आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क ,अहमदाबाद – उत्तर, कस्टम हॉउस, प्रथम तल, नवरंगपुरा ,अहमदाबाद- 380009		OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009
फ़ोन नंबर./ PHONE No.: 079-27544557	फैक्स/ FAX : 079-27544463	E-mail:- oaahmedabad2@gmail.com

निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. V.85/15-49/Dem/2010

आदेश की तारीख़/Date of Order: - 30.01.2019
जारी करने की तारीख़/Date of Issue :- 30.01.2019

द्वारा पारित/Passed by:- ऍम.एस. चौहान / *M..S.Chauhan*
अपर आयुक्त / Additional *Commissioner*

मूल आदेश संख्या / Order-In-Original No. 02/ADC/2019/MSC

जिस व्यक्ति (यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती हैI
This copy is granted free of charge for private use of the person(s) to whom it is sent.

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरूद्ध अपील ,इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी ,अहमदाबाद 380015-को प्रारूप संख्या इ.ए-1 (E.A.-1) में दाखिल कर सकता है। इस अपील पर रू .2.00 (दो रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 2.00 only.

इस आदेश के विरुद्ध आयुक्त के शुल्क गये मांगे पहले से करने अपील में (अपील) 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है।

An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. (as per amendment in Section 35F of Central Excise Act,1944 dated 06.08.2014)

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या इ.ए.-1 में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(1) उक्त अपील की प्रति।

(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरूद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रू) 2.00 .दो रूपये (का न्यायालय शुल्क़ टिकट लगा होना चाहिए।

The appeal should be filed in form EA-1 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(1) Copy of accompanied Appeal.

(2) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.2.00.

विषय: -कारण बताओ सूचना/Show Cause Notice **F.No. V.85/15-49/Dem/2010 dated 27.02.2010 issued to M/s Transformer & Rectifiers (I) Ltd., Survey No. 344-350, Sarkhej Bavla Road, Vill-Changodar, Ahmedabad.**

Brief facts of the case:-

M/s Transformer & Rectifiers India Ltd., Survey No 344-350, Sarkhej- Etev 3 Road. Viil Changodar. Ahmedabad (hereinafter referred to as 'the said assessee') are holding Central Excise Registration bearing No. AACCT2843PXM002 and are engaged in the manufacture of **'Electrical Transformers and parts thereof,** falling under Chapter 85 of the First schedule to the Central Excise Tariff Act. 1985. The said assessee is availing benefit of Cenvat Credit as per the provisions of the CENVAT Credit Rules 2004.

2. During the course of audit by the officers of CERA, it is observed that, the assessee has wrongly availed CENVAT Credit of service tax on the services of transportation of finished goods from their factory gate to the destination for the period from 2008-09.

3. The **term 'Input service'** has been defined under Rule 2 (I) of the CENVAT Credit Rules, 2004 and the same is reproduced as under:

input service" means any service.

(i) used by a provider of taxable service for providing an output service or

(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of the final products from the place of removal.

and includes services used in relation to setting up. modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion market research, storage upto the place of removal, procurement of inputs, activities relating to business, such, us accounting, auditing, financing, recruitment and quality control coaching and training, computer networking credit rating, share registry and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal;

4. *As per Sec.4(3)(c) of the Central Excise Act. 1944.*

"place of removal" means

(i) a factory or any other place or premises of production or manufacture of the excisable goods;

(ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty:

(iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory, from where such goods are removed.

5. Further as per Rule 3 of the Cenvat Credit Rules,2004, a manufacturer or producer of final products or a provider of taxable service shall be allowed to take CENVAT credit of the duties specified therein, paid on

(i) Any input or capital goods received in the factory of manufacture of final product or premises of the provider of output service on or after the 10th day of September,. 2004; and

(ii) Any input service received by the manufacturer of final product or by the provider of output services on or after the 10th day of September, 2004;

including the said duties, or tax or cess paid on any input or input service, as the case may be, used in the manufacture of intermediate products, by a job-worker availing the benefit of exemption specified in the notification of the Government of India in the Ministry of Finance (Department of Revenue). No. 214/86- Central Excise, dated the 25th March. 1986 published in the Gazette of India vide number G.S.R. 547 (E) dated the 25th March 1986 and received by the manufacturer for use in or in relation to, the manufacture of final product, on or after the 10th day of September, 2004.

6. From the definition of 'input service', it appeared that the 'input service' means any service that is used by the manufacturer in or in relation to the manufacture of final products and clearance of final products from the **Place of removal.** In order to ascertain the place of removal of the goods in respect of the clearances made by the assessee, copies of certain purchase orders were obtained from them and examined.

