केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

सत्यमेव जयते

वस्तु एवं सेवा कर भवन,
सातवीं मंजिल,पोलिटेकनिकके पास,
आम्बावाडी, अहमदाबाद-380015

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: 079-26305065

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क फाइल संख्या :File No : **V2/4/GNR/2019-20**/14909 TO 14913

ख अपील आदेश संख्या :Order-In-Appeal No.: **AHM-EXCUS-003-APP-02-2020-21**

दिनाँक Date :**27.04.2020** जारी करने की तारीख Date of Issue: 23/06/2020

आयुक्त (अपील) द्वारा पारित

Passed by **Shri Akhilesh Kumar** ,Commissioner (Appeals) Ahmedabad

ग आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश **: AHM-CEX-003-ADC-JN-22-18-19** दिनाँक : **26-Feb-19** से सृजित

Arising out of Order-in-Original: **AHM-CEX-003-ADC-JN-22-18-19,** Date: **26-Feb-19** Issued by: Additional Commissioner,CGST, Gandhinagar Commissionerate, Ahmedabad.

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।

I. Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944, 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 :-

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 दूसरा मंजिल, बहूमाली भवन, असारवा, अहमदाबाद, गुजरात 380016

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 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 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."

II. Any person aggrieved by an Order-in-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/Goods and Services Tax (Compensation to States) Act, 2017, may file an appeal before the appropriate authority.

ORDER-IN-APPEAL

This order arises out of an appeal filed by M/s Shah Alloys Ltd., Block No.2221/2222, Shah Industrial Estate, Sola-Kalol Road, Taluka Kalol, Distt. Gandhinagar (in short '*appellant*') against Order-In-Original No. AHM-CEX-003-ADC-JN-22-18-19 dated 26.02.2019 (in short '*impugned order*') passed by the Additional Commissioner, C.G.S.T. & Central Excise, Gandhinagar Commissionerate (in short '*the adjudicating authority*').

2. The facts of the case, in brief, are that the appellant are engaged in manufacture of excisable goods falling under Chapter 72 and 73 of the Central Excise Act, 1985 and are holding Central Excise Registration as well as Service Tax Registration. They, vide a letter dated 30.08.2011, informed to the department that they had taken cenvat credit of an amount of Rs.51,57,801/- vide Entry No.372 in their Cenvat Register on 29.08.2011 which was the service tax paid by them under GTA services during the period from January 2005 to July 2011 on the freight charges for export of goods up to ICD-Sabarmati from the factory gate. They contended that they could not take the cenvat credit of GTA at the material time owing to a confusion on the admissibility of the said credit.

2.1 The department took objection that the impugned GTA services in the present case would not qualify as 'input services' as defined under the Cenvat Credit Rules, 2004 (in short '*the CCR*') and hence the cenvat credit availed on service tax paid on GTA services in the case is not admissible to the appellant in terms of the said Rules. It is the contention of the department that the prices of goods charged in the invoices, randomly verified, indicated that the freight charges had been charged in addition to the assessable value plus central excise duty and therefore, it is clear that the prices had been fixed on ex-factory basis and the freight charges had been borne on behalf of the buyer and as such separately collected and shown in the invoice. Since the outward transportation charges have been borne by the buyer, the services of transportation in the case were used by the buyers and not by the appellant and as the input services under the CCR refers to services used by the manufacturer, the said service does not fall within the purview of the definition of 'input services' inasmuch as the same has not been used by the appellant. Further, since the goods in the present case had been removed from the factory of the manufacturer, the 'place of removal' in the case would be factory in terms of the provisions of Section 4(3)(c) (i) of the Central Excise Act, 1944 (in short '*the Act*') and for that reason, the service of transportation of goods from the factory gate of the appellant to the ICD would become services availed beyond the place of removal and as such the said service would not qualify as 'input service' in terms of the provisions of Rule 2(l) of the CCR. Based on the above objections, a Show Cause Notice dated 27.08.2012 was issued to the appellant for disallowing and recovery of the above said cenvat credit availed by them. This SCN was adjudicated by the adjudicating authority vide impugned order wherein Cenvat credit of Rs.51,57,801/- wrongly availed was disallowed and ordered for recovery along with interest under Rule 14 ibid read with Section

11A and 11AB of the Central Excise Act, 1944 respectively. The adjudicating authority also imposed penalty amounting to Rs.51,57,801/- under Rule 15 ibid read with Section 11 AC of the Act on the appellant.

