



सत्यमेव जयते

::आयुक्त (अपील-II) का कार्यालय,केंद्रीय उत्पाद

शुल्कः:

O/O THE COMMISSIONER (APPEALS-II), CENTRAL EXCISE,
7वीं मंजिल, केंद्रीय उत्पाद शुल्क भवन,
पोलिटैकनिक के पास,
आम्बवाडी, अहमदाबाद : 380015



7th Floor, Central Excise
Building,
Near Polytechnic,
Ambavadi,
Ahmedabad:380015

रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(30)13to18 & 106to 109/Ahd-II/2015-16 / 2280 to 2284
स्थगन आवेदन संख्या(Stay App. No.):
ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 004 to 0013 -16-17
दिनांक (Date): 25.05.2016, जारी करने की तारीख (Date of issue): 30/05/16
श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित
Passed by Shri Uma Shanker , Commissioner (Appeals-II)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-), अहमदाबाद- II, आयुक्तालय द्वारा जारी
मूल आदेश सं _____ दिनांक _____ से सृजित
Arising out of Order-In-Original No. As Per Order Dated: As Per Order
issued by: Deputy Commissioner ,Central Excise (Div-IV), Ahmedabad-II

घ अपीलकर्ता/प्रतिवादी का नाम एवम पता (Name & Address of the Appellant/Respondent)

M/s Astra Lifecare(India) pvt. Ltd.

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है ।

Any person an 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) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक 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 ।

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, 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 हानि कारखाने से किसी भंडारगार या अन्य कारखाने में या किसी भंडारगार से दूसरे भंडारगार में माल ले जाते हुए मार्ग में, या किसी भंडारगार या भंडार में चाहे वह किसी कारखाने में या किसी भंडारगार में हो माल की प्रकिया के दौरान हुई हो ।

In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है ।



Cont...2

- (c) 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 ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

- (d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

- (1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक 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 रुपये या उससे कम हो तो रुपये 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 अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

- (1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

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

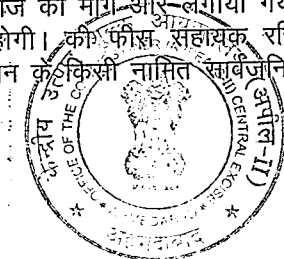
- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

- (ख) उक्तलिखित परिच्छेद 2 (1) 'क' में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मेटल हॉस्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

- (b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

- (2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।



रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।

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. Registrar 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 आदेश 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 है।

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 notwithstanding 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 रु.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 is 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 अपील 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।

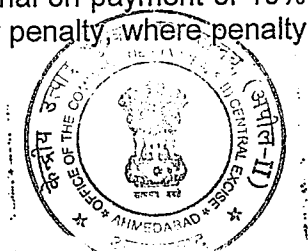
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 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 सन्दर्भ में 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."

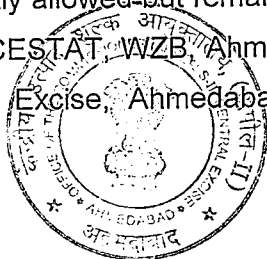


ORDER

The subject appeal cases are remanded back by the CESTAT, WZB, Ahmedabad vide Order no.A/10157 to 10166/2015 dated 23-02-15 .The Said Appeals were filed by M/s. Astra Lifecare (India) Pvt.Ltd. Plot No. 57/P, Sarkhej-Bavla Highway, Village: Rajoda, Taluka: Bavla, District: Ahmedabad Pincode-382220 (hereinafter referred to as 'the appellants') against Order in appeal Nos. 141/2013, 142/2013, 145/2013, 147/2013 & 148/2013 to 153/2013 (hereinafter referred to as 'the impugned orders') passed by the Commissioner (Appeals), Central Excise, Ahmedabad (hereinafter referred to as 'the first Appeal authority'). The appellants are engaged in the manufacture of pharmaceutical products falling under Chapter 30 of the first schedule to the Central Excise Tariff Act, 1985. The appellant are also availing the benefit of Cenvat Credit on the inputs, input services and capital goods under the Cenvat Credit Rules, 2004 (hereinafter mentioned as 'CCR, 2004').