7. From the purchase order No. SP/L-008/T-0510/0308 dated 16.05.2009 issued by the Maharashtra State Electricity Transmission Company Ltd. in the name of the assessee for the supply of 200 MVA & 100 MVA. 220 KV Class Auto Transformers against tender No. SP/T-0510/0308 opened on 20.06.2008, it is mentioned in the Annexure-B of the said order that, the assessable value agreed upon is the ex-factory price, and the freight charges and transit insurance charges are not included in the price taken for the calculation of excise duty. Thus, it appeared that the **outward freight** and **transit insurance charges** are not part of the assessable value of the goods.

8. Further from the purchase order No.OM-0398/CE/C/400KV/P&MMI1/e-EHVT-37/2008/T&R/2009-50 dated 26-03-2009 issued by M/s Transmission Corporation of Andhra Pradesh Limited, Hyderabad in the name of the assessee for the supply of 80MVA 132/33 KV Power Transformers, it is observed from page-2 of the order that the assessable value per unit agreed upon is the ex- factory price, excluding, the freight charges and transit insurance charges. Thus, it appeared that, the **outward freight** and **transit insurance charges** are not part of the assessable value of the goods and not considered for the calculation of excise duty.

9. From the purchase order No. CE/TR/SE/TR-II/ET/A3/T-1449 /PO TR 1898 / D.130 / 08 dated 02-07-2008 issued by the Tamilnadu Electricity Board, it is observed from the schedule given in Para-2 of the order read with the clause (c) of the note, it appeared that, the excise duty is calculated on updated ex-work price of the goods, excluding the freight and insurance components.

10. Thus as per the purchase orders received by the assessee from their customers fixing the price of the goods, it appeared that, the goods are sold at the factory gate and the transaction value of the goods is fixed as the ex-factory price. Further, it also appeared from the purchase orders that the assessable value for the calculation of Excise duty is also taken as the ex-factory price; and that the outward freight and insurance are not included in the assessable value. Therefore, it appeared that both the charges of freight and transit insurance for outward transportation of finished goods are borne by the assessee not by the customer. Thus, it appeared that the place of removal of the goods is the factory gate and hence the services of outward transportation and transit insurance of the finished goods do not come under the purview of the definition of **'input services'** for availing CENVAT credit.

11. Statement of Shri Chirag Vasudevbhai Thakkar. Assistant Manager Commercial of the assessee was recorded on 14-06-2010 under Section 14 of the Central Excise Act 1944, wherein he was shown all the above mentioned three purchase orders issued in the name of the assessee by various customers, as detailed above in Paras 7, 8, & 9 for procurement of transformer and parts. On going through these purchase order, he 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. He has further stated that the place of removal was the factory gate in respect of all the clearances made by them. He has further admitted that they had not declared or revealed before the Department about the availing of CENVAT Credit of service tax paid on outward freight and outward transit insurance charges at any point of time.

12. Thus, it appeared that, the place of removal in respect of the clearances of finished goods made by the assessee is their factory gate, and therefore, the services of outward transportation of the finished goods and the transit insurance availed by the assessee do not fall within the purview of the definition of **'input services'** given under Rule 2(I) of the CENVAT Credit Rules, 2004. Therefore, it appeared that the CENVAT credit of service tax paid on of outward transportation of the finished goods and the transit insurance availed by the assessee to the tune of **Rs. 83,41,792/-** during the period from **July, 2007 to March, 2010,** as detailed in Annexure-A to this notice is not admissible to them.

13. It also appeared that the said CENVAT credit of **Rs. 83,41,792/-** for the period from **July-2007 to March-2010** has been wrongly availed by the assessee contravening the provisions of Rule 3 of the CENVAT Credit Rules, 2004 read with Rule 2(I) of the CENVAT Credit Rules, 2004. in as much as, the services of outward transportation of finished goods and their transit insurance do not fall within the purview of the definition of **'input service'** used for the manufacture of their final product or for providing any output service. Further it appeared that the fact of availing of CENVAT credit of service tax paid on the said services, which do not fall within the purview of **'input services',** was never brought to the notice of the Department; and suppressed the said facts with intent to evade payment of duty by utilizing the same. Further, it appeared that availing of CENVAT credit of service tax on services other than input

services was brought to light only when their records were audited. Therefore, it appeared that the said wrongly availed credit amounting to **Rs. 83,41,792/-** is required to be recovered from them under Rule 14 of the CENVAT Credit Rules, 2004 read with the proviso to Section 11 A (1) of the Central Excise Act, 1944 by invoking the extended period of five years.

14. Further, it also appeared that interest on the amount of wrongly availed credit of **Rs. 83,41.792/-** is also required to be recovered from the assessee under Rules 14 of the CENVAT Credit Rules, 2004 read with Section 11AB of the Central Excise Act, 1944.

