आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय,अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ीअहमदाबाद३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
07926305065 - टेलेफैक्स07926305136

DIN : **20220264SW0000000C38**

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/1476/2021 /5998 - 6002

ख अपील आदेश संख्या Order-In-Appeal Nos.**AHM-EXCUS-003-APP-91/2021-22**
दिनाँक Date : **24-01-2022** जारी करने की तारीख Date of Issue 07.02.2022

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

ग Arising out of Order-in-Original No. **A.C./M.P. Dabhi/23/CEX/KADI** दिनाँक: **25.11.2020** issued by Assistant Commissioner, CGST& Central Excise, Division Kadi, Gandhinagar Commissionerate

ध अपीलकर्ता का नाम एवं पताName & Address of the **Appellant / ~~Respondent~~**

M/s Aksharchem (India) Limited
Survey No. 166 & 169, Indrad,
Chhatral-Kadi Road, Karannagar,
Taluka-Kadi, Dist-Mehsana - 382727

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 हानिकार खाने 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 मे 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 भीतरमूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए।उसके साथ खाता इ.का मुख्य शीर्ष 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 होतो रूपये 200/–फीस भुगतान की जाए और जहाँ संलग्नरकम 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 सेवा कर 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 एव 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,BahumaliBhawan,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 होत 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 filed to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू.6.50 पैसे कान्यायालय 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) इस 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.

(69) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामले में कर्तव्यमांग(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 सेवाकर 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:
(cxc) amount determined under Section 11 D;
(cxci) amount of erroneous Cenvat Credit taken;
(cxcii) amount payable under Rule 6 of the Cenvat Credit Rules.

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. Aksharchem (India) Ltd – Unit – Green Division, Survey No. 167 & 168, Chhatral-Kadi Road, Karannagar, Kadi, Mehsana- 382 727, having Service Tax Registration No. AABCA2805MEM003 [hereinafter referred to as the appellant] against OIO No.AC/MP.Dabhi/23/CEX/Kadi dated 25.11.2020 [hereinafter referred to as the impugned order] passed by Assistant Commissioner, Central GST, H.Q, Commissionerate : Gandhinagar [hereinafter referred to as the adjudicating authority].

2. Briefly stated, audit of records of the appellant was undertaken by officers of CGST, Audit, Ahmedabad and they raised an objection vide Final Audit Report No. 173/2019-20 dated 28.08.2019 regarding wrong availment of cenvat credit in respect of service tax paid on services used beyond the place of removal during the period April, 2016 to June, 2017. The Audit was of the view that the cenvat credit availed on service tax paid on Terminal Handling Charges (export) which was used beyond the place of removal, is not admissible. The appellant did not agree with the objection raised by the audit. Therefore, the appellant were issued SCN No. 106/2019-20/CGST Audit dated 29.08.2019 from F.No. VI/1(b)-36/AP-69/Cir-X/2018-19 demanding Service Tax credit amounting to Rs.3,34,620/- under the proviso to Section 73(1) of the Finance Act, 1994 read with Rule 14 of the Cenvat Credit Rules, 2004 along with interest under Section 75 of the Finance Act, 1994. Imposition of penalty was also proposed under Section 78 of the Finance Act, 1994.

3. The said Show Cause Notice was adjudicated vide the impugned order confirming the demand for service tax credit along with interest. Penalty was imposed under Section 78 of the Finance Act, 1994.

4. Being aggrieved with the impugned order, the appellant firm has filed the present appeal on the following grounds:

i. The adjudicating authority has erred in facts in contending that the cenvat credit was with respect to Terminal Handling Services (THS) received beyond the place of removal. He ought to have

appreciated that THS are not to be construed as beyond the place of removal by its very nature.

ii. The adjudicating authority has erred in confirming the cenvat credit based on notice issued under Section 73 (1) of the Finance Act, 1994 which was not applicable as the Cenvat Credit was utilized with respect to removal of excisable goods under the Central Excise Act, 1944.

iii. The SCN was issued under the Cenvat Credit Rules, 2004 which was rescinded at the time of issuance of the notice and hence, the notice is illegal and ultra vires.

iv. The confirming of demand by invoking extended period of limitation is not justified as the revenue failed to attribute plausible reason and corroborative evidence thereto.

v. Demanding of interest was not justified and imposition of penalty under Section 78 of the Finance Act, 1994 was also not justified.

