



सत्यमेव जयते

आयुक्त का कार्यालय, (अपीलस)  
Office of the Commissioner,



केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

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क फाइल संख्या (File No.): V2(71)127 /North/Appeals/ 2018-19

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-111-18-19

दिनांक (Date): 30-Oct-18 जारी करने की तारीख (Date of issue): 10/12/2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker , Commissioner (Appeals)

ग \_\_\_\_\_ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-I), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी

मूल आदेश सं \_\_\_\_\_ दिनांक \_\_\_\_\_ से सृजित

Arising out of Order-In-Original No 06/AC/Demand/18-19 Dated: 17/07/2018

issued by: Assistant Commissioner-Central Excise (Div-I), Ahmedabad North

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

**M/s Edelweiss Metals 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



(b) In case of rebate or duty or 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.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल है।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो इयूटी 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 (न.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 such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(१) 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. के 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.

(२) 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 रुपये से ज्यादा हो तो रुपये 1000/- फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील :-  
Appeal to Customs, 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 सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक न. 3. आर. के. पुरम, नई दिल्ली को एवं  
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification valuation and



रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सावधानिक क्षेत्र के बैंक को 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 यथार्थिती 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 यथार्थिती 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 उत्पादन 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।

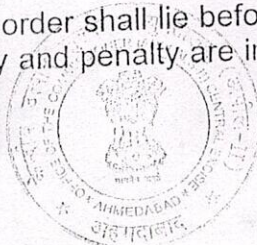
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section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



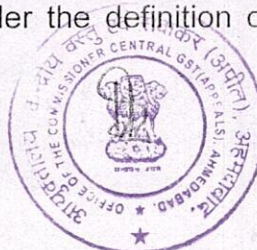
**ORDER-IN-APPEAL**

This order arises out of an appeal filed by M/s. Edelweiss Metals Ltd.,(now M/s. Sovereign Metals Ltd.) Revenue Block No.184,185,187, Phase-III, GIDC Naroda, Ahmedabad-382330 (in short 'appellant') against Order-in-Original No.06/AC/DEMAND/18-19 dtd. 17.02.2018 (in short 'impugned order') passed by the Assistant Commissioner, CGST & Central Excise, Division-I, Ahmedabad North (in short 'adjudicating authority').

2. Briefly stated that adjudicating authority vide impugned order confirmed demand of Rs.31,95,876/-(being wrongly availed Cenvat credit of Rs.8,43,479/- on items neither inputs nor capital goods + Rs.5,93,263/- on services which were used/consumed before the appellant applied for C.Ex. Registration + Rs.17,59,134/- on services which were used/consumed after obtaining C.Ex. Registration but before their plant was ready for manufacturing activity) along with interest under Section 11A(4) and 11AA of the Central Excise Act, 1944 (in short CEA, 1944) respectively read with Rule 14 of the Cenvat Credit Rules, 2004(in short CCR, 2004) and also imposed penalty of Rs.15,97,938/- under Section 11AC(1)(c) ibid read with Rule 15(2) ibid.

3. Aggrieved with the impugned order, the appellant filed the present appeal wherein, inter alia, stated that:

- The adjudicating authority confirming the demand invoking the larger period appropriating some amount, imposing penalty and interest is patently illegal, incorrect, erroneous, etc. and contrary to the settle principles of law in as much as there is no requirement in the C. Ex. Act, 1944, C.Ex. Rules or CCR, 2004 to specifically inform the deptt. about availment of Cenvat credit on Capital Goods or services invoice-wise as contended by the deptt. They have shown the availment of Cenvat credit on Capital goods, inputs and input services and utilization thereof in the monthly ER-1 returns filed online from time to time and everything was in knowledge of the deptt.
- Demand of Rs.8,43,479/- confirmed holding that the goods viz. Motorised fire rated rolling shutter(Ch.73), Flush Door & Drop seal for flush door(Ch.83), GI Flush partition, Wooden Opaque Inpill(Part of Megtek door for security purpose Ch.83), Main Safe Deposit Vault Door (Ch.83) are part of construction and is neither an input nor capital goods. All these goods are used in the factory in or in relation to manufacture of final products by providing elaborate safety and security to labour, staff, inputs and finished goods in terms of mandatory conditions and provisions of Section 7A of the Factories Act, 1948 and in compliance of various other laws. Thus, these goods have direct relationship with the manufacture of the final product and hence input if not capital goods and eligible for Cenvat credit.
- The UPS system with batteries falling under Ch.85, is essential for functioning of plant including laboratory, office, CCTV, security etc at critical times when power drops or fails, clearly fall under the definition of capital goods.



