आयुक्त (अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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DIN :20201064SW00003V0AE6

स्पीड पोस्ट

क फाइल संख्या : File No : V2/81/GNR/2019-20 /16175 16179

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-003-APP-036/20-21**
दिनाँक Date : **16-10-2020** जारी करने की तारीख Date of Issue 27-10-2020

आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original No. **AHM-CEX-003-ADC-PMR-007-19-20** दिनाँक: **06.09.2019** , issued by Additional Commissioner, Central GST & Central Excise, Gandhinagar

घ अपीलकर्ता का नाम एवं पता Name & Address of the **Appellant** / ~~Respondent~~

M/s Rushil Décor Limited,

607-608, GIDC Mansa, Taluka: Mansa,

Dist-Gandhinagar

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 अतत नीचे बताए गए मामलों के बारे में पूवोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन 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.

(क) 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।

(A) 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.

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

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

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।

(c) 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–बी/35–इ के अंतर्गतः–

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

(क) 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 2nd माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद –380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor,Bahumali Bhawan,Asarwa,Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.

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 a court fee stamp of Rs.6.50 paise 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 उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलो के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है ।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

(i) *(Section)* खंड 11D के तहत निर्धारित राशि;
(ii) लिया गलत सेनवैट क्रेडिट की राशि;
(iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

➪ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है .

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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.

इस 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।

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

The present appeal has been filed by M/s. Rushil Decor Limited, situated at 607-608, GIDC Mansa, Taluka: Mansa, District- Gandhinagar *[here-in-after referred to as the 'appellant'],* against Order-in-Original No. AHM-CEX-003-ADC-PMR-007-19-20 dated 06.09.2019 (hereinafter referred to as "*impugned order*") passed by the Additional Commissioner, Central GST and Central Excise, Gandhinagar (hereinafter referred to as the "*adjudicating authority*").

2. The facts of the case, in brief, are that the appellant is engaged in the manufacture and clearance of Paper Based Decorative Laminated Sheets and Electrical Grade Insulated Board falling under Chapter 48 & 85 of the First Schedule to the Central Excise Tariff Act, 1985, and were having Central Excise Registration No. AABCR3005NXM001. During the course of scrutiny of financial records of the appellant by the Audit, it was observed that they were also engaged in trading activities which has been included under the definition of exempted services and hence were required to follow the procedures prescribed under Rule 6(3) of the Cenvat Credit Rules, 2004 while availing CENVAT credit on input service. However, it was found that they were not maintaining separate accounts for receipt of the common input services used for manufacturing dutiable goods as well as for exempted service i.e. trading of goods. Though the appellant was availing cenvat credit on input service, they neither paid the amount as determined under sub-rule 3(A) in terms of clause (ii) of Rules 6(3) of Cenvat Credit Rules, 2004 (hereinafter referred to as '*CCR, 2004*') nor they maintained separate accounts as required under clause (iii) of said rules. Accordingly, a periodical Show Cause Notice (hereinafter referred to as '*SCN*') was issued to them for recovery of Cenvat Credit amounting to Rs.12,70,210/- for the period from April-2015 to February-2016, which was required to be reversed under Rule 14 of CCR, 2004, read with Rule 6(3)(i) of CCR, 2004 read with Section 11A of Central Excise Act, 1944 alongwith Interest under Section 11AA of the Central Excise Act, 1944. Penalty was also proposed to be imposed under Rule 15 of CCR, 2004 read with Section 11AC of Central Excise Act, 1944.

2.1. The said SCN was first adjudicated by the Adjudicating Authority vide Order-in-Original No. AHM-CEX-003-ADC-DSN-035-16-17 dated 27.10.2016, wherein the demand of Rs.12,70,210/- was confirmed alongwith Interest and penalty of Rs.50,000/- was also imposed under Section 11AC of the Central Excise Act,1944.

2.2. Being aggrieved by the said Order-In-Original dated 27.10.2016, the appellant filed appeal before the Commissioner (Appeal), Ahmedabad who vide Order-In-Appeal No. AHM-EXCUS-003-APP-088-17-18 dated 30.08.2017 remanded the matter back to the adjudicating authority to determine the cenvat credit availed on such exempted service and to modify the penalty. The relevant portion of para 13 & 14 of the Order-In-Appeal are as under:

> *"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. I find that the adjudicating authority has imposed penalty under Section 11 AC (1)(a) 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 above."*

2.3. Being aggrieved with the Order-In-Appeal No. AHM-EXCUS-003-APP-088-17-18 dated 30.08.2017, the appellant preferred appeal before Hon'ble CESTAT, Ahmedabad. Hon'ble Tribunal vide Order No. A/10081/2018 dated 08.01.2018 remanded the matter back to the adjudicating authority. The relevant portion of order of Hon'ble CESTAT, Ahmedabad under para 5 is as under:

> *"5. The First Appellate Authority in the impugned order has held that there is a trading activity undertaken by the appellant. Since the appellant is disputing this factual position, and also find that the First Appellate Authority has remanded the matter back to the adjudicating authority to apply porvisions of Rule 6 of Cenvat Credit Rules, in its proper perspective, it would be appropriate in the interest of justice, that the adjudicating authority also considers the submission of the appellant herein that they were not engaged in any trading activity. In view of this, I find that the impugned order that remands the matter back to the adjudicating authority needs to be modified as being an open remand i.e adjudicating authority should consider all the issues involved in this case after following the principles of natural justice. The appellant is also at liberty to produce documents on which he wants to rely upon to defend his case that he was not engage in any trading activity. The appeals stands disposed of by way of remand to the adjudicating authority."*

2.4. The Adjudicating Authority during denovo proceeding in view of Hon'ble Tribunal's order, has come to the conclusion that the observation of earlier adjudicating

authority is correct; that as per ledger account and nature of transaction shown in the invoices as sale and purchase, the activity carried out by them is nothing but 'trading of goods' or trading activity. Accordingly, the adjudicating authority vide the impugned order confirmed the demand along with interest and also imposed penalty on the appellant.

3. Being aggrieved by the impugned order dated 06.09.2019, the appellant has filed the instant appeal on the grounds that:

- the adjudicating authority has erred in confirming the entire demand for reversal of CENVAT credit on common input services for the period April-2015 to February-2016 by treating the activity undertaken by them as trading activity;
- they rely on Hon'ble CESTAT, Ahmedabad Order No. A/10416/2018 dated 27.02.2018 in their own case for earlier period on same issue, wherein Hon'ble Tribunal allowed the appeal considering that the transaction cannot be treated as sale and purchase;
- they are not involved in trading of goods, therefore, there is no exempted services provided by them;
- That the activity undertaken by them is not trading; that they have three manufacturing plant in Gujarat and they procure various raw materials for manufacturing of its finished goods and in case there is requirement of raw materials in one manufacturing plant which is not available in that plant and is available at another plant then that materials from that another plant is sent to the plant requiring the said raw material;
- 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 term 'trade' or 'trading' is not defined in the law, and hence as per various dictionaries, 'trade' or 'trading' means an activity which constitute as sale wherein there has to be a distinct buyer/seller and a consideration for such sale;
- the chartered accountant vide its certificate dated 05.02.2020 has certified that the appellant is issuing transfer challans for the purpose of transfer of raw material as such from one unit to another own unit and inter unit stock transfer is without adding any margins;
- mere recording such transfers in ledgers in inter-unit sale/purchase account cannot be deemed to be issued for sale;

- the substance of the transaction should prevail over the form i.e. a transaction should not be decided merely on the basis of nomenclature used in ledgers;
- penalty under Section 11AC of Central Excise Act cannot be imposable as there is no contravention of any of the provisions under law.
- the appellant has relied on various citations in support of their submissions.

4. Personal hearing in the case was held on 29.09.2020. Ms. Khushboo Kundalia and Shri Hitesh Mundra appeared for the hearing. They reiterated the submission made in appeal memorandum. Subsequently, vide additional submissions dated 01.10.2020, they further submitted a certificate issued by the Chartered Accountant along with sample stock transfer challan and again relied on the Hon'ble CESTAT's judgement in their favour in their own case.

5. I have carefully gone through the facts of the case and submissions made by the appellant in their appeal memorandum as well as additional submission made by them vide letter dated 01.10.2020. The issue to be decided in this case is that whether the appellant was engaged in trading activities in terms of Section 2(h) of the Central Excise, Act, 1944 and whether the demand confirmed in terms of Rule 6 of CCR, 2004 with interest and penalty is legally sustainable.

6.1 I observe that the adjudicating authority in de-novo adjudication has not examined any documents. He has simply quoted the findings/observation of adjudicating authority contained under order dated 27.10.2016 that as per ledger account and nature of transaction shown in the invoices as sale and purchase, the activity carried out by them is nothing but 'trading of goods' or trading activity. It is also observed that the Hon'ble CESTAT, Ahmedabad vide Order No. A/10416/2018 dated 27.02.2018 has allowed the appeal in favour of appellant in their own case for similar set of facts for earlier period which has not been considered by the adjudicating authority while again confirmed the demand. I find that the act of adjudicating authority is in violation of judicial discipline.

