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

सत्यमेव जयते

NATION TAX MARKET

DIN : **20220464SW0000333A78**

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/CEXP/642/2021/482 –496

ख अपील आदेश संख्या Order-In-Appeal Nos.**AHM-EXCUS-003-APP-009/2022-23**
दिनाँक Date : **21-04-2022** जारी करने की तारीख Date of Issue 22.04.2022

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

ग Arising out of Order-in-Original No. **25/AC/MEH/CGST/20-21** दिनाँक: **16.12.2020** issued by Assistant Commissioner, CGST& Central Excise, Division Mehsana, Gandhinagar Commissionerate

ध अपीलकर्ता का नाम एवं पताName & Address

1. **Appellant**

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

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(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 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,BahumaliBhawan,Asarwa,Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.

केन्द्रीय वस्तु एवं सेवाकर (अपील) आयुक्त OFFICE OF THE COMMISSIONER CENTRAL GST (APPEALS) AHMEDABAD

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 filled 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) 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.

(34) 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:
(lxxxv) amount determined under Section 11 D;
(lxxxvi) amount of erroneous Cenvat Credit taken;
(lxxxvii) 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."

आयुक्तालय, केन्द्रीय वस्तु एवं सेवाकर अपीलस OFFICE OF THE COMMISSIONER CENTRAL GOODS & SERVICE TAX (APPEALS) AHMEDABAD.

ORDER-IN-APPEAL

The present appeal has been filed by M/s. Shah Alloys Ltd., Block No. 2221/2222, Shah Industrial Estate, Sola-Kalol Road, Taluka : Kalol, District : Gandhinagar (hereinafter referred to as the appellant) against Order in Original No. 25/AC/MEH/CGST/20-21 dated 16-12-2020 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST, Division : Mehsana, Commissionerate : Gandhinagar [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case is that the appellant were issued periodical Show Cause Notices from October, 2009 to July, 2011 proposing to deny certain input services, which were availed as cenvat credit, which were considered inadmissible. The present periodical Show Cause Notice dated 30.06.2016 is for the period from June, 2015 to December, 2015 for wrong availment of Cenvat credit amounting to Rs.6,00,736/- in respect of the service tax paid on GTA service of Outward Transportation, Business Auxiliary Services viz. Consignment Commission Agent, Director Fees, Air Travel Agent, Insurance Survey Fees, Share Transfer Agent charges, Stock Exchange Listing Fees, Courier Services and Technical and Testing Analysis service as the same did not qualify the test of input service as defined under Rule 2 (l) of the Cenvat Credit Rules, 2004 (hereinafter referred to as the CCR, 2004). The said SCN was adjudicated vide OIO No. 46/AC/EX/MEH/17-18 dated 23.03.2018 wherein the cenvat credit was disallowed and ordered to be recovered along with interest. Penalty was also imposed under Rule 15 (1) of the CCR, 2004.

3. Being aggrieved, the appellant filed appeal before the Commissioner (Appeals), Central GST, Ahmedabad, who vide OIA No. AHM-EXCUS-003-APP-42-18-19 dated 13.07.2018 remanded the case back to the adjudicating authority. In denovo proceedings, the case was adjudicated vide the impugned order wherein the demand for cenvat credit amounting to Rs. 5,85,616/- was confirmed along with interest. Penalty equal to the confirmed amount was imposed under Rule 15 (1) of the CCR, 2004.

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

i. The impugned order is in gross violation of the principles of natural justice and judicial propriety inasmuch as the order is in complete conflict with the orders passed by the higher authorities.

ii. With regard to cenvat credit on technical testing and analysis service, the Commissioner (Appeals) had in their own case in OIA No. AHM-EXCUS-003-APP-100-18-19 dated 14.09.2018 allowed the cenvat credit. The adjudicating authority could not have passed an order which is contrary to the order of the appellate authority.

iii. As regards cenvat credit of outward GTA service, the adjudicating authority has disregarded the decision of the Hon'ble Tribunal, Ahmedabad in the case of Sanghi Industries Ltd., - 2019 (369) ELT 1424, a decision which was upheld by the Hon'ble High Court of Gujarat vide Order dated 23.01.2020. As a matter of fact, the Board had clarified vide Circular dated 08.06.2018 that if the transaction was on FOR basis, then cenvat credit of such outward transportation would be available to an assessee.

