

<p>आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हॉउस(तल प्रथम) नवरंगपुरा- अहमदाबाद ,380009</p>		<p>Office of the Commissioner of Central Goods & Services Tax & Central Excise, Ahmedabad North, Custom House(1st Floor) Navrangpura, Ahmedabad-380009</p>
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निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. F.No. STC/4-01/O&A/2017-18

आदेश की तारीख / Date of Order : 16.12.2019
जारी करने की तारीख / Date of Issue : 16.12.2019

द्वारा पारित/Passed by -

डॉ. बलबीर सिंह / Dr. BALBIR SINGH

आयुक्त / COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR-11/2019-20

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

This copy is granted free of charge for private use of the person(s) to whom it is sent.

2. इस आदेश से असंतुष्ट कोई भी व्यक्ति -इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार ,सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,O-20, मेघाणीनगर ,न्यु मेन्टल हॉस्पिटल कम्पाउन्ड , अहमदाबाद -380016 को संबोधित होनी चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, O-20, Meghani Nagar, Mental Hospital Compound, Ahmedabad-380 016.

2.1 इस आदेश के विरुद्ध अपील न्यायाधिकरण में अपील करने से पहले मांगे गये शुल्क के 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 Tribunal 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)

3. उक्त अपील प्रारूप सं .इ.ए 3.में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 ,के नियम 3 के उप नियम (2)में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो ,उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ)उनमें से कम से कम

एक प्रति प्रमाणित होनी चाहिए। अपील से संबन्धित सभी दस्तावेज भी चार प्रतियाँ में अग्रेषित किए जाने चाहिए।

The Appeal should be filed in Form No. E.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Central Excise (Appeals) Rules, 2001. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं चार प्रतियों में दाखिल , उसकी भी उतनी ही ,की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उनमें से कम से कम) प्रतियाँ संलग्न की जाएंगी एक प्रमाणित प्रति होगी।।

The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)

5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।

The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. अधिनियम की धारा 35बी के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।

The prescribed fee under the provisions of Section 35 B of the Act shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. न्यायालय शुल्क अधिनियम 1970 ,की अनुसूची ,1-मद 6 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर 1.00रूपया का न्यायालय शुल्क टिकट लगा होना चाहिए।

The copy of this order attached therein should bear a court fee stamp of Re. 1.00 as prescribed under Schedule 1, Item 6 of the Court Fees Act, 1970.

8. अपील पर भी रु 4.00 .का न्यायालय शुल्क टिकट लगा होना चाहिए।

Appeal should also bear a court fee stamp of Rs. 4.00.

विषय: -कारण बताओ सूचना:

Subject- Proceedings initiated vide Show Cause Notice bearing No. STC/4-01/O&A/2017-18 dated 13.09.2017 issued to M/s. Torrent Pharmaceuticals Limited, Torrent House, Ashram Road, Ahmedabad-380009

Brief facts of the case:

M/s. Torrent Pharmaceuticals Limited, Torrent House, Ashram Road, Ahmedabad (hereinafter referred to as "M/s. TPL") are engaged in the manufacture of pharmaceutical products falling under Chapter 30 of Central Excise Tariff Act, 1985. M/s. TPL had obtained Centralised Registration mainly for payment of Service Tax as a recipient of service and as input service distributor under the provisions of CENVAT Credit Rules, 2004. They were registered as an "Input Service Distributor" [ISD] with the erstwhile Service Tax Commissionerate, Ahmedabad having Service Tax Registration No. AA ACT5456ASD006.

2. M/s. TPL vide their letter dated 3.5.2011 and 11.2.2014 had informed that:
- a. They had manufacturing units at Indrad (Gujarat) and Baddi (Himachal Pradesh). The Indrad unit is manufacturing both dutiable and exempted products. Parts of the products in the Indrad unit which are exempted from payment of Central Excise duty are exported. The Baddi unit is availing the benefit of area based exemption Notification No. 49/2003- CE and not paying any Central Excise duty. Parts of the products manufactured in the Baddi unit are also cleared for export purposes.
 - b. They were manufacturing pharmaceutical products at the premises of job workers (Loan Licencee Manufacturers or LLMs for short) premises under Loan Licence Agreement.
 - c. They were also having in-house Research facility viz. **Torrent Research Centre (TRC)**, at Village Bhat, Dist: Gandhinagar, which is engaged in conducting research for product development for both the plants and discovery of new molecules.
 - d. They were also engaged in trading in pharmaceutical products on P to P (Principal to Principal) basis.

2.1 M/s. TPL had been distributing the CENVAT credit in the capacity of an ISD to the following:

- a. Torrent Pharmaceuticals Limited, Near Indrad Village, Taluka: Kadi, Dist.: Mehsana, Gujarat,
- b. Torrent Pharmaceuticals Limited, Near Baddi University, Village Bhud, Makhnu Majra, Tehsil- Nalagarh, District Solan, Baddi, Himachal Pradesh 173205
- c. Torrent Pharmaceuticals Limited, NH 31A, Sikkim
- d. LLM Business
- e. Service Business
- f. Trading Business

3. M/s. TPL had bifurcated their pharmaceutical business under the following business groups:

- (a) Export,
- (b) Domestic/ Insulin,
- (c) Domestic other than Insulin,
- (d) Trading Business.

4. The input services received at the manufacturing plants of M/s. TPL as well as the head office and TRC was either directly related to specific business group or common for the company or multiple business groups. Such services were either exclusively used for dutiable or exempted goods or commonly used for dutiable or exempted goods. In such a scenario the CENVAT credit of input services was distributed from the Head office on pro rata basis under two different types of ratio i.e

- (a) **Company Ratio**
- (b) **Export Business Ratio.**

4.1 **Export Business Ratio** was Input service used exclusively in relation to export business on the basis of export turnover of the concerned unit to the sum of total of export turnover of all the units during the relevant period.

4.2 **Company Ratio** was Input service used commonly for a company on the basis of turnover of the concerned unit to the sum of total of turnover of all the units during the relevant period.

5. The manner of distribution of CENVAT credit by ISD is governed under Rule 7 of Cenvat Credit Rules, 2004 [CCR, 2004 for short], as amended from time to time. The amended provisions with effect from 01.04.2012, are as under:

Rule 7. Manner of distribution of credit by input service distributor.- The input service distributor may distribute the CENVAT credit in respect of the service tax paid on the input service to its manufacturing units or units providing output service, subject to the following conditions, namely:—

(a) the credit distributed against a document referred to in rule 9 does not exceed the amount of service tax paid thereon;

(b) credit of service tax attributable to service used in a unit exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be distributed;

(c) credit of service tax attributable to service used wholly in a unit shall be distributed only to that unit; and

(d) credit of service tax attributable to service used in more than one unit shall be distributed prorate on the basis of the turnover of the concerned unit to the sum total of the turnover of all the units to which the service relates.

Explanation 1. - For the purposes of this rule, unit— includes the premises of a provider of output service and the premises of a manufacturer including the factory, whether registered or otherwise.

Explanation 2. - For the purposes of this rule, the total turnover shall be determined in the same manner as determined under rule 5.

5.1 The definition of "Total turnover" has been given in Rule 5(1) of Cenvat Credit Rules, 2004, which is reproduced herein below:

(E) —Total turnover means sum total of the value of

- (a) all excisable goods cleared during the relevant period including exempted goods, dutiable goods and excisable goods exported;
- (b) export turnover of services determined in terms of clause (D) of sub-rule (1) above and the value of all other services, during the relevant period; and
- (c) all inputs removed as such under sub-rule (5) of rule 3 against an invoice, during the period for which the claim is filed

5.1.1 The definition of "Export Turnover" is re-produced herein below:

(D) *Export turnover of services means the value of the export service calculated in the following manner, namely:*

Export turnover of services = payments received during the relevant period for export services + export services whose provision has been completed for which payment had been received in advance in any period prior to the relevant period – advances received for export services for which the provision of service has not been completed during the relevant period;

5.2 Thus, as per condition [d] of Rule 7 of Cenvat Credit Rules, 2004, credit of such services is to be distributed pro-rata on the basis of turnover of the concerned unit vis-à-vis the total turnover of all the units to which the service relates.

6. From para 4 supra, it appeared that M/s. TPL had artificially worked out and used two different types of ratio viz. 'Company Ratio' and 'Export Business Ratio' for their convenience in order to avail and utilise more than the eligible Cenvat Credit and also to avoid the lapsing of credit pertaining to those units, which do not require the CENVAT credit.

6.1 As per Rule 7 *ibid*, such credit is to be distributed on pro rata basis, based on the turnover of manufacturing units and units providing output service. As per Explanation 1 to the said Rule 7, for the purpose of the rule, "unit" includes the premises of a provider of output service and the premises of a manufacturer including the factory, whether registered or otherwise. In other words, units are to be treated as **per physical premises and not as per different types of business**, as done by the assessee. There is no legal authority to work out such 'Company Ratio' and 'Export Business Ratio', as done by the assessee.

7. It appeared that the manufacturing activity at Baddi unit has been wholly exempted from payment of duty and also the trading activity is considered as 'exempted service' for the purpose of Cenvat Credit Rules, 2004. So in both these cases, the assessee cannot avail Cenvat Credit. This fact is confirmed by the assessee who have mentioned, "No distribution of credit attributable to Baddi unit and Trading".