6.2. Further, I observe that the adjudication authority, while deciding the activities carried out by the appellant, i.e. transfer of inputs from one unit to their own another units under the cover of 'inter sale' invoices, as trading activities on the basis of transaction shown as purchase/sale of goods in their books of account, invoices showing value of the goods transferred in invoice as 'inter sale' and has not gone through and discussed the applicability of Section 2 (h) of Central Excise Act, 1944.

7. The expression 'sale' and 'purchase' have been defined in Section 2(h) of the Central Excise Act, 1944 which is reproduced below:

> *(h) "sale" and "purchase", with their grammatical variations and cognate expressions, mean any transfer of the possession of goods by one person to another in the ordinary course of trade or business for cash or deferred payment or other valuable consideration;*

8. The above definition contemplates that to be considered as 'purchase' or 'sale' in a transaction, there has to be transfer of possession of the goods from one person to another and should be for a consideration. I find that in 'sale' or 'purchase' there are three requirement (i) there has to be two distinct person, (ii) title of the goods is changed from one person to another and (iii) there should be an existence of consideration and all the three requirements should be fulfilled for treating them as 'sale' or 'purchase'. In the case on hand, I find that the title of goods is not changed from one person to another as the goods are transferred from on unit of the appellant to another unit of the appellant. Thus, there is an absence of two distinct persons to be treated as sale or purchase in the present matter. Under the circumstances, I find that the inputs transferred by the appellant to their own another units was nothing but stock transfer and cannot be considered as sale. Since the transaction is not considered as 'sale', the same cannot be considered as 'trading activity' and hence no demand can be made on the stock transfer from one unit to another unit of the same assessee. Thus, I find that demand raised by the department is not sustainable.

9. Further, my above said finding is supported by the Order No. A/10416/2018 dated 27.02.2018 of Hon'ble CESTAT, Ahmedabad as contended by the appellant, which was in their own case for similar set of facts. Relevant Para 5 and 6 of Hon'ble Tribunal's order are reproduced herein below:

> " *5.I find that there are two issues involved in the present appeal for consideration. The first issue relates to demand of Rs.33,33,794/- confirmed by the Ld. Commissioner(Appeals) relates to charging of 5%/ 6% of the value of trading sales under Rule 6(3) of CCR, 2004. The appellants have vehemently argued that the imported raw materials received against advance license and had been transferred to their other units, hence does not involve any sale but stock transfer of goods. Therefore, it cannot be construed as trading sale. Consequently, Rule 6(3) of the CCR, 2004 is not applicable. I find force in the contention of the Ld CA for the appellant. On going through the Chartered Accountant certificate dated 25.01.2017 and the sample invoices produced, it is clear that the imported materials had been transferred from one unit to another unit even though these documents are referred to as inter-sale and invoice numbers allotted showing the value of the product, but the transactions between the two units cannot be considered as sale and purchase, but stock transfer of the goods. Therefore, confirmation of the demand in this regard is unsustainable and consequently set aside. On the issue of admissibility of credit on construction services used for repair and maintenance of the plant and machinery, I find that it is covered by the judgement of this tribunal in Ion Exchange India Ltd case (supra).*
>
> *6. In the result, the impugned order is set aside and the appeal is allowed".*

9.1. It is further observed that, the demand in the present case has been made under Section 11A (7A) of the Central Excise Act, 1944 for Financial Year 2015-16, with reference to earlier Show Cause Notice dated 31.07.2015, on same grounds relied upon in earlier SCN. The demand for earlier period, i.e for the period from July-2010 to March-2015, made vide Show Cause Notice dated 31.07.2015, stand settled by the Hon'ble CESTAT, Ahmedabad in favour of the appellant vide Order discussed in the previous para. There is no change in legal provision as per Show Cause Notice dated 31.07.2015 and in the present SCN. It has been held by the Hon'ble Tribunal in appellant's case that imported materials transferred from one unit to another unit cannot be considered as sale and purchase even though the documents are referred to as inter-sale and invoice number allotted showing the value of the product and said transaction consider as stock transfer. Hence, the order of Hon'ble Tribunal deciding the issue on merits is binding on the department and the adjudicating authority has committed a gross error in law in ignoring the binding judgment of Hon'ble Tribunal in case of the same assessee. I find that the order of the adjudicating authority is not legally sustainable and liable to be set aside on merits.

10. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant. The appeal stands disposed of in above terms.

(Akhilesh Kumar) 16 October, 2020
Commissioner (Appeals)
Ahmedabad
/ /2020

Attested

(Atul B Amin)
Superintendent (Appeals)
CGST, Ahmedabad

By R.P.A.D

To

M/s. Rushil Decor Limited,
607-608, GIDC Mansa,
Taluka Mansa,
District- Gandhinagar

Copy to:

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