



सत्यमेव जयते

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

शुल्क::

O/O THE COMMISSIONER (APPEALS-II), CENTRAL EXCISE,
7वीं मंजिल, केंद्रीय उत्पाद शुल्क भवन, 7th Floor, Central Excise
पोलिटैकनिक के पास, Building,
आम्बवाडी, अहमदाबाद : 380015 Near Polytechnic,
Ambavadi,
Ahmedabad:380015



रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(85)38 /Ahd-II/Appeals-II/ 2015-16 /2805-2809
स्थगन आवेदन संख्या(Stay App. No.):

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 058-16-17

दिनांक (Date): 28.10.2016, जारी करने की तारीख (Date of issue): 08/11/16

श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित

Passed by Shri Uma Shanker , Commissioner (Appeals-II)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-V), अहमदाबाद- II, आयुक्तालय द्वारा जारी

मूल आदेश सं _____ दिनांक _____ से सृजित

Arising out of Order-In-Original No. AR-V/04/Supdt./15-16 Dated: 30-06-2015

issued by: Supdt. Commissioner., Central Excise (Div-V), Ahmedabad-II

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

M/s Inductotherm (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 अंतत 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 हैं।



Cont...2

A. J.

P. A. J.

- (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 हों।

- (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.100 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 :-

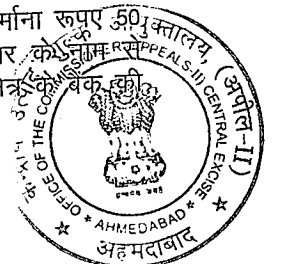
- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (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 मैन्टल हास्पिटल 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 द्वारा बैंक की 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 अनुसूची-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।

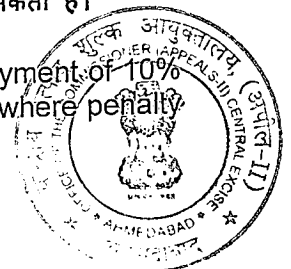
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section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



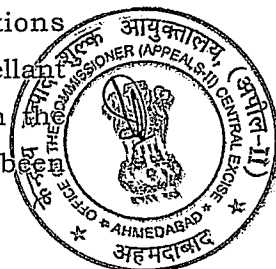
Order in appeal

The present appeal filed by M/s. Inductotherm (India) Pvt. Ltd., K. D. Vyas Building, Ambli-Bopal Road, Bopal, Ahmedabad (hereinafter referred to as the appellants) against OIO No.AR-V/04/SUPDT/15-16 [hereinafter referred to as 'the impugned order'] passed by the Supdt. Central Excise, AR-V, Div-V, Ahmedabad-II (hereinafter referred to as 'the adjudicating authority'). They are engaged in the manufacture of Induction Melting/Heating Furnace and Parts thereof falling under chapter heading 85 of Central Excise Tariff Act, 1985 (hereinafter also referred to as CETA, 1985). The appellant is availing facility of Cenvat Credit on inputs and input service under the provisions of Cenvat Credit Rules, 2004.

2. Brief facts of the case is that, during the course of audit, it was noticed that the appellant had availed Cenvat Credit on input services like Repairs and Maintenance Service of premises other than their manufacturing unit, and Sponsorship Services. It was observed that the Cenvat credit availed on the above said services had no nexus with the manufacture of their goods. Accordingly, same is inadmissible as per Rule 2 (I) of the Cenvat Credit Rules 2004. Cenvat Credit availed Rs.36054/-. They did not agree with audit objection. Statement of Shri. Mihir Patel, Manager Finance and Authorized signatory of the appellant was recorded on 21.06.2013, he stated that, they are eligible for the credit of the same; the party has informed the department about the availment of CENVAT credit on the said services, that it is general nature of business practice of availment of credit on inputs as inputs services and they have bonafide belief that all aforesaid service are input service and they are eligible to get cenvat credit; said services which are not admissible as per the provisions of the in rule 2 (ii) of the Cenvat Credit Rules, 2004. It appeared that the appellant has taken inadmissible credit on said services and have contravened the provisions of Cenvat Credit Rules, 2004. In the present case the department came to know about such inadmissible credit of said Services at the time of Audit. On examination of the same it appeared that the Credit taken on said services are not used in or in relation to the manufacture of excisable goods as provided in Rule 2 (1)(ii) of Cenvat Credit Rules 2004. It appears that the appellant did not disclose the fact regarding availment of such inadmissible Service Tax Credit at any point of time to the department. the appellant had suppressed the above fact with an intent to evade the payment of Excise duty and contravened the provision of Rule 2 (1)(ii) of Cenvat Credit Rules 2004. SCN was issued for recovery of wrongly availed Cenvat Credit, same was decided vide above order and confirmed demand with penalty.