15. Further, it appeared that the assessee has wrongly availed CENVAT credit of service tax paid on **outward freight** and **outward transit insurance charges** which are not input services for them, thereby contravening the provisions of Rule 3 of the CENVAT Credit Rules, 2004 read with Rule 2(I) of the CENVAT Credit Rules, 2004. Further, it appeared that, the availing of Cenvat credit of service tax on the said services by the assessee was never brought to the notice of the Department; and the assessee suppressed the said facts from the department with the intent to evade payment of duty and utilized the said credit without informing the department. Further, it appeared that the wrong availing of Cenvat credit on the said services was brought to light only when their records were audited by the CERA audit party. Therefore, it appeared that all the above mentioned acts of contravention on the part of the assessee have been committed with intent to evade payment of duty and thereby they have rendered themselves liable for penalty under Rule 15 (2) of the CENVAT Credit Rules, 2004 read with Section11AC of the Central Excise Act. 1944.

16. Accordingly, a Show Cause Notice No. V.85/15-49/Dem/2010 dated 27.07.2010 was issued to them asking them to show cause as to why:-

(i) Service tax credit of **Rs. 83,41,792/-** (Rupees Eighty Three Lakh Forty One Thousand Seven Hundred Ninety Two only) wrongly availed by them during the period from July-2007 to March-2010 in guise of service tax paid on Input Service, should not be recovered from them under Rule 14 of the Cenvat Credit Rules. 2004 read with the proviso to Section 11A (1) of the Central Excise Act. 1944;

(ii) Interest at the appropriate rate should not be recovered from them under Rule 14 of the CENVAT Credit Rules, 2004. read with Section 11AB of Central Excise Act. 1944 on the amount mentioned at (i) above;

(iii) Penalty should not be imposed upon them under the provisions of Rule 15 (2) of CENVAT Credit Rules. 2004 read with Section 11 AC of the Central Excise Act. 1944.

Defence submission:

17. The noticee vide their letter dated 04.08.2010 submitted their written submission as under:-

1) *"The short question, covered by matter and required to be decided by Your Honour, is to the effect that whether or not, CENVAT Credit of Service Tax, paid by us, is admissible, under Reverse Charge or Tax Shift Mechanism, under Rule 2(l)(d)(v) of*

the Service Tax Rules, 1994, read with, Notification, 32/2004-S.T., dated 03.12.2004 and Notification, 1/2006-S.T., dated 1.3.2006 and now Notification, 13/2008-S.T., dated 1.3.2008, on 25% of gross amount of Freight, remitted to the Goods Transport Agency, for transportation of our goods, from our Factory to destination, in case of F.O.R. Destination Sell basis.

2) *This issue at present, is very well settled by the decision of the Honourable Punjab & Haryana High Court, in the case, titled as,* ***AMBUJA CEMENTS LTD., VERSUS, UNION OF INDIA, 2009-TIOL-110-HC-P&H-ST,*** *annexed hereto, as* ***ANNEXURE :2.***

3) *The afore-cited decision, over-rules the Show cause notice.*

4) *We do not hesitate to state that a Manufacturer, is eligible to take CENVAT Credit of Service Tax, paid by him, on any of 117 taxable Services, so far declared by the Central Government, under the Finance Act, 1994, when procured by him, in connection with his Business Activity of Production, and Sale of his finished excisable goods, in as much as, the purpose and objects of enactment of CENVAT Credit Scheme, is to reduce the cascading effect of specified Taxes, leviable on the finished excisable goods, manufactured by an Indian Manufacturer and thereby, to reduce the burden of specified Taxes, chargeable on his finished excisable goods, resulting into reduction of cost of production, facilitating the Indian Goods/Manufacturer, to compete in the International Trade,*

5) *A close scrutiny of Rule 2(1) of the CENVAT Credit Rules, 2004, will clearly reveal that when the Learned Legislature; has expressly allowed CENVAT Credit of Service Tax, charged by Credit Rating Agency and Share Registry, situated far away, from the Manufacturing Place of finished excisable goods, then why the Department of Central Excise & Customs, denies CENVAT Credit, every now and then, on every taxable Service, procured by a Manufacturer.*

6) *Recently, the Honourable Bombay High Court, in the case, titled as,* ***COCA COLA INDIA PVT. LTD., VERSUS, C.C.E., PUNE-III, [2009 (242) E.L.T. 168 (Bom.)],*** *annexed hereto, as* ***ANNEXURE:3,*** *very manifestly and glaringly observed that whenever, a Manufacturer, procures one or more taxable Services, in connection with his Business Activity, of Production and Sale of his finished excisable goods, he is eligible to take CENVAT Credit, without falling into any dispute, about definition of "Input Service", provided in Rule 2(1) of the CENVAT Credit Rules, 2004, in as much as, when a taxable Service, is procured by a Manufacturer, in connection with his Business Activity of Production and Sale of his finished excisable goods, the Service, automatically satisfies the definition of "Input Service", under Rule 2(1) of the CENVAT Credit Rules, 2004 and this over-rules the Show cause notice.*