3. Aggrieved with the impugned order, the appellant has filed the present appeal mainly on the following grounds:

(a) GTA services were used by the appellant for the transport of goods from the factory to ICD-Sabarmati and was used particularly in relation to the goods which were exported by the appellant. The Board Circular and also settled legal position is that the place of removal in the case of export of goods was the port and therefore cenvat credit of GTA services was admissible to the appellant as input service under Rule 2(l) of the CCR.

(b) The Additional Commissioner has grossly failed to appreciate that there are two separate legal positions when it came to availment of cenvat credit of service tax paid on outward transportation service for the goods cleared to the buyers premises in domestic sale and the goods which were cleared for export because the place of removal in both the situations was different. The whole order of the Additional Commissioner is passed on wrong premise, and the plethora of decisions referred and relied upon by the adjudicating authority are inapplicable while deciding the issue whether cenvat credit of outward transportation of goods to the port for further export was admissible or not.

(c) The impugned order is passed without considering weighty and relevant submissions of the appellant which were duly supported by relevant case laws is in violation of the principles of natural justice and hence void.

(d) The lower adjudicating has erred in not considering the settled legal position by virtue of decisions in cases like Kuntal Granite [2007 (8) RLT 707] that the place of removal in case of export of goods was the port. They also rely upon the decisions of the Appellate Tribunal, Ahmedabad in cases like Adani Pharmachem [2008 (232) ELT 804] and Rawmin and Mining [2009 (131) STR 269];

(e) The Port being the place of removal in case of exports, ICD-Sabarmati could never be considered to be place "beyond the place of removal" as contemplated under Section 2(l) of the CCR. The impugned order holding that the credit in this case pertained to outward transportation beyond the place of removal, the place of removal allegedly being factory in terms of Section 4(3)(c)(i) of the Act does not hold any water.

(f) Payment of service tax of Rs.51,57,801/- on transportation service utilized by the appellant for transporting the goods for export is an admitted fact and in view of the matter, the appellant has been legally entitled to cenvat credit of the above amount;

(g) The adjudicating authority has not examined the true scope of Rule 2(l) of the CCR and has failed to consider the judgments of various High Courts on the eligibility of different services falling under the ambit of 'input services' given under Rule 2(l) of the CCR like the Hon'ble Bombay High Court judgment in the cases of Coca Cola India Pvt. Ltd. [2009 (242) ELT 168] and Ultratech Cement Ltd. [2010 (260) ELT 369] and the Hon'ble Gujarat High Court judgment in the case of Dynamic Industries [2014 (35) STR 674 (Guj.)].

(h) In support of their contention that in the case of exports, the place of removal would be the port of export and credit would be admissible on GTA services availed upto the port, the appellant has relied upon the decision of Hon'ble High Court in the case of Dynamic Industries (supra) and the Tribunal decisions in the case of Mahindra Reva Electric Vehicle [2017 (3) GSTL 75], M/s Apar Industry Ltd. [2016 (45) STR 71]; Lucas TVS Ltd. [2016 (43) STR 418 and Carboline (India) Pvt. Ltd. [2016 (44) STR 623];

(i) There is a catena of decisions which interpret the term place of removal in terms of the amendment brought in the definition of input services w.e.f. 01.04.2008. The issue of availment of cenvat credit of GTA services for the clearances made from the factory to the buyers premises has also been finally decided by the Hon'ble CESTAT, Ahmedabad in the matter of M/s Ultratech Cement in Appeal No.E/11098 /2015-DB wherein the credit on outward transportation was allowed even for the period subsequent to 01.04.2008. The adjudicating authority though referred to the this decision, has not followed the same viewing that the decision was per incurium and suffers from legal infirmities inasmuch as the Hon'ble CESTAT has failed to discuss the legal ratio of the Hon'ble Apex Court's judgment in the case of M/s Ultratech Cement and the Hon'ble CESTAT has further failed to appreciate that in view of the Apex Court's judgment in the case of M/s Ratan Melting & Wire Industries, the Board's Circular was not required to be followed as it was contrary to the Apex Court's judgment. It is no longer open to any debate that the lower officer must follow unreservedly the orders of the higher judiciary and this is the principle laid down by the Hon'ble Supreme Court in a number of cases including the one of Kamalakshi Finance Corporation [1991 (55) ELT 433 (SC)]. Therefore, the Adjudicating Authority had no jurisdiction to disregard the decisions of the Hon'ble CESTAT where the cenvat credit which are disputed in the present proceedings has been allowed.