2. Vide this general order, all ten cases are decided, which have been remanded back by hon'able CESTAT, WZB, Ahmedabad, against *impugned orders* of the first appeal authority who partly rejected the claims and partly allowed but remand back to the adjudicating authority. The CESTAT remanded the matter back to the first appeal authority to decide the issue afresh after considering the submission of the appellant. These appeals were filed against the impugned Orders-in-appeal and pertain to refund of Cenvat Credit of Service Tax taken on input services used in the manufacture of excisable goods cleared for export. All ten cases mentioned above are taken up for decision as the issues involved in all these cases are identical.

3. The brief facts of the case is that, the appellant had filed different refund claims pertain to refund of Cenvat Credit of Service Tax taken on input services, under rule 5 of CCR 2004 with the Assistant Commissioner, Central Excise, Division-IV, Ahmedabad-II. The claims were filed under the provisions of Notification No. 5/2006-CE(NT) dated 14.03.2006. These refund claims were scrutinized and were found in violation of the provisions of Rule 5 of CCR, 2004 read with the provisions of Notification No. 5/2006-CE(NT) dated 14.03.2006. Accordingly, the appellant were issued Show Cause Notices proposing to reject these refund claims. These Show Cause Notices were adjudicated by the Assistant Commissioner, Central Excise, Division-IV, Ahmedabad-II who rejected the claims. Being aggrieved by such rejection order, the appellant preferred appeals before the Commissioner (Appeals), Central Excise, Ahmedabad, who partly rejected the claim and partly allowed but remand back to the adjudicating authority. The appellant moved to the CESTAT, WZB, Ahmedabad against the orders of Commissioner (Appeals), Central Excise, Ahmedabad. The



CESTAT remanded the matter back to the first Appeal authority for verification of documents and to decide the issue of admissibility of the refund claims. Rejected services and allowed but remand back services claim are listed as below. These orders were passed in various appeals as per details in para 1 above.

Rejected services	Allowed but remanded back services
Insurance auxiliary	courier
Consulting engineer	Banking & financial
telephone	Business auxiliary
Transmission of electricity	Clearing & forwarding
Health & fitness	Tech. testing & certificate
Public relation	Transport of goods by road
Business support	Internet cafe
Maintenance & repairs	Chartered accountant
Construction of comm.. complex	Tech. testing & analysis
Erection & commissioning	-
Credit card service	-

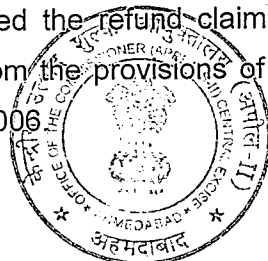
4. Personal hearing in this case was held on 18.03.2016 which was attended by Shri Bhavesh Patel, CA on behalf of the appellants. He contended that as per directions of CESTAT all necessary documents have been submitted to the first appeal authority for verification with regard to various refund claims filed by them. I have carefully gone through the case records, facts of the case, case-laws relied upon and



submissions made by the appellant. In the present matter it has not been disputed that the goods were exported by the appellant. In the instant case, I find that the first appeal authority vide the impugned orders has partly allowed but remand back refund claims towards various services used in connection with export of goods and rejected the remaining amount of refund claim for the services i.e Consulting Engineer Service, Public Relation Service, Health & Fitness Service, Telephone Service, Erection commisioning & Installation service, management consult Service, Internet Café Service, Charter Accountant Service, Insurance Auxiliary Service, Maintain & Repairs Service, Business Auxiliary Services, Business Support Services, Technical Testing & Certi.Services, Technical Testing And Analysis Services, credit Card service, and Transport of goods by road. The appellant had filed these appeals against rejection/remand back of refund claims in respect of Service Tax paid towards the said input services on the ground that the said services are falling within the ambit of 'input service' under Rule 2(l)(ii) of the Cenvat Credit Rules, 2004 and refund is admissible under rule 5 of CCR-2004.

5. I find that, as per the CESTAT order, the appellants have submitted relevant documents on dated 18.03.2016 for consideration of the first Appeal authority. Verification was conducted, for relevant invoices on which the service tax credit was taken and subsequently refund was claimed for the relevant period. The appellant produced such documents as directed and this office conducted verification to ascertain whether invoices submitted along with refund match with those mentioned in the refund claim. This exercise revealed that the invoices mentioned in the refund claim matched with each other. Therefore, I am of the view that all relevant documents were produced by the appellant. Therefore, said refund claims has been correctly filed by the appellant, and followed the conditions set out under the Notification issued under Rule 5 of CCR, 2004.

