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# केन्द्रीय उत्पाद शुल्क एवम सेवा कर आयुक्तालय , भावनगर
## OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX
## प्लॉट नं. 6776–बी / 1, 'सिध्धि सदन' बिल्डिंग,
## PLOT NO. 6776/B-1, "SIDDHI SADAN" BUILDING,
## नारायण उपाध्याय मार्ग, भावनगर–364001
## NARAYAN UPADHYAY MARG, BHAVNAGAR-364 001.
## दूरभाष : (0278) 2523627 फैक्स : 0278-2513086

रजिस्टर्ड डाक पावती द्वारा
**By R.P.A.D.**

फाईल सं. V/15-66/Dem/HQ/2009
F. No.

आदेश की तारीख : 11/08/2011.
Date of Order :
जारी करने की तारीख : 11/08/2011.
Date of Issue :

पारितकर्ता
Passed by
**श्री एन के भुजबल**
**SHRI N. K. BHUJABAL**
**आयुक्त , केन्द्रीय उत्पाद शुल्क एवम सेवा कर, भावनगर**
**Commissioner, Central Excise and Service Tax, Bhavnagar**

**मूल आदेश संख्या Order-in-Original No. 29 to 34/BVR/Commissioner/2011**

1. आदेश की यह प्रति जिसको जारी किया गया है उनके व्यक्तिगत उपयोग के लिए निःशुल्क भेजी जा रही है ।

1. This copy of order is granted free of charges for private use of the person(s) to whom it is issued and sent.

2. यदि कोई व्यक्ति इस आदेश से स्वयं को असंतुष्ट अनुभव करता है , तो इस आदेश के विरूद्व सीमा शुल्क , केंद्रीय उत्पाद शुल्क एवं सेवा कर अपीलीय प्राधिकरण , ओ–20 , मेघाणी नगर , नया मानसिक अस्पताल संकुल , अहमदाबाद को केंद्रीय उत्पाद शुल्क अधिनियम की धारा 35–बी की उपधारा 1(a) की शर्तों के आधार पर अपील कर सकता है । धारा 35–बी (1) (परंतुक) (a) से (d) के अंतर्गत मामले जैसे कि हानि ,छूट ,बॉण्ड के अंतर्गत निर्यात , शुल्क क्रेडिट के मामले , आवेदन के पुनरीक्षण के मामलों में आवेदन भारत सरकार के संयुक्त सचिव , राजस्व विभाग , वित्त मंत्रालय , नई दिल्ली को बंधनकर्ता रहेगा ।

2. Any person(s) deeming himself aggrieved by this Order may appeal against this order to The Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Ahmedabad, O-20, Meghani Nagar, New Mental Hospital Compound, Ahmedabad, in terms of the provision of Section 35B(1)(a) of the Central Excise Act, 1944. If the case covered under the category specified in Section 35B(1) (Proviso) (a) to (d), i.e. Loss, Rebate, Export under Bond, duty credit cases, the Revision application shall lies to the Joint Secretary to the Government of India, Department of Revenue, Ministry of Finance, New Delhi.

3. अपील फॉर्म E.A.-3 में केंद्रीय उत्पाद शुल्क (अपील) नियम , 2001 के नियम 3 के उपनियम 2 में विनिर्दिष्ट व्यक्ति द्वारा की जानी चाहिए ।

3. The Appeal should be filed in form EA.-3. It shall be signed by the person as specified in Rule 3(2) of the Central Excise (Appeals) Rules, 2001.

4. केंद्रीय उत्पाद शुल्क अधिनियम , 1944 की धारा 35–B के अंतर्गत अपील इस आदेश की प्राप्ति के तीन माह के अंदर दर्ज करवानी होगी ।

4. The appeal should be filed within three months from the date of communication of this order. (Section 35B of the Central Excise Act, 1944).