8. In the case of the activity of Loan Licensing Manufacturing ['LLM'], the licensee [i.e. actual manufacturer/job-worker] is required to pay Central Excise Duty. There is no liability on M/s. TPL to pay either Central Excise Duty or Service Tax on such turnover of M/s. TPL, shown under the head of LLM. Therefore, Cenvat Credit related to LLM business cannot be availed by M/s. TPL.

9. M/s. TPL had worked out 'Company Ratio', under which the credit of common input services ought to have been distributed. However, they had further sub-classified the said 'Company Ratio' into 'Export Business Ratio' and 'Domestic Ratio' and thereafter distributed the credit in the said 'Export Business Ratio', instead of 'Company Ratio' for the input service exclusively used for Export Business. Thereby, as shown in the table in Para 10 of the Show Cause Notice, M/s. TPL had distributed/transferred more credit to their Indrad unit, which is manufacturing and mainly exporting dutiable excisable goods. The said assessee has distributed less credit for the Baddi unit [in Himachal Pradesh] where no duty is payable on account of Area Based Exemption and therefore no credit could be transferred. Also less credit attributable for Trading and LLM business have been shown, because no credit could have been distributed/transferred to such units also.

10. For purposes of illustration, let us take the of distribution of Cenvat Credit during the month of January 2013, Had the credit been distributed as per condition (d) of Rule 7 of Cenvat Credit Rules, 2004, on application of "Company's Ratio", Indrad unit would have got credit of Rs.177 Lakhs, Baddi Unit would have got credit of Rs. 60.92 Lakhs and LLM would have got a credit of Rs.19.57 Lakhs. The amounts of Rs. 60.92 Lakhs and Rs.19.57 Lakhs would have lapsed as no duty was payable by M/s. TPL. However, by wrongly applying "Export Ratio", M/s. TPL had distributed Rs. 222.22 Lakhs instead of Rs. 177 Lakhs. Thus in one month alone, i.e. January 2013, excess credit to the tune of Rs.45.22 Lakhs had been distributed to Indrad unit, and lesser credit had been distributed to Baddi Unit (Rs.31.31 Lakhs) and LLM (Rs. 13.91 Lakhs), which were lapsed, as no duty was payable by M/s. TPL for these units.

11. A statement of Shri Sachindra Patel, Excise Manager, of M/s. TPL, recorded on 01.01.2015 under Section 14 of the Central Excise Act, 1944, read with Section 83 of the Finance Act 1994, *inter alia*, revealed as under:

- (i) The facts regarding the Registration under the category of Input Service Distributor in Service Tax Commissionerate, Ahmedabad and their business activities, as detailed in the above paras.
- (ii) The Head office of M/s. TPL has distributed input service tax credit to Indrad unit in following manner.
 - a) If Input service is used exclusively for Export products/ Business, credit to be distributed prorata to Indrad unit, on the basis of the turnover of Export Products/ Business of Indrad Plant to the sum total of turnover of Export Business of all the units. (Export Business ratio).
 - b) If Input service is used commonly for a company, credit to be distributed prorata to Indrad, on the basis of the total turnover of Indrad Plant to the sum total turnover of all the units. (Company ratio)

(iii) The head office of M/s. TPL distributed the credit to the unit which had used / consumed the service, in proportion to respective turnover of Business / product manufactured and cleared by the concerned unit. The term "turnover" represents turnover of product or service, for which input service relates. The reason in detail is furnished in their letter dated 11.02.2014 submitted to the Commissioner of Central Excise Ahmedabad III.

(iv) The details of Cenvat credit distributed by Head office to Indrad unit, in respect of Input service pertaining to 01.04.2012 onward and used for Export Business by applying "Export Business ratio" for the period 2012-13 & 2013-14 was submitted as Annexure B and Annexure C respectively to the statement. The said Annexures included the duty to be distributed as per total turnover ratio and differential credit thereof.

(v) Their company was exporting goods to various countries and major part of export goods were being manufactured and exported from Indrad Plant. Indrad Plant had obtained regulatory approval for export of goods from foreign regulatory authorities for all countries to which their Company exports its goods.

(vi) Their other plants are holding regulatory approval for certain countries, but not for all countries. Thus, in case of goods exported to countries exclusively from Indrad Plant, services related to those countries are exclusively used by Indrad unit; and hence entire credit in relation to such services would be distributed to Indrad plant as per Rule 7(c) of Cenvat Credit rules, 2004.

(vii) As per reworking of Cenvat credit to be distributed under Rule 7(c) and Rule 7(d) of CCR 2004 by applying the contention of the department i.e. Company ratio for credit to be distributed under Rule 7(d) of CCR 2004, they are entitled to distribute additional Credit to Indrad Plant amounting to Rs. 47,79,852/- in respect of year 2012-13 and Rs. 1,49,69,677/- in respect of year 2013-14. The details of (i) Country-wise Export turnover (ii) ISD Invoice-wise reworking of Credit to be distributed and (iii) ISD Invoice-wise summary of differential credit distributable were attached to the SCN as Annexure -D/1 to D/3(RUD-5) and Annexure - E/1 to E/3 (RUD-6) for the year 2012-13 and 2013-14 respectively.

(viii) Annexures B & C, depicting the amount of duty difference distributed as per applying the export business ratio and duty distributable after applying the total turnover ratio; wherein the total duty passed on in excess to Indrad unit comes to Rs. 4,59,73,620 (Basic Rs.4,46,34,532/- Ed Cess Rs.8,92,718/- and H.Ed Cess Rs. 4,46,370/-) for the period from April, 2012 to March,2014, was not acceptable to them.

(ix) Regarding disclosing these details to the Department and whether the details of such distribution of input service credit as per export business ratio calculated by them had been intimated or brought to the knowledge of the department after amendment in Rule 7 with effect from 01.04.2012, he stated that :

- (a) they had informed to jurisdictional officers of Kalol Division on 03.05.2011, in the matter of Cenvat credit in common input services received at Indrad plant as well as Head office and TRC.
- (b) They had explained the procedure for distribution of Input service tax credit in respect of services used exclusively for specific Business group as well as used commonly for a Company.
- (c) They had not informed or brought to the knowledge to the department about distribution procedure w.e.f. 01.04.2012, as they believed that there was no change required in practice followed. He submitted a copy of the said letter. (RUD-7)

12. From the above, it was evident that M/s. TPL had continued to adopt the same practice which they had followed before the amendment of Rule 7 of CENVAT Credit Rules 2004. Thus, the method of calculation of amount of excess duty passed on to the Indrad unit by ISD which was used for the period Jan'2013 would remain the same for the years 2012-13 & 2013-14. Accordingly, M/s. TPL had passed on excess CENVAT amounting to Rs. 4,59,73,620/- (Basic Rs.4,46,34,532/- Ed Cess Rs.8,92,718/- and H.Ed Cess Rs. 4,46,370/-) to its Indrad unit during the period from April, 2012 to March,2014.

13. The fact that M/s. TPL had never informed the department regarding distribution of Cenvat Credit on the basis of Export Business Ratio instead of total turnover ratio after amendment with effect from 01.04.2012 had been confirmed by Shri Sachindra Patel, Manager, in his statement dated 01.01.2015. The distribution of Cenvat Credit on the basis of export business ratio was not brought to the knowledge of the department by M/s. TPL. Thus, M/s. TPL had suppressed crucial facts from the department with intent to pass on ineligible Cenvat Credit of input service to the manufacturing unit in Indrad. Thus, by passing on excess CENVAT credit of Rs. 4,59,73,620/- (Basic Rs.4,46,34,532/- Ed Cess Rs.8,92,718/- and H.Ed Cess Rs.4,46,370/-) to its Indrad unit during the period from April, 2012 to March,2014, M/s. TPL had contravened the provisions as laid down under Rule 4A(2) of Service Tax Rules, 1994. Thus, on account of suppression of facts, extended period has been invoked under Section 11 A of the Central Excise Act, 1944 read with Section 73(1) of the Finance Act, 1994, to disallow and to recover Cenvat Credit along with interest in terms of Rule 14 of the Cenvat Credit Rules, 2004 from their manufacturing units, which have wrongly availed and utilised the said Cenvat Credit.

14. Further, for the deliberate act of omission and commission, as discussed hereinabove, M/s. TPL, had rendered itself liable for penal action under Rule 15 A of the Cenvat Credit Rules, 2004 for wrongly distributing Cenvat Credit amounting to Rs.4,59,73,620/-, during the period from April 2012 to March 2014. Therefore, a Show Cause Notice No. STC/4-01/O&A/2017-18, dated 13.09.2017, was issued to M/s. TPL, asking them to Show Cause as to why penalty under Rule 15A of Cenvat Credit Rules,2004, should not be imposed upon them.

DEFENCE REPLY

15. Vide letter dated 28.01.2019, M/s. TPL has submitted their reply to the Show Cause Notice, wherein they interalia submitted as under:

- (i) They reiterated the facts of the case as above.
- (ii) M/s. TPL have factories located in Gujarat (Indrad Unit), Himachal Pradesh (Baddi Unit) and Sikkim for manufacture of pharmaceutical formulations and products.

Indrad Unit

16.1 Indrad Unit, manufactures both dutiable and exempted products. Indrad Unit have two business divisions namely Insulin division (Division 1) and other than Insulin division (Division 2).

