केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

सत्यमेव जयते

केंद्रीय उत्पाद शुल्क भवन, सातवीं मंजिल, पोलिटेकनिक के पास, आम्बावाडी, अहमदाबाद-380015

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

079-26305065

टेलेफैक्स : 079 - 26305136

576/580

रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.) : **V2 (84)4,33&38/Ahd-II/Appeals-II/ 2016-17**

स्थगन आवेदन संख्या(Stay App. No.):

ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP-35-36-37-17-18**

दिनांक (Date): **7/29/2017,** जारी करने की तारीख (Date of issue): 20/9/17

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

Passed by **Shri Uma Shanker** , Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-IV), अहमदाबाद- II, आयुक्तालय द्वारा जारी मूल आदेश सं _____ दिनांक _____ से सृजित

Arising out of Order-In-Original No.(I) **12/AC/D/2015/UKG Dated: 25/01/2015 , (ii)56-59/ADC/2015/DSN Dated : 30/03/2016 & (iii) 04-07/AC/D/2016/UKG Dated: 21/04/2016**

issued by: Assistant Commissioner Central Excise (Div-IV), Ahmedabad-II

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

M/s Harsha Engineers 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 पूवोक्त 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 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।

(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 दिनाँक से तीन मास के भीतर मूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35–इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर–6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/– फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/– की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति 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, मेघाणी 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 न्यायाधिकरणें की गई अपील के विरूद्व अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर 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 ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/– फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से

रेखाकिंत 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. Registar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

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

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

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

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

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. 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-IN-APPEAL

This order covers **3 appeals** filed by **M/s Harsha Engineers Limited, Plot No.388, Sarkhej Bavla Road, Changodar, and** Ahmedabad (hereinafter referred to as 'the appellant) against the following Orders-in-original:

(i) Order-in-original No. 12/AC/D/2015/UKG dated 25/01/2016 passed by the Assistant Commissioner, Central Excise, Division-IV, Ahmedabad-II.

(ii) Order-in-original No. 56-59/ADC/2015/DSN dated 30/03/2016 passed by the Additional Commissioner, Central Excise, Ahmedabad-III.

(iii) Order-in-original No. 04to07/AC/D/2016/UKG dated 21/04/2016 passed by the Assistant Commissioner, Central Excise, Division-IV, Ahmedabad-II.

2. Briefly stated, the facts of the case are that the appellant is holding Central Excise Registration ECC No.AAACH4828CXM003 and is engaged in the manufacture of **Bearing Cages, Tooling and Tooling components** falling under Chapter 84 of the First Schedule to the Central Excise Tariff Act, 1985 (CETA, 1985). The appellant is availing CENVAT credit of inputs and capital goods used in or in relation to the manufacture of its final products, under Cenvat Credit Rules, 2004 (CCR, 2004). Details of the impugned CENVAT credit as covered in the aforementioned three Orders-in-original (hereinafter referred to as 'the impugned orders') is as follows:

O.I.O. No. & Date	Details of Credit disallowed	Credit Amount	Penalty Amount
O.I.O. No. 12/AC/2015/UKG dt. 25/01/2016	During the course of audit, it was observed that the appellant had availed CENVAT credit on **Kenloc Ceramics, Screw, Blade, Abrasive Law Pusting Plastic Module and Temperature Ceramics**, which were not inputs but were capital goods. The credit has been denied in the impugned order on the ground that the appellant was eligible to avail only 50% of the credit in the same year and 50% of credit in the next year on such capital goods, whereas it had availed 100% of credit in the same year for period of: a) December-2011 to March-2013	Rs.2,04,726/-	Rs.2,04,726/-
O.I.O. No. 56-59/ADC/ 2015/DSN dt. 30/03/2016	During the course of audit, it was observed that the appellant had wrongly availed CENVAT credit on inputs imported on the basis of Courier Bill-of-Entry. The credit has been denied in the impugned order on the ground that Courier Bill-of-Entry is not a document specified under Rule 9 of CCR, 2004 for period of: a) December-2011 to March-2013 b) April-2013 to Dec.-2013 c) Jan.-2014 to Sep.-2014 d) Oct.-2014 to June-2015	a) RS.12,46,499/- b) Rs.1,25,447/- c) Rs.1,32,409/- d) Rs. 36,488/- TOTAL: Rs.15,40,843/-	a) Rs.6,23,250/- b) Rs.12,545/- c) Rs.13,241/- d) Rs.3,649/- TOTAL: Rs.6,52,685/-

