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
: 079-26305065 टेलेफैक्स : 079 - 26305136

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क फाइल संख्या (File No.) : **V2(85)4/North/Appeals/ 2019-20**/12911 To 12916

ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP-91-19-20**
दिनांक (Date): **24/10/2019** जारी करने की तारीख (Date of issue): 06/11/2019
श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित
Passed by **Shri Gopi Nath , Commissioner (Appeals)**

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-IV), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी
मूल आदेश सं _____ दिनांक _____ से सृजित
Arising out of Order-In-Original No **02/ADC/2019/MSC** Dated: **30/01/2019**
issued by: **Additional Commissioner**-Central Excise (Div-IV), Ahmedabad North,

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

M/s Transformers & Rectifiers (India) 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

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

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

(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 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 अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

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

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ–20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद–380016

(a) 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.

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 ठत्पाद 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 .**

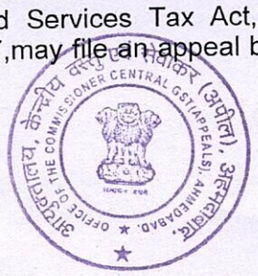
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:
(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 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।

6(I) 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."

II. **Any person aggrieved by an Order-In-Appeal issued under** the Central Goods and Services Tax Act,2017/Integrated Goods and Services Tax Act,2017/ Goods and Services Tax(Compensation to states) Act,2017,may file an appeal before the appropriate authority.



ORDER-IN-APPEAL

This order arises out of an appeal filed by M/s Transformer & Rectifiers India Ltd., Survey No.344-350, Sarkhej-Bavla Road, Village Changodar, Ahmedabad (in short 'appellant') against Order-in-Original No.02/ADC/2019/MSC dated 30.01.2019 (in short 'impugned order') passed by the Additional Commissioner, CGST. Ahmedabad North (in short 'adjudicating authority').

2. Brief facts of the case are that during the course of audit by the officers of CERA, it was observed that the appellant had wrongly availed Cenvat credit of service tax paid on services of outward transportation of finished goods and their transit insurance during the period from July 2007 to March 2010 which culminated into issue of the SCN V.85/15-49/Dem/2010 dated 27.07.2010. The said SCN was adjudicated by the adjudicating authority vide impugned order wherein he has confirmed the demand for recovery of cenvat credit amounting to Rs.82,31,165/- pertaining to the period after amendment of the definition of input service vide Notification No.10/2008-CE (NT) dated 01.03.2008 under Section 11A of the Central Excise Act, 1944 (in short 'the Act') read with Rule 14 of the Cenvat Credit Rules, 2004 (in short 'CCR'); charged interest on the demand confirmed under Section 11AB of the Act ibid and imposed a penalty of Rs.82,31,165/- under Rule 15(2) of CCR and dropped the demand of Cenvat Credit of Rs.1,10,627/- pertaining to the period prior to the amendment of the definition of input service vide Notification No.10/2008-CE (NT) dated 01.03.2008.

3. Aggrieved with the impugned order on the demand confirmed, the appellant filed the present appeal mainly on the grounds that:

i) As per Circular No.988/12/2014-CX. Dated 20.10.2014 issued by the CBEC, whether the element of freight is included in the assessable value of the excisable goods or not, cenvat credit of service tax paid on outward freight can not be denied where freight has been incurred in transportation of goods from the factory to the destination; They rely on the decision of Tribunal in the case of Shubhlakshmi Polyesters Ltd., Vs. CCE&ST, Vapi [2017 (5) GSTL 310 (Tri.-Ahmd.)];

ii) It is very clear that the Department itself, has maintained that this is a case of F.O.R. Destination Sale and if this be case, then in that case the case of the appellants is fully covered by the Circular No.1065/4/2018-CX. Dated 08.06.2018 which maintains that cenvat credit of service tax paid on outward freight would be admissible to a manufacturer, if, it is a case of F.O.R. Destination Sale; and

iii) The facts that service tax was paid on GTA services, cenvat credit was availed on the strength of proper documents and GTA services were used in connection with transportation of finished excisable goods have not been denied. Cenvat credit was accounted for in the Statutory Records and utilization of such cenvat credit was reflected in the Statutory Records as well as in Monthly returns filed from time to time. Under the facts and circumstances of the case, allegations of suppression of fact or willful mis-statement can not be sustained. This being the position, the demand beyond the normal period of limitation one year, under Section 11A(1) of the Act is time barred and therefore, required to be set aside and accordingly penalty can not be imposed nor interest can be demanded.

4. A hearing in the matter was held on 13.09.2019. Shri Mukesh Pandya, Executive (Commercial) appeared on behalf of the appellant and reiterated the submissions of appeal memo for consideration.

5. I have carefully gone through the facts of the case, appeal memorandum submissions made at the time of personal hearing and evidences available on records. I find that the limited issue to be decided is as to whether the appellant is entitled to Cenvat credit of service tax paid on services of outward transportation of finished goods and their transit insurance during the period from April 2008 to March 2010 i.e. after amendment of the definition of input service vide Notification No.10/2008-CE (NT) dated 01.03.200 or otherwise. Accordingly, I proceed to decide the case on merits.