iv. The impugned order which is in conflict with the order of the Hon'ble Tribunal, the Hon'ble High Court and the Board's Circular dated 08.06.2018 is illegal in the eyes of law.

v. As regards share transfer and stock listing service, the impugned order is in direct conflict with the order of the jurisdictional Tribunal in the case of Adani Port & Special Economic Zone Ltd. – 2016 (42) STR 1010, wherein the Hon'ble Tribunal had allowed cenvat credit of such services.

vi. With regards to the cenvat credit on Insurance Surveyor service, the impugned order is in direct conflict with the decision of the jurisdictional Tribunal in the case of Surani Ceramics Ltd. – 2012 (283) ELT 388, wherein the Hon'ble Tribunal had concluded that when insurance premium is relatable to business activity, then such insurance premium is cenvatable. The decision of the Hon'ble

Tribunal was in view of the decision of the Hon'ble Karnataka High Court in the case of Millipore India Pvt. Ltd. – 2012 (26) STR 514.

vii. The impugned order passed by the adjudicating authority reflects non application of mind inasmuch as the adjudicating authority has completely mis-interpreted the findings of the Commissioner (Appeals). The Commissioner (Appeals) had in the remand order, vide Para 7.2, held that with regards to director's fees, courier services, air ticket agent services and consignment commission agent services, he has already decided such issue vide OIA No. 193/16-17 dated 23.12.2016.

viii. The Commissioner (Appeals) had vide OIA No. 193/16-17 dated 23.12.2016 allowed the cenvat credit of air travel services. As regards cenvat credit of consignment commission agent service, the Commissioner (Appeals) had directed to keep the matter in call book as the retrospective applicability of amended Rule 2 (l) of the CCR, 2004 was pending before the Hon'ble Gujarat High Court.

ix. The adjudicating authority has not appreciated the findings of the OIA dated 2.12.2016 which was relied upon by the Commissioner (Appeals), and has denied the cenvat credit of air travel services and consignment commission agent services.

x. The action of the adjudicating authority in reviewing the issue already decided by the Commissioner (Appeals) is an action without jurisdiction and is beyond the scope of the remand order.

xi. It has been erroneously held that insurance survey fees paid by them is not connected to manufacturing activity. It is a settled position that for the purpose of export, the port is the place of removal, such has been clarified by the Board vide Circular No. 999/6/2015-CX. The adjudicating authority could not have held that such service has no nexus with manufacturing activity.

xii. It is settled legal position that even if an activity is indirectly related to the manufacturing activity but is directly related to the business activity, then such activity would be in the nature of activities relating to business and therefore, cenvat credit would be available on such activity.

xiii. The Hon'ble Bombay High Court has in the case of Ultra Tech Cement Ltd.- 2010 (260) ELT 369 categorically explained the difference between the scope of input services and inputs. The Hon'ble Court had come to a conclusion that input services fall within the inclusive part of the definition of Rule 2(l) of the CCR, 2004 and input services fall within the expression activities relating to business, and therefore, are cenvatable. The adjudicating authority has completely ignored the inclusive part of the definition of input service, which covered activities relating to business.

xiv. It is an undisputed fact that cargo surveyor fees are fees, which are paid for making sure that the buyer received the goods in proper condition and in proper quantity. Without these services, the buyer may receive defective goods or goods in lesser quantity. Therefore, surveyor services are essential for the purpose of making manufactured goods available to the recipient in proper condition and quantity, hence such activity being in relation to business is cenvatable.

xv. The Hon'ble Karnataka High Court had in the case of Millipore India Pvt Ltd. categorically held that medical and personal accident policy, group insurance policy and insurance policies of vehicles are activities in relation to business and hence, cenvatable. Similar findings have also been given by the Hon'ble Tribunal, Ahmedabad in the case of Surani Chemicals Ltd, supra.

xvi. The above decisions are squarely applicable to cargo insurance surveyor services, in as much as insurance surveyor services are a part of the insurance services availed during the business and are this business activities which are cenvatable.

xvii. While denying the cenvat credit the adjudicating authority has not disputed the fact that the transportation which was undertaken by them was on FOR basis, but he has erroneously held that the Board circular dated 23.08.2007 was discontinued w.e.f. 08.06.2018 and therefore, cenvat credit is not available. The said circular dated 23.08.2007 was not discontinued but instead a new circular dated 08.06.2018 was brought in to force after the decision of the Hon'ble