4.1 The appellant filed additional written submissions on 27.12.2021 in the form of Synopsis of submissions, wherein it was submitted, inter alia, that :

- In the SCN or the impugned order it has not been discussed, deliberated and demonstrated as to how and why the service in question is required to be treated as received by them beyond the place of removal.
- The service involves is an input service as defined in Rule 2(l) of the Cenvat Credit Rules, 2004. The service was received by them well within the condition of 'upto place of removal' contemplated in the said rule.
- The service was received from Custom House Agents/Clearing and Forwarding Agents and not from the Shipping Lines or the ports. Agents were engaged to provide services prior to placement of goods upon the shipping line and, thus be deemed to have been received prior to the *situs* of removal. The nomenclature under which the service was provided to them and billed by the agents was of no relevance to determine the nature and *situs* of the service.

- Service provided to them by the agent in relation to the removal and clearance of goods at or before the Customs House and thus be regarded as the services received upto the place of removal.
- The place of removal shall be the place at which the export took place by way of handing over the custody of goods to the shipping line as clarified by Circular No. 999/6/2015-CX. For sake of argument, if it is believed that the service of THS were received by them beyond ICD-Khodiyar, it is required to be accepted as a matter of fortiori that the goods were handed over to the shipping line at the port of delivery and not at the ICD. In such circumstances, the place of removal shall be deemed to be the port instead of the ICD and they would be eligible to avail the credit.
- The issue involved is squarely covered by the following decisions : 1) Commissioner Vs. Dynamic Industries – 2014 (307) ELT 15 (Guj.); 2) Save Industries Vs. CCE – 2016 (45) STR 551 (Tri.-Chennai); 3) Kennametal India Ltd. Vs. CCE – 2016 (46) STR 57 (Tri.-Bang.); 4) Nagarjuna Agri Chem Ltd. Vs. CST – 2019 (22) GSTL 96 (Tri.-Hyd); 5) CCE Vs. Adani Pharmachem P Ltd – 2008 (12) STR 593 (Tri.-Ahm); 6) CCE Vs. Parth Poly Woven Pvt Ltd – 2012 (25) STR 4 (Guj.); 7) Centra Excise Vs. Inductotherm India P Ltd – 2014 (36) STR 994 (Guj.); 8) CCE Vs. ADF Foods Ltd – 2021 (45) GSTL 265 (Guj.) and 9) Jyotindra Steel and Tubes Ltd Vs. CCE – 2014 (36) STR 672 (Tri.-Del).
- They submit the list of services and corresponding invoices from which it clearly transpires that the service involved is in the nature of Custom House Agent service, whereas the revenue has contended the ineligibility considering the same to be Terminal Handling Charges.
- The adjudicating authority has relied upon the decision in the case of Jyotindra Steel and Tubes Ltd Vs. CCE – 2014 (36) STR 672 (Tri.-Del). However, in the said case the appeal was allowed in favour of the assessee. It was held by the Hon'ble Tribunal that the credit of shipping services, documentation charges, terminal handling charges in respect of exported goods is input services and credits were eligible.
- They had not suppressed any information which was required to be disclosed to the revenue and nor had they carried any intent to evade payment of duty. The issue involved had already been decided in their favour in a catena of decisions and therefore, they had a reasonable belied to avail cenvat credit. It is no more res integra that the onus to

prove the availability of larger period of limitation lies on the revenue. They rely upon the decision in the case of Cadila Pharmaceuticals Ltd. Vs CCE – 2017 (349) ELT 694 (Guj); CCE Vs. Zyg Pharma Pvt Ltd - 2017 (358) ELT 101 (MP) and CCE Vs. Royal Enterprises – 2016 (337) ELT 482.