16.2 Division 1 of Indrad Unit is fully engaged in manufacturing of insulin for M/s. Nova Nordisk for distributing/selling in Indian market. Insulin product is exempted from payment of excise duty in terms of Sr. No. 54 of Notification No. 04/2006-CE dated 1.3.2006. Illustrative copies of invoice raised for sale of insulin is enclosed with the reply.

16.3 Division 2 of Indrad unit mainly exports the goods manufactured by them. Other than insulin, the goods manufactured by Indrad unit are exported out of India to USA, Brazil, UAE etc., either against Bond/Letter of Undertaking under Rule 19 of the Central Excise Rules, 1944 or against claims of rebate under Rule 18 of the Central Excise Rules, 1944. 100% export is made by the Indrad Unit to the countries/ customers namely Algeria, Belgium, Norway, Panama Poland, Portugal, Romania, USA, UK, Aspean Pharmcare Holding Ltd., AstraZeneca UK Ltd. etc Illustrative copies of invoices were enclosed with the reply.

16.4 Division 2 of Indrad unit had exported exempted products (Life saving drugs) namely Allopurinol, Rivadem, Rivastrigimine, Tidomet, Tidomet Forte, Amiodaron in terms of Notification No 12/2012-CE. Illustrative copies of invoices were enclosed with the reply.

16.5 Indrad unit had obtained regulatory approval for export of goods from foreign regulatory authorities for all countries where their unit exports the goods. Other plants are holding regulatory approval for certain countries, but not for all countries. Services tax is paid by ISD for the services exclusively availed for export of manufactured goods from Indrad unit. Sample copies of the Approvals for export of goods from foreign regulatory authorities exclusively availed for Indrad Unit (**Annexure-4**) along with statement showing country /Customer wise export sales for the year 2012-13 and 2013-14 were enclosed as **Annexure 5A & 5B** to the reply.

16.6 With respect to services such as Maintenance and repair service, Testing and analysis service, Custom House service, Consulting engineer service etc. invoices were received at Indrad Unit for export of goods. Illustrative copies of invoice raised upon M/s. TPL were enclosed with the reply.

Availment of input service credit in respect of input services/invoices received at Indrad Plant

17.1 If input services pertaining to Consulting engineer Service, Maintenance and Repair Service, Testing & analysis Service, Custom House agent service; are used exclusively in relation to manufacture of dutiable goods; Indrad Unit have availed entire Cenvat credit of service tax paid on such input services received at Indrad plant (Division 2).

17.2 No Cenvat credit of service tax paid on input service such as Maintenance and Repair Service, Testing & analysis Service, Works Contract Service, Custom House agent service, is availed if such input services are used exclusively in relation to manufacture of exempted goods, including insulin business (Division 1).

17.3 If services are used commonly in relation to manufacture of dutiable and exempted good for Indrad plant such as Courier Service, Banking & Finance Service, Housekeeping Service, IT Software Service, Security Service, Telephone Service, Insurance Service, Supply of Manpower Service, Air travel agent service etc, Cenvat credit is availed on the basis service tax paid on input services in terms of Rule 6(3)(ii) read with Rule 6(3 A) of Cenvat credit Rules, based on dutiable and exempted value ratio of Indrad plant (Including Div 1 and Div 2). Copies of letters submitted by Indrad Unit to Range office on dated 23.05.2013 & 09.04.2014 in the matter of adjustment of Cenvat credit in terms of Rule 6(3 A) (d) and (f) along with working of sales ratio of Division 2 (Exports) and Common ratio (Indrad Plant) for the F.Y. 2012-13 & 2013-14 respectively, were enclosed as Annexure-7A and Annexure-7B respectively.

Other Units of M/s. TPL/Head Office

18.1 The Baddi Unit was availing the benefit of Area based exemption under Notification No. 49/2003-CE and is not liable to Central Excise duty. Parts of the products manufactured in Baddi Unit are cleared for export purpose. Illustrative copies of invoice raised for domestic clearance of goods and export were enclosed as Annexure-8A and Annexure-8B of the reply respectively.

18.2. The Sikkim unit of M/s. TPL was also availing Area based exemption under Notification No. 20/2007-CE and is paying Central Excise duty. Exemption is granted by way of refund granted on amount paid through PLA. The goods manufactured at Sikkim unit are for domestic clearance. Illustrative copies of invoice raised for domestic clearance from Sikkim unit were enclosed as Annexure-9.

18.3 M/s. TPL is engaged in manufacturing pharmaceutical products at job worker's premises under Loan License Agreement (LLM). Copy of the Loan License Agreement was enclosed as Annexure-10.

18.4 M/s. TPL also have its in-house research facility namely, Torrent Research Centre (TRC) located at Village Bhat, Dist. Gandhinagar which is engaged in conducting research for product development for both the plants and discovery of new medicines.

18.5 The head office, M/s. TPL, is mainly engaged for activities related to Corporate finance, banking, accounts, purchase, marketing, supply chain, administration and human resource etc.

18.6 The head office is also engaged in trading of pharmaceutical products on principal to principal (P to P) basis.

Distribution of input service tax credit in respect of input Service/invoices received at Head Office

19.1 Distribution of credit by ISD is governed under Rule 7 of Cenvat Credit Rules, 2004 which had undergone changes in the Budget 2012. However, the practice followed by the Head office for distribution of credit post budget changes remains same in consonance with the terms of amended Rule 7 of CCR, 2004.

19.2 No Cenvat credit of service tax paid on input service is distributed if input service is used exclusively in relation to manufacture of exempted goods (including services exclusively related

to Baddi unit or Insulin business) or provision of exempted services including trading activity.

19.3 In case of input service used exclusively in relation to manufacture of dutiable goods by Indrad or provision of taxable services, entire credit of service tax paid on such service is distributed to Indrad unit.

19.4 M/s. TPL [Head office (ISD)] had distributed the input service tax credit to Indrad unit in the following matter: -

- i. If input service is used exclusively for export products /business, credit was distributed to Indrad unit prorate on the basis of the turnover of export business of Indrad unit to the sum total of turnover of export business of all units (Export business ratio)
- ii. If input service is commonly used for company, credit is distributed to Indrad unit prorate on the basis of the total turnover of Indrad unit to the sum total of turnover of all the units (company ratio).

19.5 It may be noted that ISD has not made bifurcation in the export business of all units of M/s. TPL, implying thereby that even if input service is exclusively used for export of goods manufactured by Indrad unit, the said input credit is also allocated in three units (Indrad, Baddi and LLM units) as all three units are making exports. In other words, inputs service taxes exclusively used for export of goods from Indrad units was not assigned to Indrad units in terms of Rule 7 (c) of Cenvat credit Rules.

19.6 W.e.f. 1st July 2012, "relevant period" has been defined vide Notification 28/2012-C.E.(N.T.) dated 20.06.2012, to determine the credit for distribution *pro rata* on the basis of turnover of the said period. As per the said provision, relevant period shall be the month previous to the month during which the CENVAT credit is distributed.

19.7 For the Financial Year 2012-13 and 2013-14, credit distributed by the ISD to all units for exports on the basis of export business turnover was enclosed as **Annexure – 11** to the reply. For the sake of clarity, M/s. TPL has reproduced for illustration, the details for the month of January 2013 in which credit was distributed based on relevant period i.e. turnover of December 2012.

19.8 Similarly, for the Financial Year 2012-13 and 2013-14, credit distributed by the ISD to all units for company's turnover on the basis of Company's turnover was enclosed as **Annexure – 13** to the reply. For sake of clarity, M/s. TPL has reproduced the details for the month of January 2013 in which credit was distributed based on the definition of relevant period i.e. turnover of December 2012.

Name of Unit	Turnover of Company (Rs. in Lacs)	Export turnover ratio
Indrad	12,283.16	51.28
Baddi	4,226.73	17.65
LLM	3,984.01	16.63
Sikkim	1,358.80	5.67
Service(HO)	189.13	0.79
Trading	1,911.98	7.98
Total	23,953.81	100.00

Illustrative copies of ISD invoices issued to Indrad Unit for distribution of credit of service tax paid related to company turnover was enclosed as **Annexure-14** to the reply.

Letters written to department by M/s. TPL intimating the above-mentioned method of distribution of credit by them to Noticees and other units in terms of Rule 7 of Cenvat Credit Rules, 2004

20.1 M/s. TPL, vide letter dated 3.05.2011 had informed the Deputy Commissioner, Ahmedabad-III about the availment of Cenvat credit on common input service received at Indrad manufacturing plant as well as Head office and Torrent Research Centre. No query was raised by the department in the matter of process defined by M/s. TPL at that time, (**Annexure-15** to the reply).

20.2 Subsequently, the department viewed that as per condition (d) of Rule 7, credit of services is to be distributed pro rata on the basis of total turnover of the concerned unit vis-a-vis the total turnover of all the units to which the service. However, M/s. TPL in case of services used for export, the company has distributed credit on the basis of export turnover of the concerned unit vis-a-vis the total export turnover of all the units from where export is made.

20.3 M/s. TPL vide letters dated 11.02.2014 and 24.03.2014 informed the Commissioner of Central Excise, Ahmedabad - III in detail the mechanism of distribution of Cenvat credit of service tax adopted to distribute credit to all units in terms of Rule 7 of Cenvat Credit Rules, 2004. M/s. TPL submitted that they had rightly distributed the credit in terms of Rule 7 of the Cenvat Credit Rules, 2004. Copies of the letters dated 11.02.2014 and 24.03.2014 is collectively enclosed as **Annexure-16A & 16B** to the reply.