5. यह अपील चार प्रतियों में दाखिल की जाए और जिसके विरूद्व अपील की गई है ,उस आदेश की समान संख्या में अतिरिक्त प्रतियां संलग्न की जाए (इन में से कम से कम एक प्रति अधिप्रमाणित होनी चाहिए) । उक्त अपील के समर्थक सभी दस्तावेज चार प्रतियों में भेजे जाए । उक्त अपील व्यक्तिगत रूप से रजिस्ट्रार के समक्ष प्रस्तुत की जाए या पंजीयक के नाम से रजिस्ट्री डाक द्वारा भेजी जाए । परन्तु उक्त रजिस्ट्रार के कार्यालय में प्राप्ति की तारीख नियत अवधि में होगी ।

संयुक्त कार्यालय भावनगर केन्द्रीय उत्पाद शुल्क

5. 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. The appeal shall be presented in person to the Register or sent by Registered Post addressed to the Registrar. But the date of receipt in office of the said Registrar in time or otherwise will be the relevant date for the purposes of limitation of time.

6. फीस का भुगतान न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के पक्ष में रेखांकित बैंक ड्राफ्ट द्वारा अधिनियम के प्रावधानों के अंतर्गत करना अपेक्षित है । यह ड्राफ्ट जहॉ पीठ स्थित है , किसी राष्ट्रीयकृत बैंक की किसी शाखा के नाम पर जारी किया जाए और उस उक्त अपील प्रपत्र के साथ डिमाण्ड ड्राफ्ट संलग्न किया जाना चाहिए ।

6. The Fee is required to be paid as under through a cross Bank Draft in favour of the Assistant Registrar of Bench of the Tribunal on a branch of any Nationalized Bank located at the place where the Bench is situated and it shall be attached to the form of appeal.

(क) जहां पर मांगा गया शुल्क ब्याज और दण्ड रूपए 50,00,000/- (रूपए पचास लाख) से ज्यादा हो , रू. 10,000/- (रूपए दस हजार )

(a) Where the amount of duty and interest demanded and penalty is levied is more than ₹50,00,000/- (Rupees Fifty Lakhs), ₹ 10,000/- (Rupees Ten Thousand);

(ख) जहां पर मांगा गया शुल्क ब्याज और दण्ड रूपए 5,00,000/- (रूपए पांच लाख) से अधिक हो लेकिन , रूपए 50,00,000/- (रूपए पचास लाख) से कम हो 5,000/- (रूपए पांच हजार )

(b) Where the amount of duty and interest demanded and penalty levied is more than ₹5,00,000/- (Rupees Five Lakhs) but not exceeding ₹ 50,00,000/- (Rupees Fifty Lakhs), ₹ 5,000/-(Rupees Five Thousand);

(ग) जहां पर मांगा गया शुल्क ब्याज और दण्ड रूपए 5,00,000/- (रूपए पांच लाख) अथवा कम हो , रूपए 1,000/- (रूपए एक हजार )

(c) Where the amount of duty and interest demanded and penalty levied is ₹ 5,00,000/- (Rupees Five Lakhs) or less, ₹ 1,000/-(Rupees One Thousand);

7. इस आदेश की प्रतिलिपि पर न्यायालय शुल्क मुद्रांक अधिनियम , 1970 की अनुसूची 1 मद 6 के अंतर्गत निर्धारित 50 पैसे का न्यायालय शुल्क मुद्रांक (कोर्ट फी स्टाम्प ) लगाया जाना चाहिए ।

7. The Copy of this order attached therein should bear a Court fee stamp of 50 paise as prescribed under schedule 1 of Article 6 of the Court fee stamp Act, 1970.