In order to remove doubts we should like to clarify that if, the Department of Central Excise & Customs, would like to deny , the CENVAT Credit of Service Tax, paid by a Manufacturer, on his Input Services, it is the Department, to prove that taxable Service, in question, has been canvassed by the Manufacturer as his Input

Service, has not been used by him, in or in relation to manufacture of his finished excisable goods, failing which, on one hand, the Department can not collect Service Tax, from the Service Provider and deny CENVAT Credit of the same Service Tax, to the Manufacturer.

In this connection, kindly refer to the decision of the Honourable CESTA Tribunal, WZB, Ahmedabad, in case of ***C.C.E., VAPI, VERSUS, TPL PLASTECH LTD., 2009 (16) S.T.R. 161 (Trl.-Ahmd.)],*** *annexed hereto, as* ***ANNEXURE:4.***

We should also like to clarify that once a Manufacturer, has paid Service Tax and taken CENVAT Credit of such Service Tax, paid on his Input Service, procured by him, in connection with his Business Activity on the basis of valid duty-paying documents, his eligibility to claim such Credit, not to be questioned, on the basis that assessment of Service, by the Department, is incorrect at the end of Service Provider. In this connection, we rely upon the decision of the Honourable CESTA Tribunal, in case of ***C.C.E., CHENNAI, VERSUS, CARBORANDUM UNIVERSAL LTD., [2009 (16) S.T.R. 181 (Tri.- Chennai)],*** *annexed hereto, as* ***ANNEXURE:5.***

Recently, the Honourable CESTAT Tribunal, WZB, Mumbai, has made a glaring observation, in case of ***SEMCO ELECTRICAL (P) LTD., VERSUS C.C.E., PUNE, [2010] 24 STT 508 (MUM-CESTAT),*** *Annexed hereto, as* ***Annexure:6,*** *that any taxable service, procured by a manufacture, for his business, credit should be allowed, without going into further discussion.*

7) In the premises, the Show cause notice,is required to be set-aside, in toto:.

17.1. The period of dispute, is July, 2007 to March, 2010. The Show cause notice is dated 27.07.2010.

Obviously, the Show cause notice, has invoked a larger or special period, for recovery of CENVAT Credit, under the special provisions of Section 11-A (1) of the Central Excise Act, read with, Rule 14 of the CENVAT Credit Rules, 2004.

The fact that Service Tax, was paid on GTA Service and deposited in the appointed Bank, in proper Government Account, has not been denied.

The fact that the CENVAT Credit was availed of on the strength of GAR-7 Challan and Bills of Goods Transport Agencies, has also not been denied.

GTA Services were used in connection with transportation of our finished excisable goods, from our Factory to the destination, has also not been denied.

Under such cases, the Place of Removal of the finished excisable goods, is the destination, as per the following decisions:

- *2008-TIOL-1691-CESTAT-AHM MUMDRA PORT & SPECIAL ECONOMIC ZONE LTD. VS. CCE, RAJKOT;*
- *2008-TIOL-1582-CESTAT-AHM, ADANI PHARMACEUTICALS P. LTD. VS. CCE, RAJKOT;*
- *2009(230)ELT 569 (TRI-AHMD.) CCE, RAJKOT VS. ROLEX RINGS P. LTD. ;*
- *2008-TIOL-1580 CESTAT-MUM, CCE, NAGPUR VS. MANIKGARH CEMENT;*

- *2009-TIOL- 1376-CESTAT-DEL, CCE, RAIPUR VS. BEEKAY ENGG. & CASTINGS LTD.;*
- *2009-TIOL- 1728-CESTAT-BANG, SREE ROYAL ASEEMA ALKALIES & ALLIED CHEMICALS LTD. VS. COMMR. OF CUSTOMS , CENTRAL EXCISE & SERVICE TAX, TRIRUPATI;*
- *2010-TIOL-59-CESTAT-AHM, CADILA HEALTHCARE LTD. VS. CCE, AHMEDABAD;*
- *2010-TIOL-709-CESTAT-BANG, JK TYRE & INDUSTRIES LTD. VS. CCE, MYSORE;*
- *[2010] 24 SIT 153 (CHENNAI-CESTAT), CCE, CHENNAI VS. FOURRTS (I) LABORATOREIS (P.) LTD.*

17.2 CENVAT Credit was accounted for, in the Statutory Records, maintained under the CENVAT Credit Rules, 2004.

Utilisation of such CENVAT Credit, was reflected in our Statutory Records, as well as in Monthly Returns, filed from time to time, in Form E.R.-1.