O.I.O. No. O.I.O. No. 4to7/AC/D/2016/UKG dated 21/04/2016	During the course of audit it was observed that the appellant had wrongly availed CENVAT credit on Service Tax paid on insurance charges in respect of product calls pertaining to goods rejected by customer. The credit has been denied on the ground that in the new definition of input service w.e.f.01/04/2011 only specific activities mentioned therein are covered and there was no scope for credit of service tax on premium paid against product calls. Period: a) December 2011 to March-2013 b) April-2013 to March-2014 c) April-2014 to December-2014 d) January-2015 to June-2015	a) Rs.4,38,161/- b) Rs.2,17,445/- c) Rs.2,59,066/- d) Rs.1,92,665/- TOTAL: **Rs.11,07,337/-**	**Rs.11,07,337/-**

2.1 In O.I.O. No.12/AC/D/2015/UKG dated 25/01/2016 the recovery of CENVAT credit amounting to Rs.2,04,726/- has been confirmed along with interest under rule 14 of CCR, 2004 read with Section 11A (1) and 11AA of the Central Excise Act, 1944 (CEA, 1944) and penalty of Rs.2,04,726/- has been imposed on the appellant under Rule 15(1) of CCR, 2004.

2.2 In O.I.O. No.56-59/ADC/2015/DSN dated 30/03/2016 the total confirmed recovery of CENVAT credit amounts to Rs.15,40,843/- along with interest under 11A(5) /11A(1) and 11AA of CEA, 1944 read with Rule 14 of CCR, 2004 and total penalty of Rs.6,52,685/- has been imposed on the appellant under of Section 11AC / 11AC(1)(a) of CEA, 1944 read with Rule 15(1) / 15(2) of CCR, 2004.

2.3 In O.I.O. No.04to 07/AC/D/2016/UKG dated 21/04/2016 the recovery of CENVAT credit amounting to Rs.11,07,337/- has been confirmed along with interest under Rule 14 of CCR, 2004 read with Section 11A and 11AA of CEA, 1944 and penalty of Rs.11,07,337/- has been imposed on the appellant under Rule 15(1) of CCR, 2004.

3. Being aggrieved by the all the three above mentioned impugned orders, the appellant has preferred appeals against these orders. The grounds of appeal are enumerated below.

i. In its appeal against O.I.O. No.12/AC/D/2015/UKG dated 25/01/2016, the appellant has contended that the invoking of extended period was not justified as neither willful suppression with intent to evade duty was alleged nor exist; that various audits had occurred in between and even the appellant had filed monthly returns where it was under the *bona fide* impression that it was not bound to disclose information; that there was no dispute as to eligibility to avail CENVAT credit on capital goods and the contravention regarding availment of 50% credit in excess of admissible 50% in the same year needs to be condoned; that items like Kenloc Ceramics, Screw, Blade, Abrasive Law Pusting Plastic Module and