20.4 A statement of Shri Sachindra Patel, Excise Manager of M/s. TPL was recorded on 15.5.2014 under Section 14 of the Central Excise Act, 1994.

20.5 In continuation to the statement dated 15.5.2014, M/s. TPL vide letter dated 22.02.2014 submitted that Indrad unit has claimed less credit amounting to Rs.47,79,852/- and Rs.1,49,69,677/- for the year 2012-13 and 2013-14 respectively because services which were exclusively used for export of goods manufactured from Indrad unit was also distributed among the Baddi unit and LLM unit. A copy of letter dated 22.05.2014 along with Annexures to the said letters was enclosed as **Annexure-17** to the reply.

21. **M/s. TPL has submitted the details of Audit undertaken at the premises of M/s. TPL (head office)/ISD as under:**

- i. Audit report No. 370/2013-14 dated 2.5.2014
- ii. Audit report No. 190/14-15 dated 10.03.2015
- iii. Audit Report No. 967/15-16 dated 22.04.2016
- iv. CERA Audit

Audit undertaken at the premises of Indrad Unit

- vi. EA-2000 Final Audit No.89/2014-15 (ST) dated 06.08.2014
- vii. EA-2000 Final Audit No.312/2014-15 (C.EX) dated 20.08.2015
- viii. EA-2000 Final Audit No. 192/2014-15 (ST) dated 20.08.2015
- ix. Final Audit No. 11 /2016-17 dated 23.5.2016

22. **Invoices on which Cenvat credit taken by Noticees verified by the department**

22.1 Superintendent, Central Excise, Ahmedabad (sic) vide letter dated 6.11.2012 sought details from Indrad Unit for verification of records, i.e. Invoices on basis of which Cenvat and Service tax credit taken at Indrad Plant for the period 1-4-2012 to 30-9-2012. During the scrutiny, no discrepancies were found by the Superintendent in the matter of Service tax Credit. Copy of the letter dated 6.11.2012 is enclosed as **Annexure-25** to the reply.

22.2 A very vital fact to note is that, in none of the audit reports or scrutiny of Cenvat records, the practice adopted by M/s. TPL for distribution of ISD credit in terms of Rule 7 of Cenvat Credit Rules, 2004 or availment of ISD credit by Indrad unit is challenged by the department in any form.

Issuance of show cause notice dated 13.09.2017

23. The present show cause notice dated 13.09.2017 is issued M/s. TPL for imposition of penalty of under Rule 15 A of Cenvat Credit Rules, 2004

24. **Cenvat credit has been correctly distributed by the ISD in terms of the provisions of Rule 7 of the Credit Rules**

24.1 The case of the department is that ISD by artificially working Export Business Ratio has distributed lesser credit to the Baddi Unit where no duty is payable due to Area Based Exemption and also less credit attributable for LLM business have been shown, because no Cenvat credit could have been utilized for payment of duty by such units.

24.2 To substantiate the eligibility of Cenvat credit to M/s. TPL, relevant provisions for distribution of credit by an ISD, as applicable during the relevant period, are extracted below for

ease of reference. Rule 2(m) of the Credit Rules, defines an ISD as under:

"input service distributor" means an office of the manufacturer or producer of final products or provider of output service, which receives invoices issued under rule 4A of the Service Tax Rules, 1994 towards purchase of input services and issues invoice, bill or, as the case may be, challan for the purpose of distributing the credit of service tax paid on the said services to such manufacturer or producer or provider, as the case may be.

24.3 Rule 7 of the Credit Rules, prior to 01.04.2012, read as under:

"The input service distributor may distribute the CENVAT credit in respect of the service tax paid on the input service to its manufacturing units or units providing output service, subject to the following condition, namely:-

(a) *the credit distributed against a document referred to in Rule 9 does not exceed the amount of service tax paid thereon; or*

(b) *Credit of service tax attributable to service used in a unit exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be distributed.*

24.4 W.e.f. 01.04.2012, Rule 7 of the Credit Rules was substituted by Notification No. 18/2012-CE(NT) dated 17.03.2012 and two more conditions were added, reading as under:

(c) *Credit of service tax attributable to service used wholly in a unit shall be distributed only to that unit; and*

(d) *Credit of service tax attributable to service used in more than one unit shall be distributed pro rata on the basis of the turnover of the concerned unit to the sum total of the turnover of all the units to which the service relates.*

24.5 W.e.f. 01.07.2012, vide Notification No. 28/2012-CE (NT) dated 20.06.2012,

Clause (d) was substituted to read as under:

(d) credit of service tax attributable to service used in more than one unit shall be distributed pro rata on the basis of the turnover during the relevant period of the concerned unit to the sum total of the turnover of all the units to which the service relate during the same period.

24.6 Clause (d) was again substituted w.e.f. 01.04.2014, vide Notification No.-

5/2014-CE (NT) dated 24.02.2014, to read as under:

(e) Credit of service tax attributable to service used by more than one unit shall be distributed pro rata on the basis of the turnover of such units during the relevant period to the total turnover of all its units, which are operational in the current year, during the relevant period.

24.7 From a bare reading of the provision of Rule 7 prior to 01.04.2012 (reproduced above), it is evident that there were only two conditions contained in Rule 7, (i) it prohibits distribution of credit of service tax attributable to service used in a unit exclusively engaged in manufacture of exempted goods or providing of exempted services; and (ii) credit distributed against a document referred to in Rule 9 does not exceed the amount of service tax paid thereon.

24.8 In the present case, the disputed period is F.Y. 2012-13 and 2013-14 when Rule 7(d) for the said period was worded to state that credit of service tax attributable to service used in more than one unit shall be distributed to such units pro rata on the basis of the turnover during the relevant period of the concerned unit to the sum total of the turnover of all the units to which the service relate during the same period.

24.9 A clear reading of the rule makes it clear that the credit of service tax attributable to various units shall be distributed to all the units to which the service relate. In the present case, the services which were specifically used for export business during the period 2012-13 to 2013-14, the ISD unit distributed the credit pro rata on the basis of the exports turnover of concerned export unit to the sum of the export turnover of all the export units. The said fact is not in dispute. The legal position was not accepted by the department.

24.10 The term 'such unit' read with "to which service 'relate' " gives a crystal clear view of the legislative intent that the credit shall be distributed to the units where services have been actually received on pro rata basis to the sum of turnover of all such units.

24.11 In the present case, the services such as Liaison Support Service, Export Product registration/marketing authorization expenses, marketing expenditure in abroad etc, were specifically used for export units, the credit was distributed by ISD to all such units in the ratio of Export business ratio.

24.12 Department of Revenue vide letter No. D.O.F No. 334/1/2012- TRU dated 16.03.2012 in the matter of changes made in Rule 7 relation to distribution of credits of input service by an ISD clarified as under:

"7. Changes are being made in Rule 7 relating to distribution of credits of input services by an input service distributor (ISD) to ensure their scientific allocation to only such units where they have been put to use and proportionate to turnover. For example in case of services by way of advertisement

i if the advertisement is for a product or service provided from only one unit, the said credit shall be distributed only to that unit; and if two units, the said credit shall be distributed only to those two units, in proportion to the respective turnovers;

ii if the advertisement is for the company as such, the said credit shall be distributed only to the extent of the turnover of units registered and entitled to avail Cenvat credit to the total turnover of the company including unregistered units. "

24.13 If allegation of the department is accepted, the expenditure borne by the respective unit for the services availed by them will be uniformly distributed to the unit who has never received such services for manufacture of goods. To illustrate the said statement practically, they have given an illustrative example as under:

Plant	Turnover			Distribution ratio as per Notice			Distribution ratio as per Department		
	Export Sales	Domestic Sales	Total Sales	Exports units Ratio	Domestic Units ratio	All Units(Company) ratio	Exports units Ratio	Domestic Units ratio	All Units(Company) ratio
Indrad	86	-	86	86	-	43	57.33	-	43
Baddi	12	36	48	12	36	24	32	42.11	24
Sikkim	-	50	50	-	50	25	-	43.86	25
LLM	2	14	16	2	14	8	10.67	14.04	8
Total	100	100	200	100	100	100	100	100	100
After Interchange 1% business volume of Indrad & Baddi									
Indrad	85	1	86	85	1	43	57.33	43	43
Baddi	13	35	48	13	35	24	32	24	24
Sikkim	-	50	50	-	50	25	-	25	25
LLM	2	14	16	2	14	8	10.67	8	8
Total	100	100	200	100	100	100	100	100	100
Location wise Credit impact due to interchange of business									
Indrad	(1)	1	-	(1)	1	-	-	43	-
Baddi	1	(1)	-	1	(1)	-	-	(18.11)	-
Sikkim	-	-	-	-	-	-	-	(18.86)	-
LLM	-	-	-	-	-	-	-	(6.04)	-
Total	-	-	-	-	-	-	-	-	-

(i) If small quantum of domestic product is cleared from Indrad plant, in that case, applying

the understanding of the department as mentioned in the present show cause notice, Indrad plant may be allocated huge Cenvat credit of service tax paid on services used exclusively for domestic product-

(iii) As can be seen from the table above, if domestic business of 1% is shifted from Baddi to Indrad unit and export business of the same amount is shifted from Indrad to Baddi unit to continue same turnover without any addition in production capacity, as per their formula, credit of services used for relevant business is reasonably distributed, whereas, as per department's formula, Indrad plant gets 43% credit related to domestic business against 1% turnover of the said business.