Under the facts and circumstances of the case, allegations of suppression of fact or wilful mis-statement, cannot be sustained.

This being the position, the demand beyond the normal limitation of one year, under Section 11A(1) of the Central Excise Act, is time-barred and therefore, required to be set-aside and accordingly, penalty cannot be imposed nor Interest, can be demanded."

Personal Hearing:-

18. Personal hearing in the matter held on 24.12.2018, Shri Mukesh Pandya, Executive Commercial Manager of the Company appeared before me for personal hearing. He re-iterated the submission made at the time of PH as well as submission made vide their letter dated 04.08.2010. He also promised to submit the documents **within 15 days** as asked vide this office letter dated 23.10.2018. **Further, the noticee vide their letter dated 17.01.2019 submitted the requisite documents asked earlier**.

Discussion and Findings:-

19. I have carefully gone through the facts and case records including SCN and defence put forth by the said Noticee as well as submissions made at the time of personal hearing. The noticee was manufacturing "Electrical Transformers and Parts thereof falling under Chapter 85 of the First Schedule to CETA, 1985 and they are also availing benefit of CENVAT Credit as per the provisions of CENVAT Credit Rules, 2004.

19.1 In the instant case I have to decide that (i) Whether CENVAT Credit of Service tax paid on freight charges of Outward Transportation of finished goods availed by the noticee is admissible in purview of "Input Service" defined under Rule 2 (I) of CENVAT Credit Rules, 2004 or otherwise; (ii) Whether CENVAT Credit of Service tax paid on Transit Insurance

Charge of Outward Transportation of finished goods availed by the noticee is admissible in purview of "Input Service" defined under Rule 2 (I) of CENVAT Credit Rules, 2004 or otherwise.

20. On going through the SCN, I find that the noticee has availed CENVAT Credit of service tax on freight charges of Outward Transportation and CENVAT Credit of Service tax on Transit Insurance charges of Outward Transportation of finished goods in the following manner:-

CENVAT Credit of Service tax availed on freight charges for Outward Transportation			
Sr. No.	CENVAT Credit Register Entry No.	Date	Service Tax Credit Availed
1	1565	06.03.2009	17,47,941/-
2.	1942	27.06.2009	9,61,339/-
3.	2190	29.09.2009	15,50,745/-
4.	2669	31.01.2010	22,03,824/-
5.	2672	31.01.2010	1,60,874/-
6.	3246	31.03.2010	10,44,806/-
Total			76,69,529/-

CENVAT Credit of Service tax availed on Transit Insurance Charges			
Sr. No.	CENVAT Credit Register Entry No.	Date	Service Tax Credit Availed
1	404	16.07.2007	77,407/-
2.	665	22.01.2008	33,220/-
3.	963	25.06.2008	1,21,498/-
4.	1794	25.06.2008	1,04,404/-
5.	2027	13.05.2009	55,965/-
6.	2574	11.08.2009	1,45,773/-
7	2936	06.01.2010	56,205/-
8	3208	29.03.2010	77,791/-
Total			6,72,263/-

21. On going through the definition of "Input Service" I find that the definition of Input services was amended vide Notification No. 10/2008-CE (NT) dated 01.03.2008. Before amendment definition of Input service provided at Rule 2 (1) of CENVAT Credit Rules, 2004 is reproduce below:-

(I) "Input Service" means any service

(i) used by a provider of taxable service for providing an output service; or

(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacturer of final products and clearance of final products ***from the place of removal,***

and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or

premises, advertisement or sales, promotion, marketing research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry and security, inward transportations of inputs or capital goods and outward transportation upto the place of removal".

21.1 And post amendment vide Notification No. 10/2008-CE (NT) dated 01.03.2008, the definition of Input service is reproduce below:-

"input service" means any service, -

(i) used by a provider of taxable service for providing an output service, or

(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products ***upto the place of removal,***

and includes services used in relation to modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal;

but excludes-

21.2. Regarding Place of removal, Section 4(3)(c) of the Central Excise Act, 1944 states as

" place of removal means-

(i) a factory or any other place or premises of production or manufacture of the excisable goods ;

(ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;

(iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory;"

21.3 From the above two tables I find that the noticee has availed CENVAT Credit of Service Tax paid on freight charges of Outward Transportation of finished goods post amendement of the definition of "Input Service". And they have availed CENVAT Credit of Service Tax paid on Transit Insurance Charges on Outward Transportation of finished goods in the regime of both prior and post amendment of the definition of "Input Service".