कार्यालय, केन्द्रीय वस्तु एवं सेवाकर (अपील) आयुक्त, अहमदाबाद
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Apex Court in the case of Ultra Tech Cement Ltd. – 2018 (9) GSTL 337.

xviii. They had paid service tax amounting to Rs.2,11,850/- on outward freight for the period from 01.06.2015 to December, 2015 and had taken cenvat credit of the same which was legal and proper.

xix. Cenvat credit of outward freight on sales on FOR basis was allowed in various cases like Pooja Forge Vs. Commissioner of Central Excise, Faridabad – 2013 (30) STR 371 (Tri.-Del), Aarti Steel Ltd. Vs. Commissioner of Central Excise, Ludhiana – 2013 (29) STR 494 (Tri.-Del); Palco Metals Ltd. Vs. Commissioner of Central Excise, Ahmedabad – 2012 (26) STR 429 (Tri.-Ahmd).

xx. The Hon'ble High Court of Chattisgarh had in the case of Lafarge India Ltd. vs. Commissioner of Central Excise, Raipur – 2014 (307) ELT 7 held that in cases where sale is at the place of destination, an assessee is entitled to claim cenvat credit on service tax paid for GTA provided the amount paid was integral part of the price of the goods. In the present case, the service tax paid for the GTA service provided amount was integral part of the price of the goods.

xxi. The Hon'ble Tribunal, Ahmedabad in case of Shubhlakashmi Polyesters Ltd. Vs. Commissioner of C.Ex., & S.T., Vapi – 2017 (5) GSTL 310 (Tri.-Ahmd) held that cenvat credit of service tax paid on GTA service is admissible when condition of sale puts burden on manufacturer to deliver the goods at the buyers premises.

xxii. Cenvat credit of various services like Air Travel Agent service and other office expenses were denied wrongly as the admissibility of cenvat credit cannot be judged on the basis of whether the input service was received in the factory or before clearance of the goods or otherwise.

xxiii. The Hon'ble Tribunal had allowed cenvat credit of service tax paid on travel agents service in a catena of decisions. They rely upon the decision in the case of : Goodluck Steel Tubes Ltd.- 2013 (32) STR 123; Cadmech Machinery Company – 2013 (31) STR 33; Lupin Ltd – 2012 (28) STR 291.

xxiv. The adjudicating authority has misdirected himself in denying credit of service tax paid on sales commission agents. Service of sales commission have direct relation to the manufacturing of final products and therefore, denying credit of the same is bad in law.

xxv. The Government issues Notification No.02/2016-CE (NT) dated 03.02.2016 inserting an Explanation under sub-clause (c) of Rule 2 (l) of the CCR, 2004 clarifying that for the purposes of that clause, sales promotion includes services by way of sale of dutiable goods on commission basis. By virtue of this, sales commission agent's service, have been clarified, to be in the nature of input services. The dispute involved in the appeal thus stand settled in favour of the trade.

xxvi. The Hon'ble Tribunal, Ahmedabad in the case of Essar Steel India Pvt. Ltd., vide Order dated 04.02.2016 held that this explanation was to be given retrospective effect since it was consistent with the Circular issued by the Board to the benefit of the assessee.

xxvii. The reason for suggesting that commission agent services were not covered under Rule 2 (l) of the CCR, 2004 is the judgment of the Hon'ble Gujarat High Court in the case of Cadila Health Care Ltd. – 2013 (30) STR 3 (Guj). This judgment has been appealed against by the assessee before the Hon'ble Supreme Court and the appeal has been admitted and is subjudice before the Hon'ble Apex Court.

xxviii. The CBIC vide Circular No. 943/4/2011-CX dated 29.04.2011 clarified that credit was admissible on services of sale of goods on commission basis and this circular is still not withdrawn by the Government.

xxix. The Hon'ble High Court of Gujarat in the case of Dynamic Industries – 2014 (35) STR 674 (Guj.) held that the definition of the term 'input services' is coined in the phraseology of 'means and includes'.

xxx. The adjudicating authority has erred in denying credit on share transfer agent service and stock exchange listing fees without any basis. The said services were used by them as input service and the authorities failed to appreciate the need of these services in the modern day world. For smooth functioning of business of manufacturing, these services are essential.