6. On going through the impugned orders, I find that the first appeal authority has observed that the refund of the services claimed for Consulting Engineer Service, Public Relation Service, Health & Fitness Service, Telephone Service, Erection, commisioning & Installation service, management consult Service, Internet Café Service, Chartered Accountant Service, Insurance Auxiliary Service, Maintain & Repair Service, Business Auxiliary Services, Business Support Services, Technical Testing & Certi.Services, Technical Testing And Analysis Services, credit Card service, and Transport of goods by road service, I find that the first appeal authority has erred in interpretation of Rule 5 of CCR, 2004 read with Noti.No.5/2006-CE(NT) dated 14.03.2006 and has rejected the refund claim on the ground that the said services are specifically excluded from the provisions of Cenvat Credit Rules, 2004 and Noti.No.05/2006-CE(NT) dt. 14.3.2006



7. I find that, admissibility of Cenvat Credit taken on input services such as Clearing & Forwarding Agents, Courier service, Banking and other Financial Services and Service Tax paid on Transport of goods by road [GTA] is concerned, I find that Revisionary Authority, Department of Finance, MoF, Government of India in the case of Nov Sara India (P) Ltd. 2012 (286) ELT 461 (GOI) has held that place of removal under Section 4 of Central Excise Act, 1944 may be factory/warehouse, a depot, premise of a consignment agent or any other place of removal from where the excisable goods are to be sold for delivery at place of removal. Meaning of word "any other place" read with definition of "sale" cannot be construed to have meaning of any place outside geographical limits of India. Once the place of removal is decided within the geographical limit of the country it cannot be beyond the port of loading of export goods. Thus place of removal is the port of export where sale takes place. If this is the case, the services provided by Clearing & Forwarding Agents are input services and Cenvat Credit of service tax paid for such services is admissible. Similarly services provided by Couriers are input services and Cenvat Credit of service tax paid for such services is admissible in light of case, Piramal Glass Limited Vs Commissioner of Central Excise, Surat cited at 2012 (286) ELT 414 (Tri-Ahmd). Banking and other Financial Services and Service Tax paid on GTA services are also input services and Cenvat Credit of service tax paid for such services is admissible on count of plethora of judgments of various appellate authorities. I relied on following cases, GTA Service-2013 (292) ELT 316 (Tri-Bang) Commissioner of Cus. & C.Ex. Hyderabad-IV Vs Pokarna Ltd. Banking Service 2012 (278) ELT 503 (Tri-Del) – Banmore Cables & Conductor Vs CCE, Indore. M/s.Modern Petrofils Vs Commissioner of C. Ex., Vadodara - reported at 2010 (18) STR 625 (Tri. Ahmd.); Commissioner of C. Ex., Surat Vs Colour Synth Industries P. Ltd, reported at -2009 (14) STR 309 (Tri. Ahmd). I rely upon the said citations, since the ratios of the judgments are squarely applicable in the facts of the present case. Therefore, I find that the appellant have correctly availed the Cenvat Credit on said services i.e. Clearing & Forwarding Agents, Courier service, Banking and other Financial Services Transport of goods by road from the factory upto the Port. Therefore, the refund of Service Tax is admissible to the appellant.

8. As regards Technical Testing and Analysis service, Testing Inspection and Certification Services, the appellant has availed Service tax credit as input service which was rendered in respect of production on trial basis. On going through the records, I find that the contention put forth by the appellant that "*they were engaged in the manufacturing of Pharmaceutical goods which required technical testing and analysis report before export of goods as per quality standards. Appellant were exporting goods 100% EOU that so, there were no utilization of technical testing and analysis service for the goods other than that used for export of goods.*" Therefore, I find that the appellant have correctly availed the Cenvat Credit on said service and



therefore the refund of Service Tax paid towards Technical Testing and Analysis is admissible to the appellant.