(j) In another decision given by the Hon'ble CESTAT in the matter of M/s Sanghi Industries Ltd. in final Order No.A/10374-10375/2019, the Hon'ble CESTAT has allowed the cenvat credit of service tax paid on GTA services when clearances were made to the buyers premises in the domestic market. The Hon'ble Tribunal in their said decision has considered the amendment to the definition of input service w.e.f.

01.04.2008 and also discussed all the decisions which the lower adjudicating authority has relied upon while disallowing the cenvat credit in the present case. It also referred to Board's Circular No.1065/4/2018-CX dated 08.06.2018 giving clarification on the term "place of removal" under Section 4 of the CEA, 1944. After such discussion, the Hon'ble CESTAT has held that credit was admissible in view of the most relevant Apex Court's judgement discussed in the order.

(k) The issue under dispute is already stand decided in favour of the appellants by the Commissioner (Appeals) on the previous occasion and these orders are effective at present, the adjudicating authority is bound by the orders of the Commissioner (Appeals); and

(l) The appellant has not committed breach of any rule with an intent to evade payment of duty. When it is the appellant who has specifically informed the Range and Jurisdictional Officers about their action of taking credit and the credit in question is not utilized, no penalty or interest could be justifiably imposed on the appellant in law.

4. Personal hearing in the matter was held on 05.02.2020. Shri Amal Dave, Advocate, appeared on behalf of the appellants and submitted additional written submissions during hearing. He re-iterated the submissions made therein and in the appeal memorandum.

4.1 In the additional submissions, the appellant submitted that the arguments furnished by the adjudicating authority for disallowing the credit in question in the impugned order has been discarded by the Tribunal, Ahmedabad in their decision in the case of M/s Sanghi Industries [2019 (369) ELT 1424] and this decision of Tribunal stands affirmed by the Hon'ble High Court of Gujarat vide their Order dated 23.01.2020 wherein the departmental appeal against the said Tribunal decision was dismissed. They further relied on the decisions of the Hon'ble Gujarat High Court in the case of Dynamic Industries (supra) and Inductotherm India Pvt. Ltd. in Tax Appeal No.22 of 2014 and the Tribunal decisions in the case of M/s Honest Bio Vet Pvt. Ltd. [2014 (310) ELT 526] and in the case of M/s Precise Products [2018 (9) GSTL 203] to advance their plea that port is the place of removal in cases of export of goods.

5. I have carefully gone through the appeal memorandum, submissions made at the time of personal hearing and evidences available on records. I find that the only issue to be decided is as to whether appellant is entitled to Cenvat credit of service tax paid on GTA services availed for removing the goods from their factory to the ICD-Sabarmati for the purpose of export, or otherwise.

6. It is seen that the adjudicating authority vide impugned order has confirmed the demand on the ground that Outward Transportation services availed in the present case are not 'input service' as defined in Rule 2(l) of the Cenvat Credit Rules, 2004 being services

availed beyond the place of removal and hence the cenvat credit availed on the service tax paid on freight charges of outward transportation of the finished are not admissible. The said decision was on the premise that the place of removal of goods in the case was factory gate. The adjudicating authority has mainly relied on the judgment of Hon'ble Supreme Court in the case of Commissioner of Central Excise & S.T. Vs. Ultra Tech Cement Ltd. [2018 (9) GSTL 337 (SC)] for his decision.