22. I have gone through the SCN and statement dated. 14.06.2010 of Shri Chirag Vasudevbhai Thakkar, Assistant Manger Commercial of the said Noticee and Purchase Order No. SP/L-008/T-0510/0308 dated 16.05.2009 issued by Maharashtra State Electricity Transmission company Ltd issued to the said noticee; Purchase Order No. OM-0398/CE/C/400K/P&MM11/e-EHVT-37/2008/T&R/2009-50 dated 26.03.2009 issued by M/s

Transmission Corporation of Andhra Pradesh Ltd issued to the said Noticee; Purchase Order No. CE/TR/SE/TR-II/ET/A3/T-1449/PO.TR.1898/D.130/08 dated 02.07.2008 issued by the Tamilnadu Electricity Board issued to the said Noticee, I find that freight charges of outward transportation and transit insurance charges were not included in the assessable value and both the charges were born by the noticee itself. Therefore, it was alleged in the Show Cause Notice that the place of removal was factory gate itself. From the said facts I agree and confirm that the place of removal of the excisable goods was factory gate.

23. On carefully going through the definition of Input service provided under Rule 2(l) of CENVAT Credit Rules, 2004, it appears that the input service has been defined to mean any service used by the manufacturer whether directly or indirectly and also includes interalia services used in relation to outward transportation upto place of removal. The two clauses in the definition of input services take care to circumscribe input credit by stating that the service used in relation to the clearance from the place of removal and service used for outward transportation upto the place of removal are to be treated as input service. The first clause does not mention transport service or transit insurance service in particular. The second clause restricts transport service credit upto the place of removal. When these two clauses are read together, it becomes clear that transport services credit cannot go beyond transport upto the place of removal. The two clauses, the one dealing with general provision and other dealing with specific item, scheme. The purpose of interpretation is to find harmony and reconciliation among the various provisions. Credit availability is in regard to inputs, the credit covers duty paid on input materials as well as tax paid on services, used in or in relation to the manufacture of the 'final product'. The final product manufactured by the noticee in their factory premises and once the final products are fully manufactured and cleared from the factory premises, the question of utilization of the service does not arise as such services cannot be considered as in relation to the manufacture of the final product. Therefore, extending the credit beyond the point of removal of the final product on payment of duty would be contrary to the scheme of CENVAT Credit Rules. The main clause in the definition states that the service in regard to which credit of tax is sought, should be used in or in relation to clearance of the final products upto the place of removal. The definition of input service should be read as whole and should not be fragmented in order to avail ineligible credit. Once the clearances have taken place, the question of granting input service stage credit does not arise. Transportation is an entirely different activity from manufacture and this position remains settled by the judgment of Hon'ble Supreme Court in the case of *Bombay Tyre International -1983(14) ELT1896 (SC), Indian Oxygen Ltd- 1988(36)ELT723 (SC)* and *Baroda Electric Meters- 1997(94) ELT13 (SC).* The post removal transport of manufactured goods is not an input for the manufacturer. Similarly in the case of *M/s Ultratech Cement Ltd. - 2018(9) GSTL337 (SC)* , the Apex Court has taken view that CENVAT Credit on goods transport agency service availed for transport of goods from place of removal to buyer's premises is not admissible to the respondent. Further, in the case of *M/s Ultratech Cement Ltd. v. CCE Bhavnagar-2007-TOIL-429-CESTAT-AHM-2007(6)STR364 (Tribunal),* the Hon'ble Tribunal has taken view that after the final products are cleared from the place of removal, there will be no scope of subsequent use of service to be treated as input.

24. I have carefully gone through the defence submission of the noticee wherein they have relied upon the Judgment of Hon'ble High Court of Punjab and Haryana in the case of *M/s Ambuja Cement Ltd. Vs Union of India, 2009-TIOL-110-HC-P&H-ST.* In this regard I find that the Hon'ble Supreme Court in the case of *M/s Ultratech Cement Ltd. -2018(9) GSTL337 (SC)* have also discussed the said case of *M/s Ambuja Cement Ltd.* and the Apex Court has opined that *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 not it could be.*

25. In regard to freight charges on Outward Transportation of finished goods, I find that in the instant case credit availed by the noticee on freight on Outward Transportation of final products pertains to the regime of post amendment of the definition of 'input service'. Therefore, I fully rely on the Judgment of the Hon'ble Supreme Court in the case of *M/s Ultratech Cement Ltd. -2018(9) GSTL337 (SC)* and confirm that CENVAT Credit of service tax on freight charges of outward transportation of the finished goods availed by the noticee is not admissible in view of definition of "Input Service" provided at Rule 2 (I) of CENVAT Credit Rules, 2004 and find noticee have wrongly availed the CENVAT credit to the tune of Rs. 76,69,529/-.