Temperature Ceramics were used in the manufacture of other dutiable final products which were cleared on payment of duty and hence these items were inputs for the appellant and cannot be artificially made to fall under the ambit of capital goods; that the appellant was manufacturing and clearing Tooling Components as evident from Central Excise Registration Certificate, R.G-1 Register, Invoice and ARE-1; that merely because any product falls under Chapter 82, 68 or 90 does not automatically make it capital goods and the appellant had availed CENVAT credit under capital goods category out of misunderstanding. The appellant has further contended that the impugned order merely states that it had not been able to establish that the impugned goods were components, spares and accessories, refractories and refractory materials etc. and also how they had been used in the factory without appreciating the fact that it had clearly brought out that these are consumable materials and used as hand tools and components and no objection was raised in this regard by earlier audits by department and by CERA; that there is no restriction for availment of 100% credit on 4% SAD under CCR, 2004; that the impugned credit amounting to Rs.2,04,726/- had always remained in the books of account and such credit was not utilized by the appellant and it cannot be concluded that this credit amount was wrongly availed and utilized and there was any prejudice against interest of Revenue.

ii. In respect of O.I.O. No.56-59/ADC/2015/DSN dated 30/03/2016, the main grounds of appeal filed by the appellant are that the O.I.O. had erred in holding that CENVAT credit for duty paid in Courier Bill of Entry is not available as it had received the goods in question in their factory which was used in the manufacture of dutiable final products that were cleared on payment of duty; that when fact of duty payment, receipt of goods in factory, its use in manufacture of final products cleared on duty are not in doubt then credit should not have been denied; that even Reserve Bank has instructed that a Xerox copy of B/E furnished by the courier for releasing foreign exchange; that as per proviso to Rule 9(2) of CCR, 2004, if all prescribed details are not available in duty paying document, at least payment of duty on goods, receipt of goods and its use in manufacture of dutiable products should be proved by the claimant with minimum details like details of duty paid, description of goods, assessable value, details of IEC number and name and address of the factory; that the said rules does not enumerate any specific copy of Bill of Entry and that it had all such documents to show that duty paid goods were used for manufacture of dutiable goods which were cleared on payment of duty. The appellant has argued that the SCN had solely relied upon CBEC Circular No. 31/2007-Cus dated 29/08/2007 to allege that Courier Bill of Entry is not valid document for availing CENVAT credit as per clause (c) of Rule 9 of CCR, 2004 as there is no such amendment made in Rule 9(1)© of CCR, 2004 even after the issue of CBEC Circular; that the CBEC Circular is guidance for the officers and not the law settled by judicial decision and is not binding to the assessee; that the O.I.O. has taken shelter of the amendment made in Rule 9(1)(d) of CCR, 2004 w.e.f. 31/12/2015 but it has not been appreciated that this amendment has also allowed certificate issued by an appraiser of Customs in respect of goods imported through a Foreign Post office or as the case maybe, an authorized Courier. The appellant has relied on CCE Delhi-III vs Interface Microsystems and Ruby Mills Ltd. vs CCE, Mumbai – 2009 (15) S.T.R. 616 (Tri.-Mumbai). The appellant has also argued that during previous audits by Central Excise, no objection / query was raised by EA-2000 auditors as well as AG auditors in this regard; the SCN demanded CENVAT credit amounting to Rs.15,40,843/- under Rule 14 of CCR, 2004 read with proviso to Section 11A(1) of CEA, 1944 whereas the O.I.O. has confirmed the demand under Section 11A(5) of CEA, 1944; that the SCN had proposed penalty under Rule 15(2) of CCR, 2004 read with Section 11AC of CEA, 1944, however penalty has been imposed under the provisions of Section 11AC of CEA, 1944 whereby wrong credit has been equated to evasion of duty by the appellant; that thus the O.I.O. had travelled beyond the scope of SCN in confirming duty as well

as imposing penalty; that if duty is demanded then due CENVAT credit of duty paid on the inputs utilized for manufacture of goods on which duty is demanded may also be allowed to the appellant; that the invocation of extended period was not justified in the present case; that as held by Hon'ble Supreme Court in the cases of Padmini Products and Chemphar Drugs & liniments – 1989 (43) ELT 195 (SC) and 1989 (40) ELT 276 (SC), mere omission to give correct information was not suppression of facts unless it was deliberate and intentional evasion of duty.