7. Since the issue pertains to eligibility of impugned services under 'input services', it is pertinent to examine as to how input service is defined under the CCR. The definition of 'input services' has to be seen in two contexts, before its amendment with effect from 01.04.2008 and after that. In the present case, the appellant has availed the cenvat credit of the service tax paid in respect of services availed during the period from January 2005 to July 2011 on 29.08.2011. As the credit under dispute was availed or taken on 29.08.2011, the admissibility of the said credit has to be decided in terms of the definition prevailing at the time of taking credit. Therefore, the definition of input service relevant in the case is that of the period after 01.04.2008, which reads as under:

> *"2(l) "input service" means any service :-*
>
> *(i) used by a provider of taxable service for providing an output services; 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 setting up, 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, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal;"*

As can be seen from the above definition, services of outward transportation availed by manufacturer is eligible as 'input services' upto the place of removal. Thus, the crucial factor which determines the admissibility of outward GTA services as input services is the 'place of removal' in the case. Provisions of Central Excise Act, 1944 provides that the place of removal has to be with reference to the point of sale of excisable goods i.e. the point or place where the transfer of property of the goods have taken place.

8. In the facts of the present case, it is observed that the impugned services were availed by the appellant for transportation of goods removed for export. The SCN issued did not dispute this fact. I find that the issue of admissibility of cenvat credit in case of export of goods has been clarified by the Central Board of Excise & Customs vide their Circular No.999/6/2015-CX dated 28.02.2015 issued from F.No.267/13/2015-CX.8 wherein it has been explained as to how the place of removal to be ascertained in the case of

clearance of goods for exports for the purpose of admissibility of cenvat credit on input services. The relevant portion of the said Circular reads as under:

> *"5. Clearance of goods for exports from a factory can be of two types. The goods may be exported by the manufacturer directly to his foreign buyer or the goods may be cleared from the factory for export by a merchant-exporter.*
>
> *6. In the case of clearance of goods for export by manufacturer exporter, shipping bill is filed by the manufacturer exporter and goods are handed over to the shipping line. After Let Export Order is issued, it is the responsibility of the shipping line to ship the goods to the foreign buyer with the exporter having no control over the goods. In such a situation, transfer of property can be said to have taken place at the port where the shipping bill is filed by the manufacturer exporter and place of removal would be this Port/ICD/CFS. Needless to say, eligibility to CENVAT Credit shall be determined accordingly.*
>
> *7. In the case of export through merchant exporters, however, two transactions are involved. First is the transaction between the manufacturer and the merchant exporter. The second transaction is that between the merchant exporter and the foreign buyer. As far as Central Excise provisions are concerned, the place of removal shall be the place where the property in the goods passes from the manufacturer to the merchant exporter. As explained in paragraph 4 supra, in most of the cases, this place would be the factory gate since it is here that the goods are unconditionally appropriated to the contract in cases where the goods are sealed in the factory, either by the Central Excise officer or by way of self-sealing with the manufacturer of export goods taking the responsibility of sealing and certification, in terms of Notification No. 19/2004- Central Excise (N.T.), dated 6-9-2004, etc.*
>
> *8. However, in isolated cases, it may extend further also depending on the facts of the case, but in no case, this place can be beyond the Port/ICD/CFS where shipping bill is filed by the merchant exporter. The eligibility to CENVAT Credit shall be determined accordingly."*

Thus, it is apparent that in the case of clearance of goods for export by manufacturer exporter, the place of removal of goods would be the Port/ICD/CFS. In the instant case, it is not disputed by the department that the goods were not exported by the appellant as manufacturer exporter. When that being so, the place of removal of goods in the case has to be ICD-Sabarmati in the present case as per Board's above clarification. Further, it also appears to be a settled legal position that in the case of exports, the place of removal necessarily has to be port of export and once the place of removal of goods in the case is ascertained as port of export, then the impugned services of outward transportation up to the port of export would fall within the ambit of 'input services" as defined under Rule 2(l) of the CCR, in view of the Hon'ble Gujarat High Court decisions in the case of M/s Dynamic Industries [2014 (35) STR 674 (Guj.)] and in the case of Inductotherm India Pvt. Ltd. in Tax Appeal No.22 of 2014.