26. In regard to service tax paid on Transit Insurance Charges for Outward Transportation of finished goods, I find that the said noticee have availed CENVAT Credit on such service in both regime i.e. prior and post amendment of definition of "Input Service". In regard to credit availed prior to amendment of definition of "Input Service", I find that the noticee has not included the charges of Transit Insurance in the assessable value shows that place of removal of the goods was factory gate not the buyer's place and in this reference I rely on the view of the Hon'ble CEGAT Delhi in the case of *M/s Escort JCB Ltd. -2000 (118) E.L.T.650 (Tribunal)* wherein the Hon'ble Tribunal has mentioned that *"Place where excisable goods are sold can be a place of removal. A place where the goods are sold can be place where the property in the goods sold passes from seller to the buyer. The property in the goods passed from the seller to the buyer at the factory gate as contended by the Representative of the appellant. Then the value of the goods at factory gate must be the basis for assessment to duty. So, the question that arises for consideration is whether property in the goods sold did, in fact, pass from the appellant firm to the buyer when the goods left the factory gate. It is an admitted case that the appellant got the goods insured when it was sent to the purchaser. Policy was taken in the name of the appellant. In the course of transit if the goods are lost, it is conceded before us, insurance company was to reimburse the appellant. Insurance company was reimbursing the appellant only because the appellant continued to have the property in the goods which were in transit. In this view of the matter it can be said that though the goods were in transit, the appellant continued to be the owner of the goods. In other words, no sale took place till it reached the buyers destination. Only*

when the goods reached buyers destination, the sale takes place. In such a situation, the goods belonging to the appellants were sold at the premises of the buyer". Therefore, I also find that credit availed by the noticee on the Transit Insurance Charge of Outward Transportation of the finished goods prior to amendment of the definition of 'input service' is admissible on the basis of Judgment of the Hon'ble Supreme Court in the case of *M/s ABB Ltd. - 2018(11)G.S.T.L.3(S.C.)* and Judgment of the Hon'ble High Court of Punjab and Haryana in the case of *M/s Ambuja Cement Ltd. Vs Union of India, 2009-TIOL-110-HC-P&H-ST.*

27. In regard to credit availed on Transit Insurance Charge of Outward Transportation of finished goods, post amendment of the definition of 'input service', I find that the noticee has not included the charges of Transit Insurance in the assessable value shows that place of removal of the goods was factory gate not the buyer's place and in this reference I rely on the view of the Hon'ble CEGAT Delhi in the case of *M/s Escort JCB Ltd. -2000 (118) E.L.T.650 (Tribunal)* as discussed in earlier Para 9 above. Therefore, I find that credit availed by the noticee on the Transit Insurance Charges of Outward Transportation of the finished goods post amendment of the definition of 'input service' is not admissible on the basis of the discussion made at earlier Paras i.e. Para 6 and Para 7. I fully rely on the Judgment of the Hon'ble Supreme Court in the case of *M/s Ultratech Cement Ltd. -2018(9) GSTL337 (SC)* and confirm that credit availed by the noticee on Transit Insurance Charge of outward transportation of the finished goods, post amendment of the definition of 'input service' is not admissible in view of definition of "Input Service" provided at Rule 2 (I) of CENVAT Credit Rules, 2004 and they have wrongly availed the CENVAT credit to the tune of Rs. 5,61,636/-.

28. From forging Para 9 and Para 9.1, I find that the CENVAT Credit to the tune of Rs. 1,10,627/- prior amendment of the definition of 'input service', availed by the noticee on Transit Insurance Charges of Outward Transportation is admissible to them, however, the CENVAT Credit to the tune of Rs. 5,61,636/- post amendment of the definition of 'input service', availed by the noticee on Transit Insurance Charges of Outward Transportation is not admissible to them.

29. Further, the noticee in their defence submission has relied upon the case of *M/s Coca Cola India Pvt. vs. CCE, Pune-III-2009(242)E.L.T. 168 (Bom.); CCE Vapi vs. M/s TPL Plastech Ltd.-2009(16) STR161(Tri-Ahmd); CCE Chennai vs. M/s Carborandum Universal Ltd. -2009(16) STR 181(Tri- Chennai); M/s Semco Electrical (P.) Ltd. vs. CCE Pune -2010(24) STT 508 (Mum-CESTAT).* I have gone through the judgments of the Hon'ble Tribunals in all these cases and find that such cases are not squarely applicable in the instant case.

30. In view of forgoing discussion I conclude that wrongly availed CENVAT credit of Service Tax paid on Freight Charges on Outward Transportation and Transit Insurance Charges of Outward Transportation of finished goods post amendment to definition of 'input service' required to be recovered from the noticee along with interest under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11(A) of CEA, 1944 & Section 11AA of CEA, 1944.