9. As regards clearing & forwarding agent services, the adjudicating authority has held that the said services has been utilised after the manufacturing activity of the final product that is after the place of removal, I find that the said services are essential services for export of goods and utilised by the appellant being a EOU unit which primarily engaged in the business of export of goods. In above view point, I find force in the arguments of the appellant as they have referred to the judgments in case of Commissioner of C. Ex. Rajkot v. Adani Pharmachem P. Ltd., reported at - 2008 (12) STR 593 (Tri. Ahmd.); and Leela Scottish Lace Pvt. Ltd., Vs Commissioner of Customs , Bangalore reported at 2010(257) ELT 151 (Tri. Chennai), wherein it has specifically been held, that Cenvat Credit of Service Tax is admissible on the said services as input services. I rely upon the said citations, since the ratios of the judgments are squarely applicable in the facts of the present case. As such said services are utilised for selling of their goods and such services are falling under the ambit of input services as per the Cenvat credit Rules, 2004, therefore the appellant have correctly availed the Cenvat Credit on said service. Therefore, the refund of Service Tax paid for clearing & forwarding agent services is admissible to the appellant.

10. As regards admissibility of credit on input services such as construction of commercial complex service, I find that said services are received before 01-04-11. The appellant has submitted relevant invoices/documentary evidence for verification in respect of the said service. I find that, such services are falling under the ambit of input services as per the Cenvat credit Rules, 2004. The appellant have correctly availed the Cenvat Credit on said service. Therefore, the refund of Service Tax paid for said service is admissible to the appellant.

11. Regarding the rejection of refund claim in respect of the Public Relation Services, the same has been rejected for non submission of any evidence in support of their contention. I find that the appellant has not substantiated the direct nexus of this service with the manufacturing. I therefore find that, such services are not falling under the ambit of input services as per the Cenvat credit Rules 2004. Therefore, the refund of Service Tax is not admissible to the appellant.

12. Regarding the rejection of refund claimed in respect of the Consulting Engineer Service, I find that the appellant has submitted relevant invoices/documentary evidences for verification in respect of the said service. I also find that, credit of said service is allowed vide OIA NO.002/14-15 dated 24-09-14. Therefore, the appellant

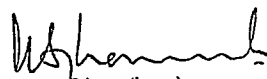


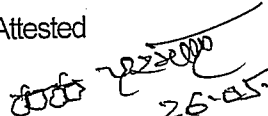
have correctly availed the Cenvat Credit on said service. I hold that, the refund of Service Tax credit is admissible to the appellant.

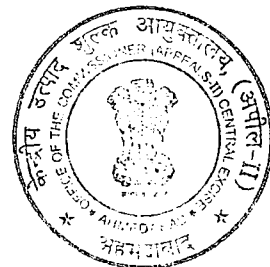
13. As regards admissibility of Cenvat Credit of service tax paid for the services i.e Telephone Service, Erection, commissioning & Installation service, Management Consultant Service, Internet Café Service, Chartered Accountant Service, Insurance Auxiliary Service, Maintenance & Repair Service, Business Auxiliary Services, Business Support Services and credit Card service, I find that the unit is a 100% EOU and main activity is manufacturing and 100% export of goods. I find that as per definition of input service, even indirect relationship of usage of service for manufacturing is covered in the definition of 'input service'. Even otherwise there are numerous case laws where various higher appellate authorities have held that if an assessee has paid the service tax and taken credit on the basis of valid documents, its eligibility to such credit cannot be questioned. I would like to cite the case of *Ultratech Cement Ltd.* decided by the Hon'ble High Court of Bombay 2010 (260) E.L.T.369 (Bom.) 2010 (20) S.T.R. 577 (Bom.) wherein the Hon'ble High Court has held that any service which has nexus with the business activity of the appellant, whether it is manufacturing or rendering service, has to be treated as "input service" coming within the purview of Rule 2(l) of the CENVAT Credit Rules, 2004. Therefore, in light of aforesaid case law, I hold that refund of such service tax credit is eligible to the appellants.

14. In view of foregoing discussions and findings, I hold that Cenvat credit of service tax for said input services is admissible to the appellant, and said refund claims are admissible to the appellant.

All remand back cases as mentioned above stands disposed of as above.


(Uma Shanker)
Commissioner (Appeals-II)
Central Excise, Ahmedabad

Attested

26-05-16
(K.K.Parmar)
Superintendent (Appeals-II)
Central excise, Ahmedabad



By Regd. Post A. D

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3. The Dy. Commissioner, Central Excise Division-IV, Ahmedabad-II.
4. The Asstt. Commissioner (Systems), Central Excise, Ahmedabad-II.
5. Guard File.
6. P. A. File.