- There is nothing in CCR, 2004 restricting the Cenvat credit of Rs.5,93,263/- availed on services used/consumed before getting C.Ex. Registration. The registration and eligibility of Cenvat credit are independent issues. The case law viz. Showa India (P) Ltd. Vs. CCE, Faridabad reported in 2012(275) ELT-128 (Tri. Delhi) relied upon by the adjudicating authority has been challenged in the Punjab & Haryana High Court as reported in 2014(34) STR-J100(P&H HC).
- There is nothing in CCR, 2004 restricting the Cenvat credit of Rs.17,59,134/- availed on services received after taking C.Ex. registration on 28.02.2014 but before the plant was ready for manufacturing on 27.08.2014. The services on which credit is taken were in the nature of Legal & Professional, Management Consultancy, Audit, Security, Manpower Recruitment etc. and are not services used in relation to setting up of a factory e.g. Construction, Architect, Works Contract etc.

4. Personal hearing in the matter was held on 09.10.2018. Shri Mukesh Matreja and Rajesh Mehuriya, Consultants, appeared on behalf of the appellant and stated that Safe Door is classified under Ch.83 and UPS under Ch.85 are capital goods; filed additional written submission received on 15.10.2018 stating, inter alia, that neither there was any malafide intention on their part nor the deptt. has put any evidence on record that credit was availed with malafide intention; that several mandatory obligations are required to be discharged under the Factories Act, 1948, Gujarat Pollution Control Board, Deptt. of Industrial Policy and Promotion, Directorate of Industrial Safety & Health etc. hence items used in the factory of manufacture of final products for the purpose of safety & security of goods, theft, fire and in no way be termed as part of construction held by the adjudicating authority.

5. I have carefully gone through the appeal memorandum, submissions made at the time of personal hearing and evidences available on records. I find that the subject appeal is hit by limitation of 02 days in terms of provisions contained in Section 35(1) of the Central Excise Act, 1944. No application or request is made for condonation of said delay either way by the appellant i.e oral or written at any point of time. However, I condone the said delay of 02 days in terms of powers vested in me vide proviso to Section 35(1)ibid in the interest of justice. I find that the main issues, inter alia, to be decided are:

(a) Whether the appellant is entitled to avail Cenvat credit on items viz:

- (1) Motorised Fire rated rolling shutter(Ch.73),
- (2) GI Flush, GI Flush Door and Drop Seal(Ch.83),
- (3) GI Flush Partition, GI Flush Door & Drop Seal for Flush Door(Ch.76),
- (4) Wooden Opaque Infill(part of Megtek Door for security purpose)(Ch.83)
- (5) Main Safe Deposit Vault Door(Ch.83)
- (6) 2x250 KVA UPS System with batteries(Ch.85)



(7) 1x15 KVA UPS (Ch.85) as 'input' or 'Capital Goods' ?;

- (b) Whether the appellant is entitled to avail Cenvat credit of service tax paid on services availed prior to C.Ex. Registration dtd.28.02.2014?, and
- (c) Whether the appellant is entitled to avail Cenvat credit of service tax paid on services availed from the date of C.Ex. Registration dtd. 28.02.2014 to date of plant ready for manufacturing process i.e. 27.08.2014?

Accordingly, I proceed to decide the case on merits.