केन्द्रीय वस्तु एवं सेवाकर (अपील) आयुक्त कार्यालय, THE COMMISSIONER CENTRAL GST (APPEALS), AHMEDABAD.

xxxi. The adjudicating authority has erred in denying credit on testing and analysis services which are integrally required for finished goods to be tested and without this condition being fulfilled, the finished goods cannot be said to be marketable. It is held in a catena of decisions that cenvat credit of testing and analysis services is admissible. They rely upon the decision in the case of HEG Ltd. – 2010 (18) STR 56 (Tri.-Del); Semco Electric Pvt. Ltd. – 2013 (30) STR 572 (Tri.-Mum); Ingersoll Rand Intn. (India) Ltd. – 2015 (38) STR 646 (Tri.-Bang.) and Adani Port & SEX – 2016 (42) STR 1010 (Tri.-Ahmd).

xxxii. The adjudicating authority has erred in imposing penalty under Rule 15 of the CCR, 2004 and it deserves to be set aside as there is no justification in demand of duty. There is no cogent and reliable evidence in support of the charges levelled in the impugned order and therefore, no penalty is justified on the basis of charges levelled on assumptions and presumptions.

xxxiii. The present one is not a case where they had committed any contravention of any of the Rules with intent to evade payment of duty. There is no violation of any nature committed by them. When they have not utilized the cenvat credit and had specifically informed the Range and jurisdictional Officers about taking this credit, the question of imposing penalty would not arise.

xxxiv. In the instant case as there is no short levy or short payment of duty or non levy or non payment of duty. Therefore, the proposal to charge interest under Rule 14 read with Section 11AA is not maintainable.

5. Personal Hearing in the case was held on 09.03.2022 through virtual mode. Shri Sudhanshu Bissa, Advocate, appeared on behalf of the appellant for the hearing. He reiterated the submissions made in appeal memorandum.

6. I have gone through the facts of the case, submissions made in the Appeal Memorandum as well as submissions made at the time of personal hearing. The dispute in the present case pertains to the admissibility of cenvat credit in respect of the service tax paid on GTA service towards

Outward Transportation, Business Auxiliary Services viz. Consignment Commission Agent, Director Fees, Air Travel Agent, Insurance Survey Fees, Share Transfer Agent charges, Stock Exchange Listing Fees, Courier Services and Technical and Testing Analysis service. The demand pertains to period from June, 2015 to December, 2015

7. I find that the impugned order has been issued in denovo proceedings ordered vide OIA No. AHM-EXCUS-003-APP-42-18-19 dated 13.07.2018 passed by the Commissioner (Appeals), Central GST, Ahmedabad. In the said OIA, I find that the issues relating to admissibility of Cenvat Credit in respect of GTA service, Insurance Survey Fees, Share Transfer Agent Charges and Stock Exchange Listing Fees and Technical & Testing Analysis Fees were remanded back to the adjudicating authority for giving reasoned findings. Further, as regards the cenvat credit in respect of Director's Fees, Courier Services, Air Ticket Travel Agent Services, Consignment Commission Agent services, it was held at Para 7.2 of the said OIA, supra, that :

> "As regards Director's Fees, Courier Services, Air Ticket Travel Agent Services, Consignment Commission Agent. This authority has settled the issue vide OIA No. 193/16-17 dated 23.12.2016 and 20/16-17 dated 25.05.2016 in the appellant's own case. Hence, I do not find it necessary to discuss again."

7.1 On a perusal of OIA No. 193/16-17 dated 23.12.2016, I find that cenvat credit in respect of Courier Service was allowed, while the cenvat credit in respect of Director's Fees was disallowed. Further, in respect of cenvat credit on Consignment Commission agent service, the Commissioner (Appeals) had remanded the case back to the adjudicating authority to keep the case in call book in view of the appeal filed by the department before the Hon'ble High Court of Gujarat against the Order of the Hon'ble Tribunal in the case of Essar Steel Ltd. Vs. CCE, Surat-II.

7.2 On a perusal of OIA No.20/16-17 dated 25.05.2016, I find that the cenvat credit in respect of Air Ticket Travel Agent services was held to be admissible in view of the decision in the case of Goodluck Steel Tubes Ltd Vs C.C.E, Noida reported at 2013(32)S.T.R. 123 (Tri.-Del.).