8. उक्त अपील फॉर्म के साथ शुल्क / दण्ड की अदायगी का प्रमाण संलग्न किया जाना चाहिए ।

8. Proof of payment of duty, penalty etc. should also be attached in original to the form of appeal.

9. अपील पर रू. 5 (रूपए पांच ) का न्यायालय शुल्क मुद्रांक (कोर्ट फी स्टाम्प ) लगाया जाना चाहिए ।

9. Appeal should bear a Court Fee Stamp ₹ 5/-.

10. पूर्ण जानकारी हेतु केंद्रीय उत्पाद शुल्क (अपील) नियम , 2001 एवम CEGAT (कार्यविधि) नियम 1982 देखें ।

10. Please refer to the Central Excise (Appeals) Rules, 2001 and the CEGAT, Procedure Rules, 1982 for complete details.

**To,**
M/s. GHCL Ltd.,
Sutrapada,
Veraval Kodinar Highway,
Taluka: Veraval, Distt: Junagadh.

विषय : कारण बताओ नोटिस संख्या :

Subject: Show Cause Notice No. (i) V/15-66/Dem/HQ/2009 dated 28.10.2009, (ii) V/15-42/Dem/HQ/2009 dated 13.07.2009, (iii) V/15-106/Dem/HQ/ 2009 dated 06.01.2010, (iv) V/15-121/Dem/HQ/ 2009 dated 15.04.2010, (v) V/15-11/Dem/HQ/2010 -11 dated 30.07.2010 and (vi) V/15-22/Dem/HQ/2010 -11 dated 19.10.2010 issued to M/s. GHCL Ltd., Sutrapada, Veraval Kodinar Highway, Taluka Veraval, Distt. Junagadh.

**BRIEF FACTS :-**

M/s. GHCL Ltd., Sutrapada, Veraval Kodinar Highway Taluka: Veraval Distt.: Junagadh-362275 (hereinafter referred to as 'the Noticee') are engaged in the manufacture of Soda Ash and Sodium Bicarbonate falling under Chapter Heading No. 2836 20 10 and 2836 30 00 respectively of the First Schedule to the Central Excise Tariff Act, 1985 (hereinafter referred to as final product) and are holding Central Excise Registration. The Noticee avails the CENVAT Credit under Cenvat Credit Rules, 2004 (hereinafter referred to as CCR, 2004). The Noticee also avails the Cenvat Credit in respect of Input Services and utilizes the same for the payment of Central Excise Duty on clearance of their final products.

2. It appeared on scrutiny of ER-1s that the noticee had wrongly availed the CENVAT credit on following categories of services and utilized for payment of Central Excise duty on clearance of their final product. The reasons for proposed denial of CENVAT credit are as follows :

(I) Security Services:

i. The Noticee has used the service for the colony (of staff) also the bifurcation of service used for factory as well as colony has not been provided.

ii. The noticee has used the Services at Pipavav port, which is beyond the factory premises of the Noticee.

iii. The invoice issued by the provider of service is incomplete in view of Rule 4A of the Service Tax Rules, 1994 (hereinafter referred to as STR) in as much as the name of the recipient of the service is mentioned as M/s. GHCL Coal Yard, Pipavav instead of M/s. GHCL Ltd., Sutrapada.

(II) Analysis and Inspection :-

i. The inspection and analysis has been done at Pipavav or Porbandar port, which are beyond the factory premises of the noticee.

ii. The above inspection/ analysis is the service provided before the commencement of manufacture or post manufacture of final product.

iii. The invoice issued by the provider of service is incomplete in view of Rule 4 of STR in as much as the name and address of the recipient of the service is mentioned as M/s. GHCL Ltd., Navrangpura, Ahmedabad instead of M/s. GHCL Ltd., Sutrapada.

(III) Custom House agent Service:-

i. The noticee has taken the service on import of the coal at Porbandar, which is beyond the factory premises of the noticee.

ii. The service is taken before the commencement of manufacture or post manufacture of final product

iii. The coal imported is not "input" of the final product

iv. The invoice issued by the provider of service is incomplete in view of Rule 4A of the STR in as much as the name of the recipient of the service is mentioned as M/s. GHCL, Ahmedabad instead of M/s. GHCL Ltd., Sutrapada.