iii. In its appeal against O.I.O. No.04to 07/AC/D/2016/UKG dated 21/04/2016, the appellant has submitted that the appellant is a manufacturer exporter and having status of Export house, exporting goods under CIF/DDP/CPT terms and the product recall insurance is for covering the risk which may arise due to quality complaint and rejection of exported final products and return of sold goods which has an inbuilt provision the manufacturing cost and the sales promotion of such goods; that the insurance charges and the manufacturing activity of the final product have a direct relationship in as much as the demand for the product in foreign market and manufacturing activity is inter connected and there is a direct proportionate relation between increase in the demand and manufacturing activity as the insurance charges enhances the marketability of the final product; that they rely on M/s Coca Cola India Pvt. Ltd. vs CCE, Pune-III – 2009 (8) TMI 50 Bom.H.C.; Commr of Cus. & S.T. Bangalore vs GE Medical System Pvt. Ltd. – 2015 (12) TMI 342 CESTAT; M/s Hindustan Zinc Ltd. vs CCE, Jaipur – 2014 (7) TMI 485 CESTAT, New Delhi; CCE, Guntur vs Hindustan Coca Cola Beverages (P) Ltd. – 2010 (7) TMI 383 CESTAT Bangalore; Commr. of C.E., Bangalore-III vs Stanzen Toyotetsu India (P) Ltd., 2011 (4) TMI 201 Kar. H.C. and M/s Sigma Electric Manufacturing Corporation P. Ltd. vs CCE, Pune-I – 2016 (3) TMI 994 CESTAT, Mumbai. The appellant has further argued that insurance charges bears relation with marketability of the final manufactured product and is covered under sales promotion activity as it has compelling commercial reason with regards to its business of manufactured final product; that the policy taken by the appellant was to facilitate the safe delivery of goods to the customers without which the sale transaction cannot be assumed to be complete; that when the payment of service tax was not in dispute, the credit of service tax becomes eligible when related to sales promotion; as is clear from the decisions CCE, Ahmedabad-II vs Cadila Healthcare Ltd. – 2013 (30) S.T.R.3 (Guj.) and CCE, Bangalore-III vs. Stanzen Toyotetsu India (P) Ltd. – 2011 (4) TMI 201 Kar. H.C. that the services provided by the appellant for product recall fell within the ambit of 'sales promotion' and even otherwise these services were directly or indirectly related to the business of the appellant and hence CENVAT credit could be availed on them; that product recall insurance policy is in consonance with IRDA Regulations; that the cost of input services is inbuilt in the cost of Final product and that *bona fide* was created by earlier Tribunal order on same grounds in favour of the appellant reported in 2012 (27) STR 164 (Tri.Ahmd.) and in its own case reported as M/s Harsha Engineers Ltd. vs CCE, Ahmedabad-II – 2013 (9) TMI CESTAT Ahmedabad.

4. Personal hearing was availed by the appellant on 19/06/2017 when Shri P.P. Jadeja, Consultant and Shri Manoj Bhavsar, authorized signatory of the appellant company appeared on behalf of the appellant. The learned Consultant reiterated the grounds of appeal. He made additional written submissions. In the additional written submissions, the grounds of appeal in all the three appeals were reiterated.

5. I have carefully gone through the facts of the case on records and submissions made by the appellant in its grounds of appeals and the oral and written submission

during personal hearing. I take up the issue involved in each of the appeals individually in the following paragraphs.