7.3 I find that the adjudicating authority has in the impugned order has taken cognizance of OIA No. AHM-EXCUS-003-APP-42-18-19 dated 13.07.2018 of Commissioner (Appeals) allowing cenvat credit in respect of courier services and accordingly, reduced the demand against the appellant. He has, however, apparently, overlooked the fact that in the said OIA, the cenvat credit in respect of Air Ticket Travel Agent service was also allowed. Therefore, the issue was not any more open to the adjudicating authority to adjudicate. He has, however, dealt with the merits of the issue and in gross judicial indiscipline sat in judgment over the decision of the Commissioner (Appeals) as well the Hon'ble Tribunal which had in the case of Goodluck Steel Tubes Ltd, supra, held the issue to be no more *res integra*. The impugned order, in so far as it pertains to the issue of cenvat credit on Air Ticket Travel Agent service, is, therefore, void *ab inito*.

7.4 I also find that despite the Commissioner (Appeals) having decided the issue of cenvat credit in respect of Director's Fees by holding that the appellant are not entitled to cenvat credit, the adjudicating authority has again adjudicated the matter. The act of the adjudicating authority in adjudicating an issue already decided by the appellate authority in the same case is void *ab inito*. Since the credit stands disallowed by the Commissioner (Appeal) OIA No. AHM-EXCUS-003-APP-42-18-19 dated 13.07.2018, the issue is no more *res integra* in the instant appeal and hence, not being dealt with.

7.5 I further find that despite the specific direction of the Commissioner (Appeals) to keep the issue of admissibility of cenvat credit on Consignment Commission agent service in call book in view of the appeal filed by the department before the Hon'ble High Court of Gujarat against the Order of the Hon'ble Tribunal in the case of Essar Steel Ltd. Vs. CCE, Surat-II, the adjudicating authority has in total disregard of the order of the higher appellate authority adjudicated the issue and taken a view which is contrary to the judgment of the Hon'ble Tribunal in the case of Essar Steel Ltd., supra. This is judicial discipline of the highest order on the part of the adjudicating authority. Since the Hon'ble High Court of Gujarat is seized of

the matter on an appeal by the department, I remand back this issue to the adjudicating authority to keep it in abeyance in the call book till the matter is decided by the Hon'ble High Court of Gujarat.

7.6 Therefore, the issue before me for decision is the admissibility of cenvat credit in respect of the service tax paid on :

a) GTA service towards Outward Transportation,
b) Insurance Survey Fees,
c) Share Transfer Agent charges,
d) Stock Exchange Listing Fees
e) Technical & Testing Analysis service.

8. In respect of the cenvat credit of service tax paid on GTA Outward transportation service, I find that the issue has earlier been decided by me in the case of Ransariya Poly Pack Pvt Ltd vide OIA No. AHM-EXCUS-003-APP-54/2021-2022 dated 11.11.2021. The relevant part of the said OIA is reproduced as under :

> "5.5 Hence, it is apparent that the terms of sale in respect of consignments in question are FOR sales at buyer's place. Since the sale of the finished goods by the appellant is on FOR buyers destination, the place of removal would be the buyers destination, where the ownership of the goods changes from the appellant to the buyer. Therefore, the services used for clearance of the finished goods till the buyers destination would qualify as input service as per Rule 2 (l) of the CCR, 2004 discussed above.
>
> 5.6 I find that the adjudicating authority has in the impugned order referred to the decision in the case of CCE vs. Ultratech Cement Ltd reported in 2018 (9) GSTL 337 (SC) wherein the Hon'ble Supreme Court had held that Cenvat Credit on goods transport agency service availed for transport of goods from place of removal to buyer's premises was not admissible.
>
> 5.7 I find that subsequent to the above judgement of the Hon 'ble Supreme Court, the Hon'ble Tribunal, Ahmedabad had in the case of Sanghi Industries Ltd Vs. Commissioner of C.Ex., Kutch (Gandhidham) reported in 2019 (369) ELT 1424 (Tri.-Ahmd), involving the same issue, held at para 5 of their judgement that :
>
> > "From the above judgment it is thus clear that till the goods are handed over to the buyer, the cost is borne by the assessee or in other words where the goods are cleared on FOR basis the freight paid on outward transportation would qualify as "Input service". As regard reliance placed upon by the Revenue on the judgment of the Apex Court in case of *Ultratech* supra, we find that the Hon'ble Supreme Court was concerned only with the "place of removal" but did not go into the aspect of "Point of sale" or the FOR price destination

issue. Hence the said judgment is not applicable in the facts of the present case."