5. Personal Hearing in the case was held on 28.12.2021 through virtual mode. Shri Rahul Patel, CA, appeared on behalf of the appellant for the hearing. He reiterated the submissions made in appeal memorandum as well as in synopsis submitted as part of hearing.

6. I have gone through the facts of the case, submissions made in the Appeal Memorandum, and submissions and evidences available on records. I find that the issue to be decided in the case is whether the Cenvat credit in respect of the service tax paid on Terminal Handling Charges (THC) service by the appellant is admissible or otherwise. I find that the department has denied the credit to the appellant on the grounds that the THC is in respect of a service provided beyond the place of removal and that the same is not covered by the definition of 'input services' in terms of Rule 2 (l) of the Cenvat Credit Rules, 2004 (hereinafter referred to as the CCR, 2004). The relevant Rule 2 (l) of the CCR, 2004 is reproduced as under :

> " "input service" means any service, -
>
> (i) used by a provider of output service for providing an output service; or
>
> (ii) used by a 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 modernisation, 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, 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**;"

6.1 For denying the cenvat credit, the department has relied upon the Circular No. 999/6/2015-CX dated 28.02.2015 issued by the CBIC. Para 6 of the said Circular is reproduced as under :

> "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."

6.2 I find that THC is basically charges collected by the port authorities from the shipping lines for the services provided at the ports relating to storage and handling of the cargo. After completion of the customs procedures, the goods are shipped on board the vessel after issuance of 'Let Export Order' by the Customs authorities. The THC is paid in respect of the services rendered prior to the loading of the cargo on the shipping vessel. The appellant have claimed that the charges paid by them are in respect of services rendered to them by the CHA/Clearing and Forwarding Agents and the services were received prior to placement of the goods upon the shipping line, therefore, received prior to the place of removal. In this regard, I find that the invoices for the impugned services have been issued by the CHA/Clearing and Forwarding Agents to the appellant and the services appear to have been provided to the appellant before and at ICD, Khodiyar. I am of the view that the process for export of goods does not get completed until the goods are cleared from the port/ICD. Accordingly, the place of removal would be the Port/ICD and consequently all the services relating to the clearance of the export cargo prior to its clearance from the port/ICD are services rendered in relation to the clearance of goods upto the place of removal. This view is also fortified by the Circular dated 28.02.2015 issued by the CBIC. I further find that in the SCN and the impugned order no evidence has been put forth to indicate that the impugned services availed by the appellant have been provided beyond the place of removal. A mere allegation that the services in respect of which cenvat credit has been availed by the appellant were provided beyond the place of removal is not, in my considered view, sufficient grounds to deny cenvat credit to the appellant.

6.3 The appellant have submitted copies of some of the invoices pertaining to the services in respect of which cenvat credit has been availed by them. On a perusal of one such Invoice No. RCPT1604260266 dated 26.04.2016 issued by the Container Corporation of India Limited, ICD Khodiyar, I find

that it is in respect of Handling Charges and Freight Charges. This indicates that the Handling Charges and Freight Charges are incurred at ICD, Khodiyar from where the goods are cleared for export. Therefore, in terms of the Circular dated 28.02.2015 issued by the CBIC, the service is availed upto the place of removal and consequently, the appellant are entitled to avail cenvat credit of the same.

