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(34)82/Ahd-III/2016-17/Appeal-I** / 4430 to 4434

ख अपील आदेश संख्या :Order-In-Appeal No.: **AHM-EXCUS-003-APP-048-17-18**

दिनाँक Date :**20.07.2017** जारी करने की तारीख Date of Issue: 25-07-17

श्री उमाशंकर आयुक्त (अपील-I) द्वारा पारित

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

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

Arising out of Order-in-Original: **AHM-CEX-003-ADC-AJS-023-024-025-16-17** Date: **22.09.2016** Issued by: Additional Commissioner, Central Excise, Din: Kalol, A'bad-III.

ध अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

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

M/s. Sureel Enterprises Pvt. 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 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– ण0बी/35–इ के अंतर्गतः–

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

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.

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hcspital 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 रेखाकिंत बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाख 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."

ORDER-IN-APPEAL

M/s Sureel Enterprise Pvt. Ltd., 513-B, National Highway Road, Chattral, Taluka: Kalol, District: Gandhinagar (hereinafter referred to as 'the appellant') is holding Central Excise Registration No.AADCS5160KXM001 and are engaged in the manufacture of Organic Surface Active Agents i.e. Detergent Washing Powder falling under Chapter Heading 3402 of the first Schedule to the Central Excise Tariff Act, 1985 (CETA, 1985). The appellant has filed the present appeal being aggrieved by **Order-in-original No.AHM-CEX-003-ADC-AJS-023-024-025-16-17 dated 23/09/2016** (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Central Excise, Ahmedabad-III (hereinafter referred to as 'the adjudicating authority').

2. During the course of audit of Range-IV, Division-II, Ahmedabad-III by officers of CERA, it was observed that the appellant, who had received raw material from NIRMA Ltd. and had removed goods on payment of duty, had taken CENVAT credit of Service Tax on inward transportation on the strength of bills raised on NIRMA Ltd. where the transporters had brought the goods on behalf of NIRMA Ltd. without any obligation to the appellant, which was irregular input credit of Service Tax paid on inward transportation. The investigation carried out by department in pursuance of CERA observation revealed that the appellant had availed CENVAT credit amounting to Rs.27,01,611/- irregularly during the period of April-2010 to December-2014 in contravention of provisions of Rule 9(1)(e) of Cenvat Credit Rules, 2004 (CCR, 2004) read with Rule 2(l)(ii) ibid. Three Show Cause Nctices (SCNs) viz. (i) SCN F.No.V.34/15-185/DEM/OA/14 dated 02/06/2015 demanding CENVAT credit of **Rs.27,01,611/-** under Rule 14 of CCR, 2004 for the period of **April-2010 to December-2014**, invoking extended period under Section 11A(4) of Central Excise Act, 1944 (CEA, 1944) (ii) SCN F.No.V.34/03-24/SCN-DEM/15-16 dated 09/12/2015 demanding **Rs.4,63,972/-** for the period **January-2015 to June-2015** and (iii) SCN F.No.V.34/15-185/DEM/OA/15-16 dated 18/07/2015 demanding **Rs.6,83,086/-** for the period **July-2015 to December-2015.** In all the three SCNs, interest was demanded under Rule 14 of CCR, 2004 read with Section 11AA of CEA, 1944 and penalties were proposed to be imposed on the appellant under Rule 15(2) / Rule 15(1) of CCR, 1944, read with Section 11AC of CEA, 1944. All these three SCNs were adjudicated vide the impugned order confirming the demands along with interest and imposing penalties as proposed in the these SCNs.

3. The grounds of appeal in the instant appeal are as follows:

1) M/s Nirma Ltd., Chattral procured and supplied the materials out of which detergent was manufactured on job-work basis in the factory of the appellant on principle to principle basis for the purpose of trading without following the provisions of Notification No. 214/86 as amended and Rule 4(5) of CCR, 2004.