5.8 Consequently the Hon'ble Tribunal held that :

"**8.** In view of our above findings we hold that the appellants are eligible for the credit of service tax paid on outward freight. Accordingly, the impugned order is set aside. We allow the appeals with consequential reliefs, if any MA (ORS) also stand disposed of."

5.9 The judgement in the above case is that of the jurisdictional Tribunal at Ahmedabad. Further, the order of a higher appellate authority is binding on me. Therefore, following the principles of judicial discipline, I follow the decision of the Hon'ble Tribunal in the case cited supra.

6. I am, therefore, of the considered view that the adjudicating authority has erred in denying Cenvat Credit to the appellant. Consequently, I set aside the impugned order for being not legal and proper and allow the appeal filed by the appellant."

8.1 I find that the facts involved in the present appeal are similar to that in the aforesaid OIA. The appellant have in the instant case availed cenvat credit in respect of the service tax paid in GTA outward service where the goods were cleared on FOR buyers destination. As per the available records, the aforesaid OIA has not been overruled or set aside by any higher appellate authority.

8.2 I further find that the Hon'ble Tribunal, Ahmedabad had in the case of Ultratech Cement Ltd. Vs. CCE, Kutch (Gandhidham held vide Final Order No. A/10373/2019 dated 25.02.2019 that where goods are sold on FOR basis, cenvat credit of service tax paid on outward freight is admissible. Further, the judgment of the Hon'ble Tribunal was upheld by the Hon'ble High Court of Gujarat vide Order dated 23.01.2020 in R/Tax Appeal No. 691/2019, 690/2019 and 698/2019 filed by the department. Therefore, following the decision in the said OIA as well as the judgments of the Hon'ble Tribunal, Ahmedabad and the Hon'ble High Court of Gujarat, I hold that the appellant are entitled to cenvat credit in respect of the service tax paid on GTA outward transportation service.

9. As regards the cenvat credit in respect of the service tax paid on Insurance Survey Fees, Share Transfer Agent charges and Stock Exchange Listing Fees, I find that this authority has in the case of the same appellant held vide OIA No. AHM-EXCUS-003-APP-100-18-19 dated 14.09.2018 that

cenvat credit in respect of these services are not admissible. The appellant have not put forth any order of the higher appellate authority overruling the view taken in the said OIA. Therefore, following the said OIA, I hold that the cenvat credit is not admissible in respect of service tax paid on Insurance Survey Fees, Share Transfer Agent charges and Stock Exchange Listing Fees. The impugned order is upheld to this extent.

10. Regarding the issue of cenvat credit in respect of the service tax paid on Technical and Testing Analysis service, I find that this authority had in the case of the same appellant held vide OIA No. AHM-EXCUS-003-APP-100-18-19 dated 14.09.2018 that cenvat credit in respect of this services is admissible. Therefore, following the said OIA, I hold that the appellant are eligible for cenvat credit in respect of the service tax paid on Technical and Testing Analysis service.

11. The appellant have also challenged the imposition of penalty under Rule 15(1) of the CCR, 2004. I find that in respect of the cenvat credits disallowed, as above at Para 9, it was held by the Commissioner (Appeals) vide OIA dated 14.09.2018 that "*there was no malafide intention in behalf of the appellant to wrongly avail Cenvat Credit. Accordingly, penalty imposed on the appellant under the provisions of Rule 15 (1) of the Cenvat Credit Rules, 2004 is required to be set aside, I do so.*" I concur with the above order and, therefore, hold that penalty is not imposable on the appellant under Rule 15 (1) of the CCR, 2004.

12. In view of the above findings and discussions, I allow the cenvat credit in respect of GTA Outward transportation service and Technical and Testing Analysis service. The cenvat credit in respect of Insurance Survey Fees, Share Transfer Agent charges and Stock Exchange Listing Fees is held to be not admissible. Accordingly, the impugned order is upheld to this extent. The issue of cenvat credit of service tax paid on Consignment Commission Agent service is remanded back to the adjudicating authority to be kept in abeyance in call book pending judgment of the Hon'ble High

Court of Gujarat in the case of Essar Steel Ltd, supra. The penalty on the appellant is set aside.

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

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

21st April, 2022.

(Akhilesh Kumar)
Commissioner (Appeals)
Date: .04.2022.

Attested:

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

BY RPAD / SPEED POST

To

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

The Assistant Commissioner, — Respondent
CGST & Central Excise,
Commissionerate : Mehsana

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.