(IV) Commissioning and Installation Service:-

i. The service is used in relation to erection of boiler and as such it is before the commencement of manufacture of the final product.

(V) Cost of facility management and maintenance and support fee:-

i. This service has no nexus to the manufacture of final product.

(VI) Mobile Service:-

i. The mobiles are used at Ahmedabad and not at the factory premises of the Noticee.

(VII) Service charges for Coal Shipment:-

i. The Service has been taken at Pipavav and Porbandar port and not at the factory premises of the noticee.
ii. The service taken is before the commencement of manufacture of the final product.
iii. The debit note issued is incomplete in view of Rule 4A of STR in as much as the category of service and its classification have not been mentioned in the Debit Note.

3. It had been alleged that the noticee had wrongly availed the CENVAT credit in as much as :-

(A) Services are used :-

i. Beyond the factory premises of manufacture of final product.
ii. Before commencement of manufacture
iii. After completion of manufacture.
iv. At their salt units / salt pan / depot / office / beyond the factory premises.
v. At colony / township area as well and no bifurcation is provided.
vi. Has no nexus with manufacturing activities

(B) I Service provider has issued Bills / Invoice which are :-

i. Not serially numbered
ii. Not having description / classification of service
iii. From more than one set of invoices and each invoice bears distinct Nos.
iv. From the premises other than the registered one.
v. Unsigned/ Xerox copy of Invoice/ challan
vi. Issued on the name of other office address.'

(B) II In case of input service distributed :-

i. Address of the provider of service has not been mentioned in the invoice.
ii. The category of the service is not in conformity with the provisions of the Finance Act, 1994.
iii. The Services are used beyond the factory premises.
iv. Amount of credit distribution has not been specified in the invoice.
v. Service Tax Registration No. of the distributor has not been mentioned as provided under Rule 4 A of Service Tax Rule, 1994.
vi. Invoices are not supplied by the party.

(C) From the details of service tax payment as ascertained from the service provider, it was observed that the noticee had availed CENVAT credit before the payment of Service Tax made by the service provider against the relevant invoices, as mentioned below.

| Sr. No. | Bill No. & Date | Service Tax credit availed (₹) | Payment of Service Tax made during Jan-08 to Oct-08 (₹) | Amount of undue CENVAT Credit (₹) |
|---|---|---|---|---|
| 1 | R.A. 001/ 04.02.2008 | 9,91,807/- | 5,53,758/- | 4,38,049/- |
| 2 | R.A. 002/ 04.03.2008 | | | |
| 3 | R.A. 003/ 08.04.2008 | | | |
| 4 | R.A. 004/ 21.05.2008 | 3,78,114/- | 0 | 3,78,114/- |
| TOTAL | | 13,69,921/- | 5,53,758/- | 8,16,163/- |

4. It appeared that the noticee had violated the provisions of CCR, 2004 in as much as: -

a. The Services on which the Cenvat Credit has been taken do not qualify as per the definition of Input Services as per Rule 2 (l) of CCR, 2004.

b. The invoice issued by the service provider do not contain all the particulars as prescribed under Service Tax Rules as required under Rule 9(2) of CCR,2004.

c. The invoices are having hand written serial number in contravention of what is prescribed under Rule 9 (2) of CCR, 2004 read with Para 3.2 of Chapter 4 of CBEC's Central Excise Manual.

d. and they have failed to take due care and prove the admissibility of the Cenvat credit availed and utilized, as per Rule 9 (6) of CCR, 2004.