6. Appeal against O.I.O. No.12/AC/D/2015/UKG dated 25/01/2016

The issue covered in this O.I.O. is that the appellant had availed 100% of CENVAT credit of capital goods in the same financial year on items like Kenloc Ceramics, Screw, Blade, Abrasive Law Pusting Plastic Module and Temperature Ceramics whereas Rule 4(2)(a) of CCR, 2004 stipulates that CENVAT credit of capital goods received in a factory at any point of time in a given financial year shall be taken only for an amount not exceeding fifty per cent of the duty paid on such capital goods in the same financial year. The appellant has argued that inputs include capital goods when cleared as final product as the impugned goods in question were used in the manufacture of other dutiable final products. However, by its own admission, the impugned goods were consumable products used as hand tools to manufacture tooling components, which is a final product. Such hand tool cannot be said to be inputs used in or in relation to manufacture of final goods and in this context the impugned products falling under Chapter 82 of the First Schedule to the Central Excise Tariff Act, 1985 has been correctly held to be capital goods in the impugned order. It has been clearly brought out in paragraph 24 of the impugned O.I.O. that there was no dispute as to eligibility to avail CENVAT credit on such goods and the contravention was only in respect of availment of excess 50% in the same financial year. Therefore, this is not a case of ineligible CENVAT credit because even the excess 50% of credit availed by the appellant was available to them in the subsequent year. Thus this is a case of premature availment of CENVAT credit on capital goods. In a similar matter the case of MADRAS CEMENTS LTD. vs COMMISSIONER OF CENTRAL EXCISE, HYDERABAD – 2016 (336) E.L.T. 175 (Tri. – Hyd.), Hon'ble Tribunal has held as

> "7. The original authority has stated that these items are used as such in the factory, as parts/components of the cement plant/machinery and therefore, are capital goods. I do not find any evidence to take a different view. The allegation with regard to the credit availed on these items like air slide, bucket elevator, roto packer, etc., is that being capital goods, the appellants availed 100% credit in the same year. Appellants were eligible to take 50% credit in the year of receipt and 50% in subsequent year. Availing entire credit in the same year is in contravention of the provisions of the Cenvat Credit Rules, 2004. The authorities below have therefore, ordered recovery of 50% of the irregular credit availed along with interest. **I am of the opinion that it is only a case of premature availment of credit as the appellants could avail the credit in the subsequent years. Therefore, the recovery of the irregularly availed credit in excess of 50% (Rs. 16,22,615/-) is not justified. Taking into consideration the violation of the provision, I find that appellants are liable to pay the interest on the irregularly availed credit on capital goods.** The contention raised on behalf of appellant is that, the appellants did not utilize the credit availed and therefore, there is no interest liability. I am of the view that in the peculiar facts, when the appellant has contravened the provisions, the Revenue has to be compensated for the irregular credit availed. In view thereof, I hold that the demand/recovery of credit of

Rs. 16,22,615/- is set aside, whereas the demand of interest on the said amount is sustainable. **The appellant is liable to pay interest on the amount till the date of reversal or if not reversed, till date on which the appellant could have availed remaining 50% credit on capital goods in the subsequent year."**

Following the above ratio, the demand for recovery of CENVAT credit and imposition of penalty is set aside. The interest liability is upheld for the period up to reversal of the impugned credit amount or if not reversed, then till such date as the appellant was eligible to avail the remaining 50% credit in the subsequent financial year.

7. Appeal against O.I.O. No.56-59/ADC/2015/DSN dated 30/03/2016

The dispute involved in this O.I.O. is that the appellant had wrongly availed CENVAT credit on the inputs imported on the basis of Bill of Entry filed by the Courier. In the impugned order CENVAT credit amounting to Rs.12,46,499/- has been disallowed on the ground that the C.B.E.C. Circular No. 56/95-CUS dated 30/05/95 is binding on the department. The relevant contents of this Circular are reproduced below for ready reference.

