,

and includes services used in relation to modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal; but excludes
[A] specified in sub-clause (p), (zn),)zzl), (zzm), (zzq), (zzzh) of clause 105 of Section 65 of the Finance Act (hereinafter referred to as specified service), in so far as they are used for-
(a) Construction or execution of works contract of a building or civil structure or a part thereof; or
(b) Laying of foundation or making of structures for support of capital goods
[B] ....

The clause [A] has been amended with effect from 20.06.2012 which reads as under-

[A] service portion in the execution of a work contract and construction services including service listed under clause (b) of Section 66E of the Finance Act (hereinafter referred to as specified services) in so far as they are used for-
(a) Construction or execution of works contract of a building or civil structure or a part thereof; or
(b) Laying of foundation or making of structures for support of capital goods, except for the provisions of one or more of the specified service; or

[B] .....

16. From the above definition, it is seen that with effect from 20.06.2012, there is exclusion for "works contract service" and "construction service" when these services are used for construction or execution of works contract of a complex, building, civil structure or for laying foundation or making structure for support of capital goods. The inclusive portion of the definition covers service relating to modernization, renovation or repairs of a factory premises of provider of output service or manufacture of final products and clearance of final products upto the place of removal. I further observe that when the inclusive part specifically allows the credit of service tax paid on services pertaining to the modernisation, renovation or repairs of a manufacturer of final products and clearance of final products, what the services that are covered under exclusion part are. In my opinion, the exclusion part covers services in the nature of 'original works' viz., the new constructions or substantial constructions and not the petty works. In other words, if the manufacturer, instead of renovation/repairs to their factory premises/office intends to construct a new building, in such a case no credit of service tax paid to the contractor is eligible.

17. Now, the question arises regarding actual works carried out by the appellant. It is the contention of the appellant that they had taken credit on service tax paid on Works Contract Service used in relation to renovation of the factory and alteration/repairs of machinery. On the other hand, the adjudicating authority contended that the appellant had taken the credit in dispute on service tax paid on "work contract services" used in the nature of civil work under works contracts and the said services were provided in areas and structures in the factory premises and also in relation to foundation and making support structure of capital goods. In the instant case, I observe that the impugned notice, on the basis of audit objection, was issued to the appellant for wrong availment of input service credit on "work contract service" for construction of foundation of boiler and its accessories. In the impugned order also, it was mentioned that the said credit was taken by the appellant on the said service for civil construction under work contract. Further, the invoice furnished by the appellant reveals that the scope work involves repairing and maintenance of work which were in the nature of civil work under work contract. In the circumstances, there is no reason to consider the argument of the appellant that during the period that they had taken the said credit on service tax paid on "work contract services" used in relation to repairing of machinery, especially in absence of any further documental evidence.

18. Further, for availing Cenvat credit, the prime condition is that the requisite service shall fall within the ambit of input service definition, as specified in the CCR-2004. In the instant case, as per definition of "input service", the service i.e. "work contract" availed by the appellant for carrying out in the nature of civil work, do not fall within the ambit of "input service". Since the definition of input service itself restricts the appellant from availing the service tax credit of the service of "work contract" used for construction, as discussed above, I do not find any merit to discuss further aspect of argument put forth by the appellant in the appeal. Therefore, I uphold that the appellant is not eligible for input service credit availed by them during the relevant period. In the circumstances, the same is to be recovered from them with interest.

19. The appellant's other contention is that the notice is barred by limitation. The adjudicating authority's justification for invoking extended period is that the appellant has contravened the provisions of Rule 6 and 2(l) of the CCR and has also suppressed facts with the intent to evade payment of duty. The appellant's contention is that there is no suppression of facts since it was known to the department as they have submitted all relevant records in November 2012 and December 2013 that they were engaged in both manufacturing and trading activity and were availing CENVAT credit in respect of trading /work contracts also. I observe that while submitting the records of November 2012 and December 2013 before the authority, they had suppressed the relevant facts from the department, as such the demand for the said period is very well within the ambit of invoking extended period In other words, show cause notice, covering the issue discussed above, can be issued till 2017 by invoking extended period. In the circumstances, show cause notice dated 31.07.2015 issued, covering the said periods, does not find any difference, and correctly issued..

20. I find that the adjudicating authority has imposed penalty under Section 11 AC of the Central Excise Act, 1944 in respect of amount liable to pay under Rule 6 (3) of CCR. The penalty imposed under the said Section is required to be modified as the demand of amount liable to pay under Rule 6(3) of CCR is modified, as discussed at para 14.

21. In this backdrop, I partially modify the impugned order. The appeal filed by the appellant stands disposed of in above terms (अपीलकर्ता द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है।).

(उमा शंकर)
आयुक्त (अपील्स - I)
Date:21/02/2017

Attested

(Mohanan V.V)
Superintendent (Appeals-I)
Central Excise, Ahmedabad

By R.P.A.D
To
M/s. Rushil Décor Ltd.,
607-608, GIDC, Mansa, Dist. Gandhinagar
Gujarat.

Copy to:-

1. The Chief Commissioner, Central Excise, Ahmedabad Zone .
2. The Principal Commissioner, Central Excise, Ahmedabad-III
3. The Deputy/Assistant Commissioner, Central Excise, Gandhinagar Ahmedabad-III.
4. The Assistant Commissioner, System-Ahmedabad-III
5. Guard File.
6. P.A. File.