whereby the liability to pay duty was on the appellant who was the job-worker. The appellant availed CENVAT credit of duty paid on the materials supplied by N/s Nirma Ltd. and having discharged Service Tax on inward transportation of the said materials, availed CENVAT credit of such Service Tax also. As per terms and condition of the agreement, the charges for manufacture of detergent on job-work basis are to be paid per Kg of the quantity of detergent manufactured by the appellant and all the expenses incurred by the appellant on behalf of Nirma Ltd. were to be reimbursed by M/s Nirma Ltd. on actual basis. Since inward transportation is related to the manufacturing activity of dutiable goods, the appellant took credit of Service Tax paid on inward transportation. The only objection by CERA was that the transportation charges were paid by M/s Nirma Ltd. as the appellant had raised debit notes towards such charges. On perusal of the ledger account it is evident that the payments towards inward freight is paid by the appellant and it is factually wrong that the invoices were in the name of Nirma Ltd. Issuance of debit notes and recovering transportation charges from M/e Nirma Ltd. is based on mutual commercial understanding and agreement between both parties and does not have any bearing on Service Tax liability. In view of the clarification in Board Circular No. 97/8/2007 dated 23/08/2007, credit of Service Tax paid on GTA can be availed by consignor or consignee who manufactures excisable goods or provides taxable service. In Elgi Ultra Industries Ltd.-2010 (19) STR 669 (Tri.Chennai) and M/s Rajasthan Spinning & Weaving Mills ltd. – 2011 (22) STR 52 (Tri.-Del.) it has been held that credit of Service Tax paid on GTA service by the recipient of GTA service was available to them.

2) Even otherwise, on the grounds of limitation also the confirmed demand is not sustainable and is required to be quashed and set aside. All the details were available on record for scrutiny of the audit officers. In response to the summons issued by Range Superintendent, the appellant had furnished the details in its letter. The appellant had fully cooperated with the department at all times. The audit officers had not pointed out any discrepancy during audit of their records, until CERA raised the objection.

3) As regards imposition of penalty under Section 11AC, the ground adduced is that the appellant had contravened the provisions of CCR, 2004 intentionally by suppressing the facts from the department. When the demand is not sustainable, penalty is also not sustainable.

4. Personal hearing in the appeal was held on 20/03/2017. Shri Vikram Singh Jhala, Authorized signatory appeared and reiterated the grounds of appeal. He submitted that the appellant is paying transportation charges which are being reimbursed to them by Nirma. This is a common practice. As regards limitation, he submitted that regular audits were conducted but the issue was never raised.

5. I have carefully gone through the impugned order and the grounds of appeal filed by the appellant. The issue to be decided is whether the CENVAT credit of GTA service for transportation of inputs supplied by M/s NIRMA Ltd., availed by the appellant as job-worker is admissible or otherwise. The undisputed facts are that the transporters had raised invoices in the name of M/s Nirma Ltd., the payment of freight charges made by the appellant, along with Service Tax was reimbursed by M/s Nirma Ltd.

6. Rule 2(l) of CCR, 2004 defines input service as service used by a manufacturer, whether directly or indirectly, in or in relation to the manufacturer of final products and clearance of final products up to the place of removal and includes inward transportation of inputs or capital goods and outward transportation up to the place of removal. In terms of Rule 2(1)(d) of Service Tax Rules, 1994, service tax on GTA service is payable on reverse charge basis by the recipient who is liable to pay the freight charges. In the present case, the invoices raised by the transporters are in the name of M/s Nirma Ltd. and the payment of transportation charges and service tax made by the appellant have been reimbursed by M/s Nirma Ltd. Therefore, it is clear that M/s Nirma Ltd. was liable to pay the freight and Service Tax on reverse charge mechanism as they are the recipient of the said service. Further, in the impugned order in paragraph 23, the adjudicating authority has reproduced the relevant clauses of the contract between the appellant and M/s Nirma Ltd. As per clause-7 thereof, the raw material and other goods for the purpose of job-work shall be sent by M/s Nirma Ltd. to the factory of the appellant in Chattral village of Kalol district. On examining the copies of invoices issued by the raw materials suppliers, it is seen that the buyers of raw materials was M/s Nirma Ltd., Chhatral and the consignee address is shown as the factory of the appellant at Chhatral. Therefore, the actual consignee of the inputs and recipient of the GTA service is M/s NIRMA Ltd. and not the appellant. M/s Nirma Ltd. had purchased the raw materials and arranged that the raw materials are supplied directly by the seller to the factory of the appellant for manufacture on job-work basis. Such transportation does not make the appellant the buyers of raw materials or the recipient of GTA service relating to the transportation of such raw materials. Therefore, the reliance placed on Board Circular No. 97/8/2007 dated 23/08/2007 by the appellant is not helping its cause because it is neither the consignor nor the consignee of the raw materials or recipient of the impugned GTA service. Thus the said GTA service was not for inwards transportation for the appellant and it was not eligible to avail the impugned credit and hence the confirmation of demands and interest in the impugned order is sustainable on merits.