6. After going through the facts of the case, I find that the adjudicating authority vide impugned order has confirmed the demand on the ground that Outward Transportation services are not 'input service' as defined in Rule 2(l) of the Cenvat Credit Rules, 2004 being services availed beyond the place of removal and hence the cenvat credit availed on the service tax paid on freight charges of outward transportation of the finished goods and transit insurance charges on outward transportation of the finished goods are not admissible.

7. In this regard, it is to observe that the issue of admissibility of cenvat credit on service tax paid on GTA services availed for transport of goods from place of removal to buyer's premises after the period of amendment of the definition of input service vide Notification No.10/2008-CE (NT) dated 01.03.2008 stand settled in view of Hon'ble Supreme Court's Judgement dated 01.02.2018 in the case of Commissioner of Central Excise & S.T. Vs. M/s Ultra Tech Cement Ltd. [2018 (9) G.S.T.L. 337 (S.C)] wherein the Apex Court had categorically hold that Cenvat Credit on goods transport agency service availed for transport of goods from place of removal to buyer's premises was not admissible as such services are not covered under the ambit of 'input services' as

defined under Rule 2(l) of the CCR being services availed beyond the place of removal. The relevant portion of the judgment of the Hon'ble Supreme Court is as under:

> *"7. It may be relevant to point out here that the original definition of 'input service' contained in Rule 2(l) of the Rules, 2004 used the expression 'from the place of removal'. As per the said definition, service used by the manufacturer of clearance of final products 'from the place of removal' to the warehouse or customer's place etc., was exigible for Cenvat Credit. This stands finally decided in Civil Appeal No. 11710 of 2016 (Commissioner of Central Excise Belgaum v. M/s. Vasavadatta Cements Ltd.) vide judgment dated January 17, 2018. However, vide amendment carried out in the aforesaid Rules in the year 2008, which became effective from March 1, 2008, the word 'from' is replaced by the word 'upto'. Thus, it is only 'upto the place of removal' that service is treated as input service. This amendment has changed the entire scenario. The benefit which was admissible even beyond the place of removal now gets terminated at the place of removal and doors to the Cenvat credit of input tax paid gets closed at that place. This credit cannot travel therefrom. It becomes clear from the bare reading of this amended Rule, which applies to the period in question that the Goods Transport Agency service used for the purpose of outward transportation of goods, i.e. from the factory to customer's premises, is not covered within the ambit of Rule 2(l)(i) of Rules, 2004. Whereas the word 'from' is the indicator of starting point, the expression 'upto' signifies the terminating point, putting an end to the transport journey. We, therefore, find that the Adjudicating Authority was right in interpreting Rule 2(l)."*

8. I find that in the present case, the place of removal of excisable goods is the factory gate of the appellant. As per facts revealed from the SCN and the OIO, the purchase orders referred in the case clearly indicates that the price agreed upon by the appellants and their clients was ex-factory price and freight charges of outward transportation and transit insurance charges were not included in the price taken for the calculation of excise duty. This clearly proves the point of sale of goods in the instant case as factory gate. That being so, the place of removal of goods in the case undisputedly would be the factory gate in view of the principle laid down by Hon'ble Supreme Court in the case of CCE Vs. Ispat Industries Ltd. [2015 (324) ELT 670 (SC)] as clarified by the Central Board of Excise and Customs vide Circular No.1065/4/2018-CX. dated 08.06.2018. The Authorised Person of the appellant in his statement given under Section 14 of the Act has confirmed that all their clearances of finished goods were on ex-factory price basis and the freight for outward transportation of the finished goods and transit insurance charges did not form part of the assessable value and that the place of removal was the factory gate in respect of all clearances made by them. The above facts deposed by their employee have not been disowned or disputed by the appellant in their submissions. Thus, it is seen that the appellant themselves are not disputing to factory gate as place of removal in their case. Once the place of removal of goods has been ascertained as factory gate, then services of

outward transportation of goods and their transit insurances goes out of the purview of 'input services' as defined under the CCR being services availed beyond the place of removal, as held by the Hon'ble Supreme Court vide their judgment in the case of Commissioner of Central Excise & S.T. Vs. M/s Ultra Tech Cement Ltd. referred in the previous para. When the impugned services are not input services as defined under the CCR, no credit of service tax paid on the same is admissible in terms of the said Rules. Consequently, the cenvat credit of service tax availed by the appellant on the impugned services becomes ineligible/inadmissible credit and thereby wrongly availed and liable to be disallowed and recovered. In view thereof, I do not find any error in the decision taken by the adjudicating authority in this regard vide the impugned order.