6. As regards 5(a), I find that the adjudicating authority has considered said items as part of construction and disallowed the same whereas the appellant has consistently claimed they 'input' having relationship with the manufacture of final product. I find that any item claimed as 'input' has to fit in the definition given in Rule 2(k) of the CCR. 2004 which is reproduced below for the sake of ease:

[(k) "input" means -

- (i) all goods used in the factory by the manufacturer of the final product; or
- (ii) any goods including accessories, cleared along with the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products; or
- (iii) all goods used for generation of electricity or steam [or pumping of water] for captive use; or
- (iv) all goods used for providing any [output service, or];
- [(v) all capital goods which have a value upto ten thousand rupees per piece.]

but excludes -

(A) light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol;

[(B) any goods used for -

- (a) construction or execution of works contract of a building or a civil structure or a part thereof; or
- (b) laying of foundation or making of structures for support of capital goods,

except for the provision of service portion in the execution of a works contract or construction service as listed under clause (b) of section 66E of the Act;]

[(C) capital goods, except when,-

- (i) used as parts or components in the manufacture of a final product; or
- (ii) the value of such capital goods is upto ten thousand rupees per piece;]

(D) motor vehicles;

(E) any goods, such as food items, goods used in a guesthouse, residential colony, club or a recreation facility and clinical establishment, when such goods are used primarily for personal use or consumption of any employee; and

(F) any goods which have no relationship whatsoever with the manufacture of a final product.

I find that the appellant vide written submission dtd.09.10.2018 has given detailed description for item no. 1 to 5 and stated that they are movable in nature and installed for safety purpose considering high value of final products but it has no relation whatsoever, directly or indirectly, for manufacture of final products and appropriately covered under Clause (F) supra. Similarly, for availing Cenvat credit



on the said items as 'Capital Goods', it has to fit in the definition given in Rule 2(a) of the CCR, 2004 which is reproduced below for the sake of ease:

(a) "capital goods" means :-

(A) the following goods, namely :-

- (i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, [heading 6805, grinding wheels and the like, and parts thereof falling under [heading 6804 and wagons of sub-heading 860692]] of the First Schedule to the Excise Tariff Act;
- (ii) pollution control equipment;
- (iii) components, spares and accessories of the goods specified at (i) and (ii);
- (iv) moulds and dies, jigs and fixtures;
- (v) refractories and refractory materials;
- (vi) tubes and pipes and fittings thereof; [\* \* \*]
- (vii) storage tank, [and]

[(viii) motor vehicles other than those falling under tariff headings 8702, 8703, 8704, 8711 and their chassis [but including dumpers and tippers],]

used -

- (1) in the factory of the manufacturer of the final products, [\* \* \*]; or

[(1A) outside the factory of the manufacturer of the final products for generation of electricity [or for pumping of water] for captive use within the factory; or]

- (2) for providing output service;

[(B) motor vehicle designed for transportation of goods including their chassis registered in the name of the service provider, when used for -

- (i) providing an output service of renting of such motor vehicle; or
- (ii) transportation of inputs and capital goods used for providing an output service; or
- (iii) providing an output service of courier agency;]

[(C) motor vehicle designed to carry passengers including their chassis, registered in the name of the provider of service, when used for providing output service of -

- (i) transportation of passengers; or
- (ii) renting of such motor vehicle; or
- (iii) imparting motor driving skills;]

[(D) components, spares and accessories of motor vehicles which are capital goods for the assessee;]

I find that the items mentioned at Sr. No. 1 to 5 in para 5(a) are neither falling under chapters given in the definition of 'Capital goods' nor qualify as its components, spares and accessories. So, I do not find anything contrary to the findings of the adjudicating authority. Accordingly, to this extent demand confirmed alongwith interest and penalty imposed vide impugned order is upheld.

6.1 As regards item no. 6 and 7(i.e. UPS Systems), I find that the same are falling under Chapter 85. During personal hearing also, the appellant has submitted that UPS System is falling under Chapter 85. I find that the goods falling under Chapter 85 is covered in the definition of 'Capital Goods' hence said UPS Systems would qualify as 'Capital Goods' rather than 'input'. Accordingly, Cenvat credit to this extent is allowed as 'Capital Goods' and demand confirmed alongwith interest and penalty imposed vide impugned order is set-aside.