(iv) Further, even after reduction of turnover of export business, Indrad plant gets the same amount of credit related to services used for export business. Therefore, the noticee contents that the formula of the department is against the intention and the spirit of the legislation, as the formula of the department will never ensure their scientific allocation to only such unit where they have been put to use and proportionate to turnover. (as stated in sub-para 7 of para F of D.O. F.No. 334/1/2012-TRU dated 16th March, 2012)

24.14 Hence, the noticee contents that the basis of recovery demand in the present show cause is against the intent of the government and that the ISD unit has rightly distributed the credit to the export units in proportion to the turnover of all export units.

○ 24.15 The noticee emphasizes that on this ground alone, the proceedings in the show cause notice is liable to be dropped.

25. M/s. TPL has rightly distributed credit by issuing correct invoice under Rule 4A(2) of Cenvat Credit Rules, 2004

25.1 It had been alleged in the SCN that Indrad Unit have wrongly availed and utilized credit on input services distributed through ISD route by its Head Office.

○ 25.2 In this regard M/s. TPL has submitted that Rule 4A of the Service Tax Rules, 1994 provides that taxable service is to be provided and credit is to be distributed on invoice, bill or challan. Further Rule 4A(2) provides that every input service distributor distributing credit of taxable services shall, in respect of credit distributed, issue an invoice, a bill or, as the case may be, a challan signed by such person or a person authorized by him, for each of the recipients of the credit distributed, and such invoice, bill or, as the case may be, challan shall be serially numbered and shall contain the information like the name, address and registration number of the person providing input services and the serial number and date of invoice, bill, or the case may be, challan issued under sub-rule 2 of rule 4A, the name and address of the said input service distributor, the name and address of the recipient of the credit distributed and the amount of the credit distributed.

25.3 Thus, from the above it is clear that credit can be distributed by Input Service Distributor based on an invoice raised under Rule 4A(2) of the Service Tax Rules, 1994 by indicating the necessary particulars specified therein which include the nature of input service received and the service tax amount paid thereon. Such details can also be included in the annexure attached to ISD invoices.

25.4 Rule 9(1) (g) of Cenvat Credit Rules, 2004 provides that Cenvat Credit shall be taken by the manufacturer on the basis of an invoice, bill or challan issued by an input service distributor under rule 4A of the Service Tax Rules, 1994. Accordingly, Corporate Office while acting as an ISD had raised ISD invoices during the disputed period for the purpose of distributing the Cenvat credit on input services. Based on such ISD invoice, the Indrad Unit have availed credit and utilized it for discharging excise duty liability. In other words, the Indrad Unit have correctly availed credit based on ISD invoice.

26. Even otherwise, the M/s. TPL are entitled to get credit of services amounting to Rs. 1,97,49,529/- which had been exclusively received and used at Indrad unit yet distributed to other export units in terms of Rule 7(d) of Cenvat Credit Rules, 2004.

26.1 M/s. TPL had distributed less credit to Indrad Plant amounting to Rs.47,79,852/- and Rs.1,49,69,677/- for the year 2012-13 and 2013-14 respectively as the services which were exclusively used for export of goods manufactured from Indrad unit, was also distributed among the Baddi unit and LLM unit.

26.2 The details of the invoices which were towards specific differential credit of Rs.47,79,852/- and Rs. 1,49,69,677/- was submitted by Indrad Unit vide letter dated 24.03.2014.

26.3 It is submitted that M/s. TPL had distributed the input service tax credit, used exclusively for export products /business by Indrad unit, to Indrad unit, prorate on the basis of the ratio of export business of Indrad unit to the sum total of turnover of export business of all units (Export business ratio).

26.4 Thus from the above, they have submitted that ISD has not made bifurcation in the export business of M/s. TPL, i.e. even if input service is exclusively used for export of goods by Indrad unit, the said input credit was also allocated within three units (Indrad, Baddi and LLM) which are making exports.

26.5 In other words, inputs service taxes exclusively used for export of goods from Indrad units was not assigned to Indrad units in terms of Rule 7 (c) of Cenvat Credit Rules.

26.6 Rule 7 of Credit Rules, as it stood during the relevant period is reproduced below:

Rule 7. Manner of distribution of credit by input service distributor- "The input service distributor may distribute the CENVAT credit in respect of the service tax paid on the input service to its manufacturing units or units providing output service, subject to the following condition, namely

- (a) *the credit distributed against a document referred to in Rule 9 does not exceed the amount of service tax paid thereon; or*
- (b) *Credit of service tax attributable to service used by one or more units exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be distributed.*
- (c) *credit of service tax attributable to service used wholly by a unit shall be distributed only to that unit; and*
- (d) *Credit of service tax attributable to service used by more than one unit shall be distributed pro rata on the basis of the turnover of such units during the relevant period to the sum total turnover of all the units to which the service relates during the same period.*

26.7 From reading of the above it is evident that Rule 7(c) of Cenvat Credit Rules states that credit of service tax attributable to service used wholly in a unit shall be distributed only to that unit. Thus in the instant case, by applying Rule 7 (c) of Cenvat credit rules it is submitted that Indrad unit has claimed less credit amounting to Rs. 47,79,852/- and Rs. 1,49,69,677/- for the year 2012-13 and 2013-14 respectively because services which are exclusively used for export of goods manufactured from Indrad unit was also distributed among the Baddi unit and LLM unit. Thus, the Cenvat credit distributed by M/s. TPL is correct and the impugned SCN is liable to be dropped on this ground alone.

27. **The department was very well aware of the method of distribution of credit by ISD**

27.1 Non-disclosure of the information which is not required to be disclosed by law, does not amount to suppression. All the information was available on record. Thus, no allegation of suppression, wilful mis-statement etc, can be made against M/s. TPL.

27.2 **Several Audits were undertaken by the Department at the premises of the Assessee as well as Indrad unit promises, however, no objection w.r.t distribution of credit by ISD in terms of Rule 7(d) of CCR, 2004 and availment of excess credit by Indrad unit was raised by the department.**

27.3 Details of the audit reports were reproduced.

27.4 M/s. TPL contended that the department was fully aware of each and every information of M/s. TPL and Indrad Unit. However, they did not raise any audit objection against them with respect to issue of distribution of credit in terms of Rule 7(d) of Cenvat Credit Rules, 2004, as amended, as they found the practice adopted by the company to be correct and the practice was not challenged in form of issuance of Show Cause Notice.

27.5 M/s. TPL submitted that prior to insertion of Explanation 3 of Rule 7 w.e.f. 01.07.2012, to define relevant period of turnover, Indrad Unit had re-calculated actual turnover at the end of the year and adjusted the differential credit available/payable. Also, under Rule 7 of Cenvat

Credit Rules, during the period Jul-12 to Mar-13, M/s. TPL was required to distribute the credit on the basis of previous month turnover. Indrad unit of the M/s. TPL vide letter dated 23.05.2013 (Annexure-7) provided month wise turnover of all locations with calculation of Export ratio and Company ratio applied to for year 2012-13 to Range Superintendent of Indrad Unit to justify the adjustment of Credit availed during the year 2012-13. No objection was raised by the department on applying Export Business Ratio.

27.6 M/s. TPL also submitted that Indrad unit vide letter dated 3.05.2011 (Annexure-15 supra) informed the department about the above method of distribution of credit by M/s. TPL. Thus there could not be suppression on part of M/s. TPL

27.7 It is further submitted by the noticee that the amount of Cenvat credit distributed by the M/s. TPL was very much on record and was never suppressed from the Department. M/s. TPL regularly filed its Service tax returns and declared all the relevant particulars, including the Cenvat credit distributed through ISD invoices. Further, once M/s. TPL have declared the amount of Cenvat credit distributed in its return, it is a sufficient disclosure to the authorities and in case the authorities doubted the same, they could have sought details on the basis of such disclosure itself. Therefore, the allegation that M/s. TPL did not inform the Department about the facts of the case was unsustainable.

28. **Penalty under Rule 15A of the Credit Rules cannot be imposed on the Noticees in the present case**

28.1 The noticee contents that invocation of any penalty provision against the Noticees amounted to misapplication of law.

28.2 The impugned notice proposed to impose penalty upon the Noticees under Rule 15A of the Credit Rules, the provisions whereof have been extracted below for ease of reference:

Rule 15A. General Penalty.

Whoever contravenes the provisions of these Rules for which no Penalty has been provided in the rules, he shall be liable to a penalty which may extend to five thousand rupees.

29. **There has been no contravention of the Credit Rules.**

29.1 The noticee states that a bare reading of the provisions of Rule 15A quoted above, makes it evident that the same is applicable only where there has been a contravention of the provisions of the Credit Rules. In light of the submissions made in the foregoing paragraphs, the noticee reiterates that M/s. TPL had availed and distributed the disputed Cenvat credit in compliance with the legal framework of the Credit Rules. Therefore, they contend that there had been no contravention of the Cenvat Credit Rules, and consequently, no penalty is liable to be imposed upon M/s. TPL.