6.4 The appellant have relied upon the judgment of the Hon'ble High Court of Gujarat in the case of Commissioner Vs. Dynamic Industries – 2014 (307) ELT 15 (Guj.). In the said case, the Hon'ble High Court had held that :

> **"5.** This Court in Tax Appeal No. 22 of 2014 rendered on January 31, 2014 in the case of *Central Excise* v. *Inductotherm India P. Ltd.*, was dealing with the cargo handling service and the issue was whether the service of tax paid on cargo handling service was admissible to the manufacturer as "input service tax credit". Relying on various judicial pronouncements, it was held and observed thus :
>
> > "The question that begs the decision is as to whether cargo handling services can be said to have been used in or in relation to manufacture and clearance of final product upto the place of removal, which is port. Admittedly, there is no express inclusion of cargo handling service in the definition of 'input service'. However, in light of the decisions rendered in this area, such interpretation can be made holding that in case of export of final product, place of removal would be port of shipment and not factory gate and therefore, the manufacturer would be entitled to avail the amount claimed towards cargo handling as 'input service' under the Cenvat Credit Rules.
> >
> > Admittedly, cargo handling services are utilized for the purpose of export of final product where the place of removal for the purpose of export shall necessarily have to be the port and therefore any service availed by the exporters until the goods left India from the port are the service used in relation to clearance of final products upto the place of removal. If at this stage, the definition of input service is recollected, it includes services used by the manufacturer directly or indirectly in or in relation to manufacture of the final product and in relation to clearance of final product from the place of removal. Definition of term 'input service' being very wide in its expression, wherein number of services used by manufacturer are included in the same, used directly or indirectly.
> >
> > This Court in the case of *Parth Poly Wooven Pvt. Ltd.* (supra) has held that when the manufacturer transports his finished goods from the factory, without clearance to any other place such as, go-down, warehouse, etc. from where it would be ultimately removed, such service is covered in the expression "outward transportation up to the place of removal" since such place other than factory gate would be the place of removal. It had been in clear terms held that

outward transport service used by the manufacturer for transportation of finished goods from the place of removal up to the premises of the purchaser is covered within the definition of 'input service' provided in Rule 2(1) of the Cenvat Credit Rules. Taking this analogy further, the cargo handling service is availed essentially for the purpose of exporting the goods and in such case, the services of cargo handling used by the manufacturer for transportation of the finished goods from the place of removal shall have to be essentially the port from where goods are actually taken out of the country.

Both the authorities have rightly held that tax paid by the service providers under this category of cargo handling service, therefore, would be inclusive in the definition of 'input service'. There is no dispute on the part of the Revenue that such services were availed by the respondents in clearing the goods from the factory premises and for the purpose of export."

6. As in the case of cargo handling service, in case of all three services in relation to which substantial question of law has been framed, there is no specific inclusion of such services in the definition of "input service". For the purpose of export of final products, the place of removal as held in the decision reproduced herein above, is held to be a port of shipment and not the factory gate and, therefore, the manufacturer would be entitled to avail the input services extended towards the custom house agent service, shipping agent service, container service and overseas commission service. It is not in dispute that these services are utilised for the purpose of export of final products and the exporters cannot do business without these services. Any service availed by the exporters until the goods left India from the port are the service used in relation to clearance of final products upto the place of removal.

7. Remembering the definition of "input service", any service 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, which in the present case, is a port of shipment, these services would be included in the term "input service". The Revenue at no point of time has disputed the factum that the services in relation to which the Cenvat credit is claimed by the manufacturer-respondent, were availed for the purpose of clearing the goods for the purpose of export.

8. We notice that the nature of services used in the present case are somewhat different. However, in some of the concluded matters, the question was with respect to service tax paid on outward transportation of goods. Any service used by the manufacturer directly or indirectly in relation to manufacture of final products and clearing of final products upto the place of removal would certainly be covered within the expression as held hereinabove. In the present case, the place of removal would be the port.