6.2 As regards 5(b), the appellant has stated that they have taken Cenvat credit on valid invoices of services after taking registration and relied upon case laws viz. mPortal India Wireless Solutions (P) Ltd. Vs. CST, Bangalore reported in 2012. In this regard, I find that as per Rule 9 of the Central Excise Rules, 2002 every person, who produces, manufactures, carries on trade, holds private store-room or warehouse or otherwise uses excisable goods or an importer who issues an invoice on which Cenvat credit can be taken, shall get registered. So, it is ample clear that a person who is not registered under the C.Ex. Rules, 2002 cannot avail it. Secondly, it is also ample clear that a person who is not registered is not eligible to avail Cenvat credit. I also find that the case laws supra relied upon by the appellant, the Hon'ble High Court of Karnataka has observed that the CCR, 2004 puts no restriction on the assessee to get registration for availing Cenvat credit. Whereas the adjudicating authority has relied upon case laws viz. Showa India (P) Ltd. Vs. CCE, Faridabad reported in 2012(275) ELT-128(Tri. Delhi) wherein the Hon'ble CESTAT has held as under:

***“Cenvat credit - Input service - Invoice issued prior to the registration of the company with Central Excise Department - Commencing of business expression apply from the time the party seeks to pay Service tax and avail credit in respect thereof in terms of provisions of law - Terms ‘commencing of business’ in Rule 3 of Service Tax (Registration of Special Category of Persons) Rules, 2005 cannot be understood in the manner whereby it will apply only on the cases where the actual manufacturing process would start - It would commence from the time of preparation commences for the establishment of manufacturing unit as the party is entitled to avail credit even prior to actual commencement of production - Denial of credit in respect of invoices issued prior to the registration of the appellant with Central Excise Department upheld - Rule 3 of Cenvat Credit Rules, 2004. [para 19]”***

I also find that this decision has been challenged by the assessee in the High Court and the Hon'ble High Court has also admitted the appeal but no stay is granted. So, the said decision is operative. Accordingly, the plea of the appellant is not tenable and to this extent the demand confirmed alongwith interest and penalty imposed vide impugned order is upheld.

6.3 As regards 5(c) supra, I find that the appellant has availed services which can be attributed to setting up of a factory and has also produced Chartered Engineer's certificate stating that the plant is ready for manufacturing process from 27.08.2014. So, as per the definition of 'input service' as defined in Rule 2(l) of the CCR, 2004, cenvat credit of service tax paid can be availed only when it has been used directly or indirectly in relation to manufacture and clearance of final products upto the place of removal. I find that said services were availed upto the date of plant ready for manufacturing process. So, I find that when the plant is not ready for





manufacturing process, it cannot be attributed to manufacturing and clearance of final product upto the place of removal as defined in Rule 2(l) of the CCR, 2004. Hence, I do not find anything contrary to the findings of the adjudicating authority. So, to this extent demand confirmed alongwith interest and penalty imposed vide impugned order is upheld.

6.4 As regards invocation of extended period under Section 11A(4) of the Central Excise Act, 1944, I find that entire case was unearthed only after audit of records maintained by the appellant. The appellant has mainly contested that they have filed monthly ER-1 returns online and the facts is in the knowledge of the deptt. On the other hand, the adjudicating authority has clearly observed in para 29 of the impugned order that the appellant has failed to declare the same in their monthly ER-1 returns. As against this, the appellant has also failed to produce documentary evidence to that effect before the adjudicating authority as well as before the undersigned. So, the plea of the appellant is not tenable and hold that extended period is correctly invoked in the present case.

7. 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.

*Umasankar*

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Attested:

*B.A. Patel*  
*07/12/18*

(B.A. Patel)  
Supdt.(Appeals)  
Central GST, Ahmedabad.



BY SPEED POST TO:

M/s. M/s. Edelweiss Metals Ltd.,  
(now M/s. Sovereign Metals Ltd.)  
Revenue Block No.184,185,187,  
Phase-III, GIDC Naroda, Ahmedabad-382330.

Copy to:-

- (1) The Chief Commissioner, CGST, Ahmedabad Zone.
- (2) The Commissioner, CGST, Ahmedabad North (RRA Section).
- (3) The Asstt. Commissioner, CGST, Division-I, Ahmedabad North.
- (4) The Asstt. Commr(System), CGST, Ahmedabad North.  
(for uploading OIA on website)
- (5) Guard file
- (6) P.A. file.