29.2 As already submitted, M/s. TPL had rightly distributed credit to Indrad Unit in term of Rule 7(d) of the Cenvat Credit Rules, 2004. Therefore, there cannot be any allegation of contravention of any provision of the Credit Rules. Accordingly, invocation of Rule 15A of the Credit Rules is legally untenable in the present case.

29.3 Further, M/s. TPL submitted that Rule 15A is *pari materia* to Rule 27 of the Central Excise Rules, 2002 ("the Excise Rules"). Rule 27 of the Excise Rules reads thus:

"Rule 27 - General penalty - A breach of these rules shall, where no other penalty is provided herein or in the Act, be punishable with a penalty which may extend to five thousand rupees and with confiscation of the goods in respect of which the offence is committed."

29.4 In the context of Rule 27 of the Excise Rules, M/s. TPL has relied on the decision in *Special Spring (India) Pvt. Ltd. v. CCE, 2012 (277) ELT 356 (Tri)*.

29.5 M/s. TPL submitted that as Rule 15A is a penal provision. It cannot be invoked in any and every case of default, in the absence of any proof of deliberate and dishonest conduct which has resulted in the contravention of the Credit Rules. It was submitted that their conduct had been thoroughly *bona fide* as reflected by the chain of events summarizing the factual position of current case.

29.6 M/s. TPL were under a bonafide belief that the credit as distributed by them is in line with the intent of government as illustrated as example in the letter Department of Revenue vide letter No. D.O.F No. 334/1/2012- TRU dated 16.03.2012 dated 16.3.2012.

29.7 They have relied on the judgment of the Hon'ble Supreme Court in the case of Cement Marketing Co. of India Ltd. v. Assistant Commissioner of Sales Tax, 1980 (6) ELT 295 (SC), They have also relied on the decision of the Tribunal in the cases of M/s Pepsico India Holding Pvt. Ltd. v. CCE., Allahabad, reported at 2010 (255) E.L.T. 299 (Tri.-Del.)

29.8 They submitted that where there is a *bona fide* interpretation of provisions of law, penalty is not imposable.

29.9 They relied on the following judgments/decisions of Hon'ble Courts and Tribunal:

- (i) Commissioner of Central Excise v. Gujarat Narmada Fertilizers Co. Ltd., 2009 (240) ELT 661 (SC)
- (ii) Maruti Suzuki Ltd. v. Commissioner of Central Excise, Delhi-III, 2009 (240) ELT 641 (SC)
- (iii) Auro Textile v. Commissioner of Central Excise, Chandigarh [2010 (253) ELT 35 (Tri-Del)];
- (iv) Hindustan Lever Ltd. v. Commissioner of Central Excise, Lucknow [2010 (250) ELT 251 (Tri-Del)];
- (v) Prem Fabricators v. Commissioner of Central Excise, Ahmedabad- II [2010 (250) ELT 260 (Tri.-Ahmd.)]
- (vi) Whiteline Chemicals v. Commissioner of Central Excise, Surat [2009 (229) ELT 95 (Tri.-Ahmd.)];
- (vii) Delphi Automotive Systems v. Commissioner of Central Excise, Noida [2004 (163) ELT 47 (Tri-Del)].
- (viii) Collector of Central Excise v. H.M.M. Limited, 1995 (76) ELT 497 (SC), Commissioner of Central Excise, Aurangabad v. Balakrishna Industries, 2006 (201) ELT 325 (SC)
- (viii) Hyva India P. Ltd. v. CCE, Bangalore-III, 2008 (226) ELT 264 (Tri-Bang.).
- (ix) CCE Vs. Krishna Sahakari Sakkare Karkhane Niyamit, 2013 (288) ELT 513(Kar)

PERSONAL HEARING:

30. Personal hearing in this matter was held on 18.2.2019, wherein Ms. Madhu Jain, Advocate, Shri Sachindra Patel, AGM, Indirect Taxes and Shri Ankit Patel, Manager, Indirect Taxes, appeared on behalf of M/s. TPL and reiterated the facts submitted vide their written submissions and also submitted additional submissions. The Advocate emphasised that their Indrad unit was in fact eligible to higher amount of Cenvat Credit and that a higher amount of Cenvat Credit was distributed to it. There is no anomaly and hence the charge that Indrad unit was apportioned higher credit by the ISD does not sustain. Moreover, there were several Audits (both IAD & CERA) during the material period and no irregularity in the manner of distribution of Cenvat Credit or violation of Rule 7 of CCR was pointed out. Case law in support of their written and oral submissions was also presented.

30.1. Further, personal hearing in the matter was again held on 28.11.2019 due to change of adjudication authority, wherein Shri Jigar Shah, Advocate, Ms. Madhu Jain, Advocate, Shri Mahesh Agarwal, VP & Company Secretary and Shri Sachindra Patel, GM Taxation appeared on behalf of the assessee. They submitted that the penalty is proposed to be imposed under Rule 15 A of CCR, 2004 which is general penalty in nature. The case of the Noticees is strong on merits as there is no excess distribution of Cenvat Credit under Rule 7. The noticees placed reliance on recent decision of Hon'ble Bombay High Court in case of Oerlikon Balzers Coating India P. Ltd., reported in 2019(366) ELT 624(BOM), wherein the matter has been decided in favour. The noticees have placed on record CA certificate and other documents to prove that there is no excess distribution of cenvat credit. In addition, noticees submitted that revenue officers have carried out audit from time to time wherein all the information was provided and there is no suppression.

DISCUSSION AND FINDINGS :

31. I have carefully gone through the entire records of the case, the Show Cause Notice, the defence put forth by M/s. TPL in writing as well as contentions put forth during the course of personal hearing. I find that the issue to be decided is whether M/s. TPL has contravened Rule 7 of CCR, 2004, inasmuch as they had passed on excess Cenvat Credit to their unit at Indrad. It is also to be decided whether M/s. TPL is liable for penal action under Rule 15 A of the Cenvat Credit Rules, 2004.

32. It may not be out of place here to first examine the provisions under which the said ISD i.e. M/s. TPL has transferred Cenvat Credit to its units.

Rule 7 of the Cenvat Credit Rules, 2004:

The manner of distribution of CENVAT credit by ISD is governed under Rule 7 of CCR, 2004 as amended with effect from 01.04.2012, which is as under:

7. *Manner of distribution of credit by input service distributor.- The input service distributor may distribute the CENVAT credit in respect of the service tax paid on the input service to its manufacturing units or units providing output service, subject to the following conditions, namely:—*

(a) *the credit distributed against a document referred to in rule 9 does not exceed the amount of service tax paid thereon;*

(b) *credit of service tax attributable to service used in a unit exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be distributed;*

(c) *credit of service tax attributable to service used wholly in a unit shall be distributed only to that unit; and*

(d) *credit of service tax attributable to service used in more than one unit shall be distributed prorata on the basis of the turnover of the concerned unit to the sum total of the turnover of all the units to which the service relates.*

Explanation 1. - For the purposes of this rule, unit- includes the premises of a provider of output service and the premises of a manufacturer including the factory, whether registered or otherwise.

Explanation 2. - For the purposes of this rule, the total turnover shall be determined in the same manner as determined under rule 5.

32.1 Total turnover as stated under Rule 5(1) of Cenvat Credit Rules, 2004 which is reproduced herein below:

(E) — *Total turnover means sum total of the value of*

(a) *all excisable goods cleared during the relevant period including exempted goods, dutiable goods and excisable goods exported;*

(b) *export turnover of services determined in terms of clause (D) of sub-rule (1) above and the value of all other services, during the relevant period; and*

(c) *all inputs removed as such under sub-rule (5) of rule 3 against an invoice, during the period for which the claim is filed*

32.2 The definition of "Export Turnover" is re-produced herein below:

(D) *Export turnover of services means the value of the export service calculated in the following manner, namely:*

Export turnover of services = payments received during the relevant period for export services + export services whose provision has been completed for which payment had been received in advance in any period prior to the relevant period – advances received for export services for which the provision of service has not been completed during the relevant period;

32.3 Thus, as per condition [d] of Rule 7 of Cenvat Credit Rules, 2004, credit of such services is to be distributed pro-rata on the basis of turnover of the concerned unit vis-à-vis **the total turnover of all the units** to which the service relates.

33. From the records of the case, I find that M/s. TPL had been distributing the CENVAT credit in the capacity of an ISD to the following units:

- (i) Torrent Pharmaceuticals Limited, Near Indrad Village, Taluka: Kadi, Dist.: Mehsana, Gujarat,
- (ii) Torrent Pharmaceuticals Limited, Near Baddi University, Village Bhud, Makhnu Majra, Tehsil- Nalagarh, District Solan, Baddi, Himachal Pradesh 173205 Baddi
- (iii) Torrent Pharmaceuticals Limited, NH 31A, Sikkim
- (iv) LLM Business
- (v) Service Business
- (vi) Trading Business

33.1 M/s. TPL had also bifurcated their pharmaceutical business under the following business groups:

Export,

- (e) Domestic/ Insulin,
- (f) Domestic other than Insulin,
- (g) Trading Business.

33.2 The input service received at the manufacturing plants of M/s. TPL as well as the head office and TRC(Torrent Research Centre) was either directly related to specific business group or common for the company or multiple business groups. Such services were either exclusively used for dutiable or exempted goods or commonly used for dutiable and exempted goods. In such a scenario the CENVAT credit of input services was distributed from the Head office on pro rata basis under two different types of ratio i.e

- (a) Company Ratio
- (b) Export Business Ratio.