7. The appellant has challenged invoking of extended period and imposition of penalties on the ground that earlier audit parties had not raised the said objection. It is pertinent to note that that the payment of the freight and Service Tax on inward transportation of goods was being made by the appellant. Thereafter, the appellant had raised debit notes for freight as well as Service Tax on M/s Nirma Ltd. who had

reimbursed the said payments. The appellant was under obligation to reveal the facts relating to the debit notes to the department, which it had not done at any point of time, even during audit of its excise records. Apparently, what was declared was the fact that the expenses towards freight and Service Tax for inward transportation was borne by the appellant and hence they appeared to be eligible to avail the credit. The details of reimbursement by M/s Nirma Ltd. came to light only on the basis of detailed scrutiny of the debit notes issued by the appellant. In the case of KRISHNA UDYOG vs COMMISSIONER OF CENTRAL EXCISE, LUCKNOW – 2016 (343) E.L.T.252 (Tri.-All.) as affirmed by Hon'ble Supreme Court in KRISHNA UGYOG VS. COMMISSIONER – 2016 (342) E.L.T. A114 (S.C.), it has been held that merely because the classification list was approved, it did not mean that there was no suppression of facts. The relevant portion of the Tribunal order is extracted below:

> **4.3** On the issue of time bar, we would agree with the findings of the Commissioner that once the notification benefit is claimed in the classification which is approved by the Central Excise authorities, it goes without saying that the conditions of the notification have to be satisfied. It is not possible for Revenue to know beforehand that the condition will not be satisfied. The decision of the Hon'ble Supreme Court in the case of *Dabur India Ltd.* (supra) is based on the fact that the extended period of limitation would not apply when the classification list has been duly approved. In the present case approval was given for benefit of the notification. But later it was revealed that the condition of the notification approved in the classification list was not observed. Neither the Form-IV register indicated that the appellant were receiving the wires of less than 6 mm dimension; nor the RT-12 returns were shown to us indicating that wire of less than 6. mm dimension were used. The input gate passes are not submitted to the Central Excise authorities with RT-12 returns. In the circumstances, it is impossible for the Central Excise authorities to know that the assessee was using such wire. It was only after audit was conducted that the true facts came to light. Therefore, there is clear suppression of facts in claiming the benefit of notification wrongly. The extended period in such case is invocable.

Further, in the case of COLLECTOR OF CENTRAL EXCISE, AURANGÁBAD vs TIGRANIA METAL & STEEL INDUSTRIES – 2001 (132) E.L.T. 103 (Tri.-Del.), it has been held that the burden of proving that the department was in knowledge of facts was on the assessee availing benefit of a Notification. The relevant portion of this decision is reproduced as follows:

> **5.** Regarding the suppression of material facts by the respondents from the Revenue, the Collector had not recorded specific findings. He has simply opined that the invoices under which the goods were purchased, were shown by the respondents to Audit Party who visited their factory premises, but when the visit took place and who on behalf of the respondents, showed those invoices, he has failed to disclose. There is also no material on record to show that those invoices were initialled or signed by any member of the Audit Party in token of having gone through or examined the same. From the mere visit to the factory premises, by the Audit Party, it could not be legally inferred that the Revenue had the knowledge about the availment of the benefit of notification in question by the respondents wrongly and illegally. The burden of proving the Department's knowledge was on the respondents, as they availed the benefit of Notification No. 208/83. But that burden in our view, they had failed to discharge.

In the present case, it is not the claim of the appellant that the details of the debit notes had been declared to the audit parties. As per the excise records, the payment of freight and Service tax was made by the appellant. The burden is on the appellant to prove the department had the knowledge of the reimbursement received towards such freight and Service Tax paid by the appellant. It is on record that even after the audit was over, the appellant had not submitted the details of the impugned credit till a summons was issued and statements were recorded under Section 14 of CEA, 1944. Thus the ingredients of suppression and mis-declaration are very much existent in the present case and hence the invoking of extended period and imposition of penalties are sustainable. Accordingly, the appeal is rejected.

9. अपीलकर्ता द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed of in the above terms.

(उमा शंकर)
आयुक्त (अपील्स-१)

Date: 20/7/2017

Attested

(K. P. Jacob)
Superintendent (Appeals-I)
Central Excise, Ahmedabad.

By R.P.A.D.
To
M/s Sureel Enterprise Pvt. Ltd.,
513-B, National Highway Road, Chhatral,
Taluka : Kalol,
District: Gandhinagar

Copy to:

1. The Chief Commissioner of Central Excise, Ahmedabad.
2. The Commissioner of Centra Excise, Ahmedabad-III.
3. The Additional Commissioner, Central Excise (System), Ahmedabad-III.
4. The Deputy Commissioner, Central Excise Division, Gandhinagar, Ahmedabad-III.
5. Guard File.
6. P.A.