3. Having been aggrieved by the impugned order, the appellants submitted this appeal on the following grounds.

That the appellant has maintained proper format and all the transactions are reflected in the returns filed by the appellant on monthly basis. The appellant is also registered as a service provider of renting of immovable property with service tax department. In course of the aforesaid business, the appellant has been availing Cenvat credit of services tax paid on various services.

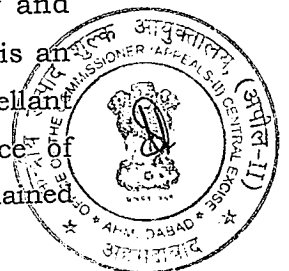


the larger period of limitation is invoked only on the ground that the above cenvat credit was not shown separately while filing monthly returns, and the reason explained by the appellant for this that there was no separate column for showing details of each of the input services and cenvat credit availed for the same has also not been considered.

that as a manufacturer the appellant has been entitled to avail cenvat credit of service tax paid on all the services involved in this case because they were used in or in relation to manufacture and clearance of the goods, and there being no suppression of facts nor any intent to evade payment of duty on the appellant's part, the proposal of invoking the extended period of limitation was also wholly without jurisdiction.

Sponsorship service: the appellant clarify that the appellant has participated in the exhibitions held outside India along with the appellant's group companies and therefore the machineries would be brought to the exhibition by the group companies and on the basis of such machinery being brought by the appellant's group company, the appellant has participated in the exhibition by sending the appellant's personnel to advertise and market the appellant's products. The sales team sent by the appellant would promote the appellant's products via posters, LED displays and other means of advertising. The cenvat credit of service tax paid on sponsorship service pertains to a few events sponsored by the appellant and such events have been sponsored as a marketing strategy for advertisement of the appellant's products and thus are in the nature of sales promotion/advertising. The cenvat credit of sponsorship service is thus admissible because the very nature of sponsorship service is sales promotion or advertising the product of the company. Since advertising or sales promotion is an input service under Rule 2(1) and such activity has a nexus with the appellant's manufacturing activity. Thus credit could be availed on the tax paid on the input services namely exhibition services and sponsorship service as these services availed by the appellant had an effect or impact on the manufacture of the final product and there is an established relationship between the input service and the manufacture of the final product.

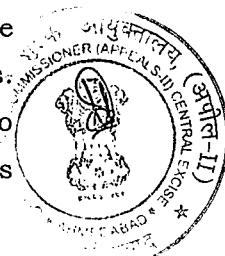
Repair and Maintenance service: The input service was utilised for providing the output service of Renting of Immovable property and accordingly, the service tax paid on such services was eligible for cenvat credit to the appellant. The appellant has given on rent, immovable property to M/s. Brickmont India Pvt. Ltd. and the appellant has been paying service tax on the rent income received under the head of Renting of immovable property. While providing this service, the appellant has paid certain amount to M/s. Eternia Premises Co-op. Society Ltd. for the service of maintenance of the appellant's own immovable property and therefore the Society Maintenance service which the appellant has availed is an input service used in relation to the provision of the output service. The appellant submits that the denial of cenvat credit of repair and maintenance service premises is also against the settled legal position on the issue. As already explained