The above ratios have been worked out by M/s. TPL as under:

33.2.1 **Export Business Ratio** was Input service used exclusively in relation to export business on the basis of export turnover of the concerned unit to the sum of total of export turnover of all the units during the relevant period.

33.2.2 **Company Ratio** was Input service used commonly for a company on the basis of turnover of the concerned unit to the sum of total of turnover of all the units during the relevant period.

34. M/s. TPL had artificially worked out and used two different types of ratio viz. 'Company Ratio' and 'Export Business Ratio' for their convenience; so as to avail and utilise more than the eligible Cenvat Credit and also to avoid the lapsing of credit pertaining to those units, which do not require the CENVAT credit.

35. As per Rule 7 *ibid*, such credit is to be distributed on pro rata basis, based on the turnover of manufacturing units and units providing output service. As per Explanation 1 to the said Rule 7, for the purpose of the rule, "unit" includes the premises of a provider of output service and the premises of a manufacturer including the factory, whether registered or otherwise. In other words, units are to be treated as per physical premises and not as per different types of businesses, as done by the assessee. There is no provision under the law to work out such 'Company Ratio' and 'Export Business Ratio', as done by M/s. TPL.

36. It is a fact that the manufacturing activity at Baddi unit is wholly exempt from payment of duty and also the trading activity is considered as 'exempted service' for the purpose of CCR, 2004. Hence it is natural to conclude that M/s. TPL cannot avail Cenvat Credit pertaining to this unit. In the case of the activities of Loan Licensing Manufacturing ['LLM'], the licensee [i.e. actual manufacturer/job-worker] is required to pay Central Excise Duty. Since there is no liability on M/s. TPL to pay either Central Excise Duty or Service Tax on turnover of such units,

shown under the head of LLM, the benefit of Cenvat Credit relating to LLM business cannot be availed of by M/s. TPL.

37. I find that M/s. TPL had worked out 'Company Ratio', in which the credit of common input service tax ought to have been distributed. They had further sub-classified the said 'Company Ratio' into 'Export Business Ratio' and 'Domestic Ratio' and thereafter distributed the credit on the basis of 'Export Business Ratio', instead of 'Company Ratio' for the input service exclusively used for Export Business. In the process, as shown in the table in Para 10 of the Show Cause Notice, M/s. TPL had distributed/transferred more credit to their Indrad unit, which is manufacturing and mainly exporting dutiable excisable goods. M/s. TPL had distributed less credit for the Baddi unit [in Himachal Pradesh], where no duty is payable due to Area Based Exemption and therefore no credit could be transferred. M/s. TPL had also worked out less credit attributable for Trading and LLM business, because no credit could have been distributed/transferred to such units.

38. The illustration of distribution of Cenvat Credit during the month of January 2013, clearly shows that if the credit had been distributed as per condition (d) of Rule 7 of CCR, 2004, on application of "Company's Ratio", Indrad unit would have got credit of Rs.177 Lakhs, Baddi Unit would have got credit of Rs. 60.92 Lakhs and LLM would have got a credit of Rs.19.57 Lakhs. As a consequence, the amounts of Rs. 60.92 Lakhs and Rs.19.57 Lakhs would have lapsed as no duty was payable by M/s. TPL. However, by wrongly applying "Export Ratio", M/s. TPL had distributed Rs. 222.22 Lakhs instead of Rs. 177 Lakhs. Thus in one month alone, i.e. January 2013, M/s. TPL has passed on excess credit to the tune of Rs.45.22 Lakhs to Indrad unit, and lesser credit had been distributed to Baddi Unit (Rs.31.31 Lakhs) and LLM (Rs. 13.91 Lakhs), which would have eventually lapsed as no duty was payable by M/s. TPL for these units.

39.1 W.e.f. 01.04.2012, Rule 7 for input service distributors was amended to provide that credit of service tax attributable to service used wholly in a unit shall be distributed only to that unit and that the credit of service tax attributable to service used in more than one unit shall be distributed pro rata on the basis of the turnover to the concerned unit to the sum total of the turnover of all the units to which the service relates.

For example, in case of services by way of advertisement –

(i) If the advertisement is for a product or service provided from only one unit, the said credit shall be distributed only to that unit; and if two units, the said credit shall be distributed only to those two units, in proportion to the respective turnovers;

(ii) If the advertisement is for the company as such, the said credit shall be distributed only to the extent of the turnover of units registered and entitled to avail Cenvat Credit to the total turnover of the company including unregistered units.

39.2 W.e.f. 1.7.2012, vide Notification No. 28/2012-CE (NT) dated 20.06.2012 in case of input service distributor, credit of service tax attributable to service used in more than one unit shall be distributed pro rata on the basis of the turnover during the period of the concerned unit to the sum total of the turnover of all the units to which the service relates during the same period.

39.3 The Cenvat Credit (Third Amendment) Rules, 2014 as notified vide Notification No. 5/2014-CE (NT) dated 24.02.2014 w.e.f. 1.4.2014 has amended Rule 7 of CCR, 2004 in respect of manner of distribution of credit by Input Service Distributor (ISD). The explanation defining 'relevant period' has also been substituted.

39.4 Accordingly, Service Tax credit attributable to service used by one or more units exclusively engaged in manufacture of exempted goods or rendition of exempted service shall be barred from distribution of credit. Further, credit of services used wholly by a unit shall be distributed only to that unit. Pro-rata distribution of Service Tax credit shall be based on turnover of units using said service during relevant period to total turnover of all its units operational in current year, during said relevant period. Assessee shall have to ascertain the turnover of all such units to distribute credit.

39.5 The definition of "relevant period" has been changed which shall now mean as follows :

- a. If the assessee has turnover in the 'financial year' preceding to the year during which credit is to be distributed for month or quarter, as the case may be, the said financial year; or
- b. If the assessee does not have turnover for some or all the units in the preceding financial year, the last quarter for which details of turnover of all the units are available, previous to the month or quarter for which credit is to be distributed."

39.6 Thus, the ratio of distribution of Cenvat credit to concerned unit, for example, financial year 2014-15 would be turnover of a concerned unit for the financial year 2013-14, as divided by turnover of all the related units for the financial year 2013-14.

40. Effectively, services used by more than one unit exclusively engaged in exempted goods or exempted services shall not be distributed. Further, credit pertaining to or used only and wholly by a unit shall be distributed to that unit only. Since the provisions relating to distribution of credit from Input Service Distributor were further amended vide Notification No. 5/2014 dated 24.02.14 and there was confusion as to whether credit pertaining to more than one unit is to be distributed amongst only those units to which the service pertains or to all the units. This has been clarified by CBEC vide Circular No. 334/15/2014-TRU dated 10.07.14 wherein it has been explained that credit is to be distributed to all the units if any service pertains to more than one unit.

41. Input service distributor can distribute Cenvat Credit of Service Tax on input services as per Rule 7 of Cenvat Credit Rules. Rule 7 provides for the mechanism of distribution of common input service credit by the Input Service Distributor to its manufacturing units or to units providing output services. An amendment was carried out vide Notification no. 05/2014-CE (N.T.) dated 24th February, 2014, amended Rule 7(d) of the said rules, providing for distribution of common input service credit among all units in their turnover ratio of the relevant period. Rule 7(d), after the amendment, reads as under:

"Cenvat credit of service tax attributable to service used by more than one unit shall be distributed pro rata on the basis of the turnover of such units during the relevant period to the total turnover of all its units, which are operational in the current year, during the said 'relevant period' "

42. Doubts have been raised regarding the manner and extent of the distribution of common input service credit in terms of amended rule 7 [especially rule 7(d)] of CCR, 2004. Rule 7 provides for the mechanism of distribution of common input service credit by the ISD to its manufacturing units or to units providing output services. These doubts have arisen with respect to the meaning of the words 'such unit' used in rule 7(d). It has been stated in the representations that due to the use of the term 'such unit', the distribution of the credit would be restricted to only those units where the services are used. It has been interpreted by the trade that in view of the amended rule 7(d) of CCR, 2004 the credit available for distribution would get reduced by the proportion of the turnover of those units where the services are not used.

43. To make the intent of the amended rule clear, Circular No. 178/4/2014-ST dated 11.07.2014 was issued by the CBEC clarifying the manner of distribution of common input service credit under Rule 7(d) of the Cenvat Credit Rules, 2004. The clarification given is in relation to the amendment made vide Notification No. 05/2014-CE (NT) dated 24.02.2014 by way of an illustration which is as follows :-

43.1 An Input Service Distributor (ISD) has a total of 4 units namely 'A', 'B', 'C' and 'D', which are operational in the current year. The credit of input service pertaining to more than one unit shall be distributed as follows:

$$\text{Distribution to 'A'} = X/Y * Z$$

X = Turnover of unit 'A' during the relevant period

Y = Total turnover of all its unit i.e. 'A'+ 'B'+ 'C'+ 'D' during the relevant period

Z = Total credit of service tax attributable to services used by more than one unit

Similarly the credit shall be distributed to the other units 'B', 'C' and 'D'.

Illustration:

An ISD has a common input service credit of ₹ 12000 pertaining to more than one unit. The ISD has 4 units namely 'A', 'B', 'C' and 'D' which are operational in the current year.