9. Regarding the appellant's contention at para 3(i) above, I find that the same is based on Para 8.2 of the Board's Circular No.97/8/2007-CX dtd.23.03.2007 which contains parameters for determining 'place of removal' for the goods cleared on F.O.R destination. The Hon'ble Supreme Court in its above referred decision in the case of Commissioner of Central Excise & S.T. Vs. M/s Ultra Tech Cement Ltd. [2018 (9) G.S.T.L. 337 (S.C)] has dealt with the applicability of the above referred Board's Circular for the period after the amendment of definition of input services in the CCR with effect from 01.04.2018 and has held as under:

> *"11. As can be seen from the reading of the aforesaid portion of the circular, the issue was examined after keeping in mind judgments of CESTAT in Gujarat Ambuja Cement Ltd., 2007 (6) S.T.R. 249 (Tribunal) and M/s. Ultratech Cement Ltd., 2007 (6) S.T.R. 364 (Tri.- Ahd.). Those judgments, obviously, dealt with unamended Rule 2(l) of Rules, 2004. The three conditions which were mentioned explaining the 'place of removal' as defined under Section 4 of the Act, there is no quarrel upto this stage. However, the important aspect of the matter is that Cenvat Credit is permissible in respect of 'input service' and the Circular relates to the unamended regime. Therefore, it cannot be applied after amendment in the definition of 'input service' which brought about a total change. Now, the definition of 'place of removal' and the conditions which are to be satisfied have to be in the context of 'upto' the place of removal. It is this amendment which has made the entire difference. That aspect is not dealt with in the said Board's circular, nor it could be.*
>
> *12. Secondly, if such a circular is made applicable even in respect of post amendment cases, it would be violative of Rule 2(l) of Rules, 2004 and such a situation cannot be countenanced."*

Further, it is to observe that the appellant's case is not a F.O.R. Destination Sale as the point of sale in their case is the factory gate as discussed in Para 8 above. Therefore, the Board's Circular relied on does not apply to their case. So far as the case law in the case of Shubhlakshmi Polyesters Ltd., Vs. CCE&ST, Vapi [2017 (5) GSTL 310 (Tri.-Ahmd.)] referred is concerned, I find that the same is of the period prior to the

pronouncement of Hon'ble Supreme Court's judgment in the case of Commissioner of Central Excise & S.T. Vs. M/s Ultra Tech Cement Ltd. [2018 (9) G.S.T.L. 337 (S.C)] in the matter, referred and relied hereinabove and with the pronouncement of judgment of the Apex Court in the matter, the case law relied upon by the appellant no more remains valid for the matter under dispute.

10. Similarly, the appellant's reliance on Board's Circular No.1065/4/2018-CX dated 08.06.2018 is also not tenable as the point of sale in their case is clearly proved to be the factory gate as discussed in para 8 above. Their contention that the department itself has maintained that this is a case of F.O.R. Destination Sale is factually incorrect as there is no such conclusion in the impugned order. On the contrary, the adjudicating authority, based on facts and evidences available on records, has clearly concluded that the place of removal in the case was factory gate. It was not the case of the appellant that their's was a F.O.R. Destination Sale as they have never made such a contention as seen from their submissions made in the case. It was also never disputed by them that the place of removal in their case was not factory gate. They were in fact contending the case only on the ground that disputed services of outward transportation and transit insurance were input services for them which were used by them in or in relation to their manufacturing activities. The said arguments of the appellant are not legally correct and sustainable being not in consonance with the definition of 'input service' specified under the CCR and with the attaining of finality of the impugned issue by the Supreme Court judgment discussed above.

11. With regard to invocation of extended period for the demand, I find that the same is rightly invoked for the reason that there was suppression of material facts from the department by the appellant in the case. The arguments/contentions put forth by the appellant does not support their case as the facts and information disclosed by them in their returns are in no way reveals the material fact of availment of credit of service tax on outward transportation and transit insurance by the appellant. The fact that they were availing credit on the said services came to the knowledge of the department first only when the records of the appellant were audited by the CERA audit party. I find that the rulings of the Allahabad High Court in the case of Commissioner of Customs & Central Excise, Ghaziabad Vs. Rathi Steel & Power Ltd. [2015 (321) ELT 200 (All.)] and the Tribunal in the case of Smita Steels Rolling Mills Pvt. Ltd. Vs. Commissioner of Central Excise, Mumbai [2016 (344) ELT 375 (Tri.-Mumbai)] support the above view. When the demand in question stand confirmed, the interest also becomes chargeable in terms of Rule 14 of the CCR read with Section 11AA of the Act. Further, as there is suppression of facts and intention to wrongly avail the

ineligible cenvat credit, penalty under Rules 15(2) of the CCR read with Section 11AC of the Act becomes imposable and as Section 11AC is invoked, the said penalty must be equal to demand confirmed in view of the decisions of the Hon'ble Supreme Court in the case of Union of India Vs. Rajasthan Spinning & Weaving Mills [2009 (238) ELT 3 (S.C) and Union of India Vs. Dharmendra Textile Processor [2008 (231) ELT 3 (SC)] rightly relied upon by the adjudicating authority.

12. In view of the foregoing discussions, I do not find any reason to interfere with the decision taken by the adjudicating authority and therefore, I upheld the impugned order and reject the appeal filed by the appellant being devoid of merits.

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

(**Gopi Nath**)
Commissioner (Appeals)

Date: 24.10.2019.

Attested:

05/11/2019

(Anilkumar P.)
Superintendent(Appeals),
CGST, Ahmedabad.

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5. The Asstt. Commissioner (System), CGST , Ahmedabad North.
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