31. On going through the case record I find that the noticee has wrongly availed the CENVAT Credit of service tax paid on Freight Charges and Transit Insurance Charges on Outward Transportation of finished goods post amendment of the definition of 'input service', contravening the provisions of Rule 3 of CENVAT Credit Rules, 2004 read with Rule 2(I) of CENVAT Credit Rules, 2004 by suppressing the material facts from the department with intent to evade payment of duty and utilized the said credit without informing the department. I also find that such facts have been admitted by Shri Chirag Vasudevbhai Thakkar, Assistant Commercial of the noticee in his statement dated 14.06.2010 recorded under Section 14 of the Central Excise Act, 1944. Therefore, I find that proposal of invocation of extended period of five years for demanding of wrong availment of CENVAT Credit availed and utilized by the noticee is correctly proposed in the SCN and I uphold such proposal in the present SCN.

32. As regards the proposal to impose penalty on the noticee under Rule 15 (2) of CENVAT Credit Rules, 2004 read with Section 11AC of CEA, 1944, I find that the noticee has clearly contravened the provisions of Rule 3 of the CENVAT Credit Rules, 2004 read with Rule 2(1) of the CENVAT Credit Rules, 2004 inasmuch as they have availed CENVAT Credit of service tax paid on freight charges and transit insurance charges of outward transportation of finished goods beyond the place of removal by suppressing the material fact from the department. Therefore, I uphold the proposal in the present SCN and find that noticee is liable to penalty under Rule 15(2) of CENVAT Credit Rules, 2004 read with Section 11AC of CEA, 1944. I rely on decision of Hon'ble Supreme Court of India in the case of *Union of India vs Rajasthan Spinning & Weaving Mills reported in 2009 (238) E.L.T. 3 (SC),* where the ratio given by the Hon'ble Apex Court in the case of *Union of India vs. Dharmendra Textile Processor- 2008 (231) E.L.T. 3 (SC)* has been affirmed. As per the ratio of these decisions, once Section 11AC is applicable in a case, the concerned authority would have no discretion in quantifying the amount and penalty must be equal to duty determined.

Order:-

33. In view of above discussion I pass the following order:-

33.1 In terms of Rule 14 of CENVAT Credit Rules, 2004 read with Section 11A(10) of Central Excise Act, 1944, I confirm the demand for recovery of CENVAT Credit amounting to Rs. 76,69,529/- (Rs. Seventy Six Lakhs Sixty Nine Thousands and Five Hundred Twenty Nine only) and Rs. 5,61,636/- (Rs. Five Lakhs Sixty One Thousands and Six Hundred Thirty Six Only) , total of Rs. 82,31,165/- (Rs. Eighty Two Lakhs Thirty One Thousands One Hundred and Sixty Five Only) availed on Freight Charges of Outward Transportation of the finished goods and Transit Insurance Charges on Outward Transportation of the finished goods respectively, availed post amendment of the definition of 'input service'.

33.2 I drop the demand of CENVAT Credit of Rs. 1,10,627 (Rs. One Lakh Ten Thousands and Six Hundred Twenty Seven only) availed on Transit Insurance Charges

on Outward Transportation of the finished goods, availed prior amendment of the definition of 'input service'.

33.3 I confirm the recovery of interest on the amount confirmed in the above Paragraph to be paid at appropriate rate under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11AA of the Central Excise Act, 1944.

33.4 I impose a penalty of **Rs. 82,31,165/- (Rs. Eighty Two Lakhs Thirty One Thousands One Hundred and Sixty Five Only)** in the present matter under Rule 15 (2) of the CENVAT Credit Rules, 2004 read with Section 11AC(1) (c) of the Central Excise Act, 1944.

33.5 In terms of Section 11AC(1) (e), the penalty imposed herein shall be reduced to 25% of penalty, if duty, interest and penalty is paid within 30 days from the date of communication of this order, subject to the condition that such reduced penalty is also paid within the period so specified.

34. SCN F. No. V.85/15-49/Dem/2010 dated 27.07.2010 is disposed of in the above terms.

30/1/2019

(Mahavir Singh Chauhan)
Additional Commissioner
CGST, Ahmedabad North

F. No. V.85/15-49/Dem/2010

By Registered AD Post/Speed Post/Hand Delivery

To

M/s Transformer & Rectifiers (i) Ltd
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Vill- Changodar, Ahmedbad

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(2) The Dy/Asst. Commissioner, CGST, Division-IV, Ahmedabad North
(3) The Superintendent, CGST, AR-III, Division-IV, Ahmedabad North
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