Unit	Turnover in the previous year (in Rs.)
A (Manufacturing excisable goods)	25,00,000
B (Manufacturing excisable and exempted goods)	30,00,000
C (providing exclusively exempted service)	15,00,000
D (providing taxable and exempted service)	30,00,000
Total	1,00,00,000

The common input service relates to units 'A', 'B' and 'C', the distribution will be as under:

- (i) Distribution to 'A' = $12000 * 2500000 / 10000000 = 3000$
(ii) Distribution to 'B' = $12000 * 3000000 / 10000000 = 3600$
(iii) Distribution to 'C' = $12000 * 1500000 / 10000000 = 1800$
(iv) Distribution to 'D' = $12000 * 3000000 / 10000000 = 3600$

The distribution for the purpose of Rule 7(d), will be done in this ratio in all cases, irrespective of whether such common input services were used in all the units or in some of the units.

44. It is crystal clear from the above, that Pro-rata distribution of Service Tax credit shall be based on the turnover of units using said service during relevant period to total turnover of all its units operational in current year, during the said relevant period. The assessee shall have to ascertain the turnover of all such units to distribute the Input Service credit. There is no provision under law that the Input Service can be distributed as "Export Business Ratio" There is no ambiguity in this fact inasmuch as all the facts are clarified vide various Notifications and Circulars issued by the Board/Government. Notifications are statutes issued by the Government to exercise the power of a legislative enactment and ensure the procedural aspects of the law. Subsequent circulars issued are normally explanatory or interpretative of the law. These Notifications are to be followed to the core without making any adjustments as per convenience. Thus when a notification has laid down a certain procedure along with conditions, it is imperative for everyone to follow the same. Here in this case, M/s. TPL has violated Rule 7 of the Cenvat Credit Rules, inasmuch as that, as per condition [d] of Rule 7 of Cenvat Credit Rules, 2004, credit of such services is to be distributed pro-rata on the basis of turnover of the concerned unit vis-à-vis the total turnover of all the units to which the service relates and M/s. TPL has distributed the same under "Export Business Ratio" as per their convenience.

45. It is the claim of M/s. TPL that the invoices on the basis of which Cenvat credit was taken at Indrad unit were called for by the Department; however, during the scrutiny of the same, no discrepancies were found. In this regard, I state that on scrutiny of the invoices, it is impossible to ascertain the "manner of distribution" of Cenvat credit, which is the issue under dispute; more so, it is beyond any scope to ascertain that the distribution of Cenvat Credit had been done on the basis of "Export Business Ratio" instead of "Company Business Ratio" from the scrutiny of the invoices. Therefore, M/s. TPL cannot claim that this discrepancy was not noticed by the Department on scrutiny of the invoices. Further, only the Cenvat Credit of 'input services' can be distributed. Hence a service procured needs to be assessed whether it is an 'input service' at any of the units of the ISD. In this case, whether the services amounts to Input Services or otherwise, is not a matter of contention.

46. M/s. TPL, in its defence submissions, has taken support of the fact that in none of the audit reports or scrutiny of Cenvat records, the said practice adopted by M/s. TPL for distribution of ISD credit in terms of Rule 7 of Cenvat Credit Rules, 2004 or availment of ISD credit by Indrad unit was challenged by the department in any form. The Supreme Court, in the case of CCE v/s. Mehta & Co. reported at 2011(264) ELT 481 (SC), has held that "Demand - Limitation - Relevant date for computation of extended period for show cause notice - Cause of action is date of knowledge". Further, just because the discrepancy was not pointed out, it does not mean that the procedure followed by M/s. TPL is correct.

47. It is the claim of M/s. TPL that vide their letters dated 03.05.2011, 11.02.2014, they

have informed the department about the above mentioned method of distribution of credit by M/s. TPL. However, on scrutiny of the above letters, I find that these letters were addressed to the offices of erstwhile Commissionerate, Central Excise, Ahmedabad-III, where the Indrad Unit of M/s. TPL is located. Further, I find that, never at any point of time, has M/s. TPL elaborated that Cenvat Credit was being passed on to Indrad Unit by their head office by wrongly applying Export Business Ratio, which is not prescribed under law. The activity of passing on of or distribution of Cenvat Credit was done by M/s. TPL, falling under the jurisdiction of erstwhile Commissionerate, Central Excise, Ahmedabad-II. M/s. TPL has never informed the concerned jurisdictional officers that they had or were indulged in such a practice of distribution of Cenvat Credit on the basis of Export Business Ratio. Shri Sachindra Patel, Excise Manager, of M/s. TPL, during the course of his statement recorded on 01.01.2015 under Section 14 of the Central Excise Act, 1944, read with Section 83 of the Finance Act 1994, has also inter alia, stated that they had not informed or brought to the knowledge to the department about distribution procedure w.e.f. 01.04.2012, as they believed that there was no change required in practice followed.

48. Thus M/s. TPL has suppressed a vital fact from the Department in order to avail excess Cenvat Credit. I find that M/s. TPL have suppressed the facts from the department with intent to pass on ineligible Cenvat credit of input service to the manufacturing unit, for which they were not legitimately entitled to. Thus, by passing excess Cenvat credit to its Indrad Unit during the period from April 2012 to March 2014, the assessee has contravened the provisions as laid down under Rule 4A(2) of service tax Rules, 1994. Thus this is a fit case for invoking extended period of 5 years as provided under Section 11A of the Central Excise Act, 1944 read with Section 73(1) of Finance Act to disallow and to recover Cenvat Credit along with interest in terms of Rule 14 of Cenvat Credit Rules, 2004 from their manufacturing units who have availed and utilised the said Cenvat Credit.

49. It appears that the assessee had not disclosed full, true and correct information about their manner of distribution of Cenvat Credit. Thus, it appears that there is a deliberate withholding of essential material information from the department about manner of distribution of Cenvat Credit inasmuch as that they had used "Export Business Ratio" instead of "Company Ratio" for passing on excess Cenvat Credit to Indrad unit, which would otherwise have lapsed. It appears that all these information have been concealed from the department deliberately, consciously and purposefully and therefore, this is a fit case to invoke the extended period under the proviso to Section 73 (1) of Finance Act, 1994 to demand the Service Tax not paid. Consequently, I hold that the deliberate act of omission and commission renders the M/s. TPL liable for penal action under Rule 15 A of the Cenvat Credit Rules, 2004.

50. In the era of self-assessment, the assessee is required to be proactive in declaring their activities to the Department. Here, I reiterate the judgment of the Hon'ble Supreme Court, in the case of CCE v/s. Mehta & Co. reported at 2011(264) ELT 481 (SC), has held that "Demand - Limitation - Relevant date for computation of extended period for show cause notice - Cause of action is date of knowledge"


51. Merely informing the Department about the "amount" of credit availed was not sufficient, inasmuch as M/s. TPL very tactfully informed the department about the quantum of Cenvat Credit wrongly availed/utilised/distributed to their Indrad Unit, without categorically informing the department that they had passed on excess Cenvat Credit to this unit by applying "Export Business Ratio" instead of "Company Ratio". Further, M/s. TPL also did not categorically disclose the nature of the input services inasmuch as that it was not possible for the scrutinising officer to demarcate the nature/source of the input services from the cumulative total of the Cenvat Credit.

52. In view of the above, it can be concluded that M/s. TPL had suppressed the facts relating to passing on of ineligible credit to their Indrad Unit, with an intent to avail excess Cenvat Credit. Therefore, I hold that M/s. TPL has wrongly distributed Cenvat Credit amounting to Rs.4,59,73,620/-, during the period from April 2012 to March 2014, under their invoices issued under Rule 4 A(2) of the Service Tax Rules, 1994, in terms of the provisions of Rule 2 (m) of the Cenvat Credit Rules, 2004. In view of the above, I hold that M/s. TPL is liable to penalty under Rule 15 A of the Cenvat Credit Rules, 2004 and pass the following order:

: O R D E R :

- (i) I hold that M/s. TPL has wrongly distributed total Cenvat Credit amounting to Rs. 4,59,73,620/- (Basic Rs.44634531/- Ed Cess Rs.892718/- and H.Ed Cess Rs. 446370/-) (Rs. Four Crores Fifty Nine Lacs Seventy Three Thousand Six Hundred Twenty Only) during the period from April 2012 to March 2014, under their invoices issued under Rule 4A(2) of Service Tax Rules, 1993, in terms of Rule 2(m) of the Cenvat Credit Rules, 2004.
- (ii) I impose penalty amounting to Rs.5000/- (Rupees Five Thousand only) on M/s. TPL under Rule 15 A of the Cenvat Credit Rules, 2004.

53. The proceedings initiated vide Show Cause Notice no. STC/4-01/O&A/2017-18, dated 13.09.2017, is hereby disposed off.


(Dr. BALBIR SINGH)
COMMISSIONER,
CENTRAL G.S.T. & C.EX.,
AHMEDABAD NORTH

F.No. STC/4-01/O&A/2017-18

Date : 16.12.2019

By Regd. Post AD

To
M/s. Torrent Pharmaceuticals Limited,
Torrent House,
Ashram Road,
Ahmedabad-380009

Copy to :

- (i) The Principal Chief Commissioner, PCCO, Ahmedabad Zone, Ahmedabad
(ii) The Assistant Commissioner, Division-VII,CGST, Ahmedabad (North)
(iii) The Superintendent, AR-I, Div-VII,Ahmedabad (North)
✓(iv) Guard File.