9. It is further observed that the adjudicating authority has relied upon the decision of Hon'ble Supreme Court in the case of CCE Vs. Ultra Tech Cement Ltd. reported at 2018 (9)

GSTL 337 (SC) to arrive at conclusion that the issue of admissibility of cenvat credit on outward transportation used for transportation of goods from the place of removal to the buyer's premises has been settled in favour of Revenue in view of amendment made in 2008 in the definition of input services defined under Rule 2(l) of the Cenvat Credit Rules, 2004.

10. It is observed in this regard that the Central Board of Excise & Customs (now Central Board of Indirect Taxes and Customs), New Delhi has reviewed their Circulars issued on the subjects of determination of place of removal and admissibility of Cenvat Credit in view of judgments of Hon'ble Supreme Court in the case of CCE Vs. M/s. Roofit Industries Ltd. - 2015 (319) E.L.T. 221 (S.C.), CCE Vs. Ispat Industries Ltd. - 2015 (324) E.L.T. 670 (S.C.), CCE, Mumbai-III Vs. Emco Ltd. - 2015 (322) E.L.T. 394 (S.C.) and CCE & ST Vs. Ultra Tech Cement Ltd. [2018 (9) G.S.T.L. 337 (S.C.)] vide their Circular No. 1065/4/2018-CX., dated 8-6-2018 issued from F. No. 116/23/2018-CX-3 and after review, it has been clarified that:

> *"4. Exceptions:*
>
> *4 (ii) Clearance for export of goods by a manufacturer shall continue to be dealt in terms of Circular No. 999/6/2015-CX., dated 28-2-2015 as the judgments cited above did not deal with issue of export of goods. In these cases otherwise also the buyer is located outside India."*

I find that this clarification has been issued taking into consideration the judgment of Hon'ble Supreme Court in the case of Ultra Tech Cement supra. Thus, it can be seen that the instructions/directions issued vide Circular No. 999/6/2015-CX., dated 28-2-2015 are still operative and the issues discussed therein would continue to be decided in accordance with the clarifications given therein.

11. It is observed from the case records that the GTA services were availed by the appellant in relation to export and hence in terms of Board's Circular No.999/6/2015-CX dated 28.02.2015 read with Board's Circular No. 1065/4/2018-CX., dated 08.06.2018, the appellant being manufacturer-exporter, is eligible for Cenvat credit till the port/ICD/CFS, being the place of removal in case of manufacturer-exporter. Therefore, it is observed that the issue was decided by the adjudicating authority without taking into consideration full facts of the case.

11.1 It is further observed that the adjudicating authority though has referred to Board's aforementioned Circular No.1065/4/2018-CX., dated 08.06.2018 issued from F. No. 116/23/2018-CX-3, but did not follow the same, considering it to be in contradiction to the law declared by the Supreme Court and he is bound to follow the judgment of Hon'ble Supreme Court in the case of Ultra Tech Cement supra in the matter of interpretation of law, for which he relied on the Apex Court's judgment in the case of Ratan Melting and Wire Industries [2008 (231) ELT 22 (S.C.)]. However, it is not forthcoming from the impugned order as to how the Board's Circular referred above is contradicting the law

declared by the Hon'ble Apex Court in the case of Ultratech Cement Ltd. (supra). It is apparent from the Board's aforementioned Circular that the same is issued after reviewing their Circulars issued on the subjects of determination of place of removal and admissibility of Cenvat Credit in view of judgments of Hon'ble Supreme Court in the case of CCE Vs. M/s. Roofit Industries Ltd. - 2015 (319) E.L.T. 221 (S.C.), CCE Vs. Ispat Industries Ltd. - 2015 (324) E.L.T. 670 (S.C.), CCE, Mumbai-III Vs. Emco Ltd. - 2015 (322) E.L.T. 394 (S.C.) and CCE & ST Vs. Ultra Tech Cement Ltd. [2018 (9) G.S.T.L. 337 (S.C.)] and such instructions are binding in nature to the adjudicating authority and he can not have a different stand on the issue, even if he disagrees with it.