by Shri Mihir Patel in his statement, the appellant has paid an amount to M/s. Etemia Premises Co-op. Society Ltd. being the maintenance amount of the appellant's immovable property which has been rented to M/s. Brickmont India Pvt.Ltd. The appellant is already registered as a service provider under Renting of Immovable Property service and the appellant is paying service tax on the rent received by the appellant from M/s. Brickmont. Thus the renting of immovable property is the appellant's output service and maintenance of the immovable property is integrally connected to the provision of renting of immovable property service. Thus, the maintenance of the immovable property given on rent is an input service used by the appellant as a provider of taxable service for providing the output service and is therefore covered under the definition of "input service" under Rule 2(1) of the Cenvat Credit Rules, 2004. Instructions issued by the Central Board of Excise and Customs in the Manual of supplementary instructions. The Hon'ble Punjab & Haryana High Court in the matter of Nahar Industrial Enterprises Ltd. reported in 2007 (25) STR 129 has categorically held *that as per the Cenvat Credit Rules and as per the Manual there was no restriction for utilization of Cenvat credit by the manufacturing unit towards payment of service tax as service provider.* They relied on the case of Coca Cola India Pvt. Ltd. 2009 (242) ELT 168 and Ultratech Cement Ltd. 2010 (260) ELT 369 wherein the Hon' ble High Court has held that, *all the activities in relation to business of manufacture were covered under Rule 2(1) which was of wider import in the context of the cenvat scheme.*

Regarding the invocation of extended period of limitation against the appellant, I find that, In the case of Continental foundation jt. Venture v CCE, Chandigarh reported in 2007 (216) ELT 177 (SC), and it is held by the Hon'ble Supreme Court with regard to the proviso to Section 11A of the Central Excise Act, 1944, that 'mere omission to give correct information was not suppression of facts unless it was deliberate and to stop the payment of duty.' In the present case where all the facts were within the knowledge of the Department. There being no contravention by way of suppression of facts with intent to evade payment duty on the appellant's part, the invocation of extended period of limitation against the appellant is unjustified.

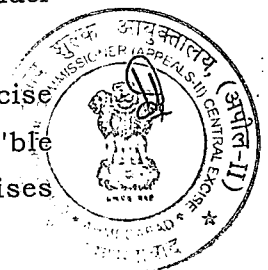
4. Personal hearing in the matter was held on 14.09.2016 wherein Smt. Shilpa P. Dave, Advocate, appeared on behalf of the appellant and reiterated the submissions made in their grounds of appeal. She has submitted copies of case laws 1.Hcl Technologies 2015 [37] STR 716[ALL.] 2. The APMC 2013 [30] STR 702 [Tri Ahd] 3.Navratna S.G. Highway Prop. P. Ltd. 2012[28]STR 166[Tri Ahd]. I have carefully gone through the records of the case as well as the written submissions made by the appellant. The issue to be decided is the admissibility of Cenvat Credit availed by the appellant on the Service Tax paid on input services like Repair and Maintenance Service of premises other than their manufacturing unit, and Sponsorship Services. It was observed that the Cenvat credit availed on the above services had no nexus with the manufacture of their goods and accordingly, the same is inadmissible as per Rule 2 (I) of the Cenvat Credit Rules 2004.



5, Regarding sponsorship service, I find that, the appellant had participated in the exhibitions held outside India along with the appellant's group companies and therefore the machineries would be brought to the exhibition by the group companies and on the basis of such machinery being brought by the appellant's group company, the appellant has participated in the exhibition by sending the appellant's personnel to advertise and market the appellant's products. The sales team sent by the appellant would promote the appellant's products via posters, LED displays and other means of advertising. The cenvat credit of service tax paid on sponsorship service pertains to a few events sponsored by the appellant and such events have been sponsored as a marketing strategy for advertisement of the appellant's products and thus are in the nature of sales promotion/advertising. The cenvat credit of sponsorship service is thus admissible because the very nature of sponsorship service is sales promotion or advertising the product of the company. Since advertising or sales promotion is an input service under Rule 2(1) and such activity has a nexus with the appellant's manufacturing and business activity, hence, cenvat credit would be admissible. The amended definition of input services also specifically includes advertisement or sales promotion within its ambit. Therefore, credit can be availed on the tax paid on the input services namely exhibition services and sponsorship service.