9. We notice that in *Cadila Healthcare* (supra), this Court as referred to hereinabove has dealt with the courier service and the question was that the courier when collects the parcel from the factory gate for further transportation, whether it would fall within the ambit of the term input service as defined under Rule 2(l) of the Rules and such issue is answered in favour of the assessee and against the Revenue. Relevant also will be to refer to the decision of the *Cadila Healthcare* (supra) and particularly, the clearing and forwarding services. Such services provided by the Clearing and Forwarding Agents in different States in India for activities relating to sale of goods in domestic market. According to the Revenue, such service would commence only after clearance of final products and

the service tax paid in respect thereof was not in relation to manufacture of final product. According to the Tribunal, the Clearing and Forwarding Agents had a definite role to play in promotion of sales by storing goods and supplying the same to customers and, thereby it promotes the sales. In such backdrop of facts, this Court held that the C & F carries out all activities right from promotion of sales to its storage and delivery to the customers. Referring to the expression "upto the place of removal" as defined under sub-clause (iii) of clause (c) of sub-section (3) of Section 4 of the Act, the Court held thus :

> "5.4 xxx xxx xxx
>
> (vi) Thus, the clearing and forwarding agent is an agent of the principal. The goods stored by him after clearance from the factory would therefore, be stored on behalf of the principal, and as such the place where such goods are stored by the C & F agent would fall within the purview of sub-clause (iii) of clause (c) of Section 4(3) of the Act and as such would be the place of removal. Viewed from that light the services rendered by the C & F agent of clearing the goods from the factory premises, storing the same and delivering the same to the customer would fall within the ambit of Rule 2(l) of the Rules as it stood prior to its amendment with effect from 1-4-2008, namely clearance of final products from the place of removal. However, this court is not in agreement with the view adopted by the Tribunal that such services would amount to sales promotion and is, therefore, an input service. For the reasons stated while discussing the issue as regards service commission paid to foreign agent, the services rendered by the C & F agents cannot be said to be in the nature of sales promotion. This issue stands answered accordingly, in favour of the assessee and against the revenue."
>
> **10.** Considering the role of Customs House Agent and Shipping Agent for rendering Customs House Agent Service and Shipping Agents and Container Services, the decision of this Court referred to in the case of Clearing and Forwarding Agent would apply and the definition of "input service" would also cover both these services, considering the nature of services rendered by them and the place of removal being the point in this case, the answer shall favour the Revenue.
>
> **12.** Accordingly, the substantial question of law raised in respect of the following three categories of services i.e. (i) Customs House Agents Services, (ii) Shipping Agents and Container Services and (iii) Services of Overseas Commission, is answered partly in favour of the assessee so far as aforesaid category Nos. (i) and (ii) are concerned. Insofar as category No. (iii) i.e. Services of Overseas Commission, is concerned, the same is answered in favour of the Revenue and against the assessee."

6.5 The above judgment of the Hon'ble High Court is squarely applicable to the facts involved in the present appeal. I further find that a similar view was taken by different benches of the Hon'ble Tribunal in the cases relied upon by the appellant and which have been cited above. Therefore, the issue is no more *res integra* and stands decided in favour of the appellant.

7. In view of the above the discussions and the decisions of the Hon'ble High Court and Hon'ble Tribunals and by following the principles of judicial discipline, I hold that the appellant have correctly availed cenvat credit of the service tax paid on Terminal Handling Charges. Therefore, I set aside the impugned order for being not legal and proper and allow the appeal filed by the appellant.

8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

(Akhilesh Kumar) 28th January, 2022

Commissioner (Appeals)

Attested:

(N.Suryanarayanan. Iyer)
Superintendent(Appeals),
CGST, Ahmedabad.

Date: .01.2022.

BY RPAD / SPEED POST

To
M/s. Aksharchem (India) Ltd,
Green Division,
Survey No. 167 & 168,
Chhatral-Kadi Road,
Karannagar, Kadi,
Mehsana- 382 727

Appellant

The Assistant Commissioner,
Central GST, Division- Kadi
Commissionerate, Gandhinagar

Respondent

Copy to:

1) The Chief Commissioner, Central GST, Ahmedabad Zone.
2) The Commissioner, CGST, Gandhinagar.
3) The Assistant Commissioner (HQ System), CGST, Gandhinagar. (for uploading the OIA)
4) Guard File.
5) P.A. File.