6. Another aspect to be noted is that in certain cases the consignee of the imported goods may seek certification from the customs regarding the duty paid on the said goods for the purpose of claiming Modvat benefit. In this regard it may be seen that the scheme of courier import clearance provides for the filing of a Bill of Entry as per the Bill of Entry (Forms) Regulations, 1976. ***It is accordingly expected that when any consignee wishes to claim Modvat benefit then in such case he should be advised to file the normal Bill of Entry, which document will serve as the document for claim of modvat. In no case is the customs to issue separate certificates for modvat purpose.***

On studying the above, it is clear that this Customs Circular is not in the nature of denial of CENVAT credit on Courier Bill of Entry. It is rather an instruction to refrain from issuing separate certificates for MODVAT (CENVAT) purposes and an advisory for the importer to file normal Bill of Entry instead of insisting for a separate certificate for the said purpose. Such an instruction cum advisory cannot be construed to mean that there is a bar on Courier Bill of Entry to be treated as a specified document under Rule 9 of CCR, 2004 to avail CENVAT credit. This view has been upheld in the decision of Hon'ble Delhi Tribunal in the case of COMMISSIONER OF C.EX., DELHI-III vs INTERFACE MICROSYSTEMS – 2015 (39) S.T.R. 313 (Tri.-Del.). The relevant extract is reproduced below.

"3. In this case, the first issue is for denial of Cenvat credit on the strength of consolidated Courier Bills of Entry. **As per Rule 9 of Cenvat Credit Rules, 2004, Cenvat credit is available on the strength of bill of entry and in the said rules there is no classification of bills of entry. The classification made by the Revenue is imaginary in the Courier Bill of Entry, an Ordinary Bill of entry or a Special Bill of Entry. It is not in dispute that respondent has taken the Cenvat credit on the strength of Courier Bills of Entry. Therefore, I hold that the Courier Bill of Entry is a specified document as per Rule 9 of Cenvat Credit Rules, 2004. Consequently, the respondent has taken the Cenvat credit correctly."**

In the present case also, CENVAT credit has been disallowed, demand for interest has been confirmed and penalty has been imposed on the appellant on the sole ground that Circular No. 56/95-CUS dated 30/05/95 was binding on the department. Herein I find the intention of this Circular is misconstrued in the impugned order and following the above ratio there is no bar on the appellant to avail the impugned credit. Therefore, I allow the appeal against O.I.O. No.56-59/ADC/2015/DSN dated 30/03/2016.

8. Appeal against O.I.O. No.04to 07/AC/D/2016/UKG dated 21/04/2016

In this O.I.O., demand has been confirmed for recovery of CENVAT credit availed on service tax paid on insurance charges in respect of product recalls of exported goods. This matter in the case of the appellant for an earlier period has been decided in its favour by Hon'ble Tribunal as per the citation HARSHA ENGINEERS LTD. vs COMMISSIONER OF CENTRAL EXCISE, AHMEDABAD – 2012 (27) S.T.R. 164 (Tri.-Ahmd.). The product recall policy is imperative to sales promotion and commercially expedient for the reason that in the absence of such a policy, the export orders would not have been executed by the appellant and the exported goods would not have been manufactured. Thus the insurance cover being an integral part of product recall has a nexus with the manufacture of goods for export. Therefore, the Service Tax paid on such insurance is admissible as input credit to the appellant and demand for reversal of such credit along with interest and penalty are not justified or sustainable.

9. अपीलकर्ता द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है।
The appeals filed by the appellant stands disposed of in the above terms.

(उमा शंकर)
आयुक्त
केन्द्रीय कर (अपील्स)
Date: 29/7/2017

Attested

(K. P. Jacob)
Superintendent,
Central Tax (Appeals),
Ahmedabad.

By R.P.A.D.

TO

M/s Harsha Engineers Limited,
Plot No.388, Sarkhej Bavla Road,
P.O.:Changodar, District: Ahmedabad -382213.

Copy to:

1. The Chief Commissioner of C.G.S.T., Ahmedabad.
2. The Commissioner of C.G.S.T., Ahmedabad (North).
3. The Additional Commissioner, C.G.S.T (System), Ahmedabad (North).
4. The A.C / D.C., C.G.S.T Division: Kadi, Ahmedabad (North).
5. Guard File.
6. P.A.