6. Regarding Repairs and Maintenance service, I find that, this input service was utilised for providing the output service of Renting of Immovable property and accordingly, the service tax paid on such services was eligible for cenvat credit to the appellant. The appellant has given on rent, immovable property to M/s. Brickmont India Pvt. Ltd. and the appellant has been paying service tax on the rent income received under the head of Renting of immovable property. While providing this service, the appellant has paid certain amount to M/s. Eternia Premises Co-op. Society Ltd. for the service of maintenance of the appellant's own immovable property and therefore the Society Maintenance service which the appellant has availed is an input service used in relation to the provision of the output service. As already explained by Shri Mihir Patel in his statement, the appellant has paid an amount to M/s. Etemia Premises Co-op. Society Ltd. being the maintenance amount of the appellant's immovable property which has been rented to M/s. Brickmont India Pvt.Ltd. The appellant is already registered as a service provider under Renting of Immovable Property service and the appellant is paying service tax on the rent received by the appellant from M/s. Brickmont. Thus the renting of immovable property is the appellant's output service and maintenance of the immovable property is integrally connected to the provision of renting of immovable property service. Thus, the maintenance of the immovable property for providing the output service, covered under the definition of "input service" under Rule 2(1) of the Cenvat Credit Rules, 2004.

7. I also find that, the instructions issued by the Central Board of Excise and Customs in the Manual of supplementary instructions, The Hon'ble Punjab & Haryana High Court in the matter of Nahar Industrial Enterprises



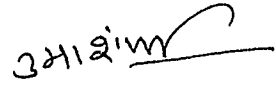
Ltd. reported in 2007 (25) STR 129 has categorically held that as per the Cenvat Credit Rules and as per the Manual there was no restriction for utilization of Cenvat credit by the manufacturing unit towards payment of service tax as service provider. I rely on the case laws of Coca Cola India Pvt. Ltd. 2009 (242) ELT 168 and Ultratech Cement Ltd. 2010 (260) ELT 369 wherein the Hon' ble High Court has held that *all the activities in relation to business of manufacture were covered under Rule 2(1) which was of wider import in the context of the cenvat scheme.* 2. In the case of M/s Navaratna S.G. Highway Prop. Ltd. 2012 (28) SIR 166, 3. In the case of Agricultural Produce Market Committee reported in 2013 (30) SIR 702. The issue involved in these cases is similar to the present case, cenvat credit is admissible to the appellant.

8. Regarding the invocation of extended period of limitation against the appellant, I find that, In the case of Continental foundation jt. Venture v CCE, Chandigarh reported in 2007 (216) ELT 177 (SC), and it is held by the Hon'ble Supreme Court with regard to the proviso to Section 11A of the Central Excise Act, 1944, that 'mere omission to give correct information was not suppression of facts unless it was deliberate and to stop the payment of duty.' In fact, the present case where all the facts discussed was within the knowledge of the Department. There being no contravention by way of suppression of facts with intent to evade payment duty on the appellant's part, the invocation of extended period of limitation against the appellant is unjustified. Therefore, I hold that penalty is not imposable. Accordingly it is set aside.

9. In view of foregoing discussion and findings, I set aside the impugned order and allow the appeal filed by the appellant. .

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

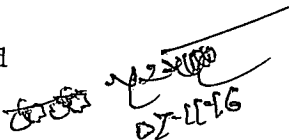
The appeal filed by the appellant stand disposed off in above terms.



(उमा शंकर)

आयुक्त (अपील्स - II)

Attested



(K.K.Parmar)

Superintendent (Appeal-II)
Central Excise, Ahmedabad

By Regd. Post A.D.

M/s. Inductotherm (India) Pvt. Ltd.,

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2. The Commissioner, Central Excise, Ahmedabad-II
3. The Dy. Commissioner, Central Excise, Div-V, Ahmedabad-II
4. The Assistant Commissioner (System), Central Excise, Ahmedabad-II
5. Guard file.
6. PA file.