11.2 Further, the adjudicating authority also seems to have erred in viewing that the decision of the Hon'ble Supreme Court in the case of M/s Ispat Industries has settled the law as far as the interpretation of definition of place of removal under Section 4 of the Central Excise Act, 1944 is concerned. While the said judgment lays down a general principle in the case of interpretation of the definition of place of removal under Section 4 of the Act ibid but the same can not be said to be applicable on the facts of the cases which are discussed by the Apex Court in their decision in the cases of M/s. Roofit Industries Ltd. (supra) and Emco Ltd. (supra) as the Hon'ble Court has clearly distinguished the facts of these cases in their decision in the case of Ispat Industries. It is also pertinent to mention that the Apex Court has only distinguished the facts of these case and has not overruled or reversed their findings/decisions in these cases. Thus, it is clear that the decisions of the Apex Court in the cases of M/s. Roofit Industries Ltd. (supra) and Emco Ltd. (supra) still hold good in their respective domain of facts. Therefore, there appears no contradiction in the Board's above referred Circular dated 08.06.2018 vis-à-vis the law declared by the Hon'ble Supreme Court vide their above said judgments.

11.3 Further, it is observed that the judgments of Hon'ble Supreme Court in the case of M/s. Roofit Industries Ltd. - 2015 (319) E.L.T. 221 (S.C.), Ispat Industries Ltd. - 2015 (324) E.L.T. 670 (S.C.), Emco Ltd. - 2015 (322) E.L.T. 394 (S.C.) and Ultra Tech Cement Ltd. [2018 (9) G.S.T.L. 337 (S.C.)] are with reference to removal of goods for domestic clearance and for that reason they are not applicable to the present case as the removal of goods in the present case were for export purpose where the buyer is outside India and this has been very clearly stated by the Board in their above referred Circular dated 08.06.2018. Similar is the case of the number of case laws relied upon by the adjudicating authority in his impugned order as none of these case laws deals with situation of export. Therefore, it is observed that adjudicating authority has decided the issue by relying on case laws which are not relevant to the facts of the case under consideration.

12. In view of the above discussions, it is to be held that the impugned order has been passed without correct appreciation of actual facts in the case and in contravention of the Instructions issued by the Board and the settled legal position on the issue under dispute and therefore, the same is not sustainable in law on merits as well as on facts.

13. For the issue under dispute, it is held that since the removal of goods in the present case being for export purpose, the place of removal in the case would be 'port of export' viz. ICD-Sabarmati in the present case and when the place of removal of goods in the case is port of export, then the impugned services of outward transportation up to the port of export would fall within the ambit of 'input services" as defined under Rule 2(l) of the CCR, in view of Board's Circular No. No.999/6/2015-CX dated 28.02.2015 and Circular No. 1065/4/2018-CX., dated 8-6-2018 referred above and the settled legal position laid down by the Hon'ble Gujarat High Court decisions in the case of M/s Dynamic Industries [2014 (35) STR 674 (Guj.)] and in the case of Inductotherm India Pvt. Ltd. in Tax Appeal No.22 of 2014 and therefore, the appellant would be eligible for cenvat credit of service tax paid on outward transportation services availed upto the port viz. ICD-Sabarmati.

14. Accordingly, the impugned order passed by the adjudicating authority is set aside for being not legal and proper and the appeal of the appellant is allowed.

15. अपीलकर्ता द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant stand disposed off in above terms.

(Akhilesh Kumar)
Commissioner (Appeals)

Date: 27.04.2020.

Attested:

(Anilkumar P.)
Superintendent(Appeals),
CGST, Ahmedabad.

BY SPEED POST TO:

M/s. Shah Alloys Ltd.,
Block No.2221/2222, Shah Industrial Estate,
Sola-Kalol Road, Taluka Kalol,
Distt. Gandhinagar.

Copy to:-

(1) The Principal Chief Commissioner, CGST, Ahmedabad Zone.
(2) The Commissioner, CGST, Gandhinagar Commissionerate (RRA Section).
(3) The Asstt. Commissioner, CGST, Division Kalol, Gandhinagar Commissionerate.
(4) The Asstt. Commissioner(System), CGST, Gandhinagar Commissionerate..
(for uploading OIA on website)
(5) Guard file
(6) P.A. file.