5. Therefore, following Show Cause Notices were issued to the noticee proposing recovery of wrongly taken CENVAT Credit under Rule 14 of CCR, 2004 read with Section 11A(1) of the CEA, 1944 along with interest under Rule 14 of CCR, 2004 read with Section 11AB of the CEA, 1944 and also proposing Penalty under Rule 15(3) of CCR, 2004.

| Sr. No. | SCN No. and Date | Period covered | Amount Involved (₹) | Issuing Authority |
|---|---|---|---|---|
| 1 | V/15-42/Dem/HQ/2009 dated 13.07.2009 | July-08 to Sep-08 | 33,47,351/- | Addl. Commissioner |
| 2 | V/15-66/Dem/HQ/2009 dated 28.10.2009 | Oct-08 to Dec-08 | 1,20,77,544/- | Commissioner |
| 3 | V/15-106/Dem/HQ/ 2009 dated 06.01.2010 | Jan-09 to Mar.09 | 3,36,47,485/- | Commissioner |
| 4 | V/15-121/Dem/HQ/ 2009 dated 15.04.2010 | Apr-09 to June-09 | 80,96,052/- | Commissioner |
| 5 | V/15-11/Dem/HQ/2010 -11 dated 30.07.2010 | Jul-09 to Sep-09 | 1,69,86,851/- | Commissioner |
| 6 | V/15-22/Dem/HQ/2010 -11 dated 19.10.2010 | Oct-09 to Dec-09 | 1,54,28,994/- | Commissioner |

**DEFENCE REPLY :-**

6. The noticee in their written submission vide letter dated 17.09.2009 with respect to show cause notice F.No. V/15-42/Dem/HQ/2009 dated 13.07.2009 have denied the allegations contained in the SCN

7. It is submitted that in order to avail CENVAT Credit, the taxable service should qualify under the definition of 'input service' as defined in rule 2(l) of the Rules. Rule 2(l) of the Rules defines 'input service' as follows :-

"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 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 up to 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 up to the place of removal;*

8. It is submitted that the first leg of the definition namely the 'means clause' covers every service used by the manufacturer, whether directly or indirectly in or in relation to the manufacture of final products. It is nowhere mentioned in the rule that the input service actually be used in manufacture of final product. Any input service which has nexus whether directly or indirectly, in or in relation to the manufacture of final product is eligible for taking CENVAT credit. It is submitted that all the services utilized by them were for manufacture of their final product. They availed services such as security services, analysis and inspection services, CHA services and various other services for manufacture and clearance of final products.

9. It is submitted that Security services are availed for the security of the goods manufactured by them and also for security of the goods lying at Port meant for export. CHA services are used for clearance of coal imported by them. Commissioning and installation services are availed for erection of boiler at their manufacturing facility. Similarly, mobile phone services are used for the purposes of business. These services cannot be seen in isolation from the manufacturing activity of the noticee. Both the activities are integrally combined with each other in as much as the input services are not used by the noticee for any other reason apart from putting it to use for manufacturing operations. Hence the services availed by the noticee are for its manufacturing activities only. Therefore, the distinction sought to be made in the SCN in respect of the input services from the manufacturing activity of the noticee is incorrect in law.

10. It is submitted that the definition of the term input service does not require a one to one correlation for the purpose of availing CENVAT Credit. In other words, the noticee will be eligible to avail CENVAT credit of taxable

services received by it which are commercially expedient for its business. Further, so long as a service is used for business purposes, then the same qualifies as an input service. Manufacturer will be able to take the CENVAT credit of all input services which are directly or indirectly, in or in relation to manufacture availed by him without which the manufacture would be impossible or commercially inexpedient. The type of input services covered for the purpose of allowing credit of service tax paid are indeed quite wide. The scope has widened because of several other activities specifically mentioned in the inclusive part of the said definition. A manufacturer will be able to take CENVAT credit on all those input services which are so integrally connected with the manufacture of final product without which the said manufacturing process would be impossible or commercially inexpedient.

11. It is submitted that the costs of procuring these input services are forming part of the assessable value for the purposes of payment of Central Excise duty. In press note dated 12.08.2004 issued by the government clearly states that "In principle, credit of tax on those taxable services would be allowed that go to form a part of the assessable value of which excise duty is charged." It is undisputed that the costs of these services are forming part for the assessable value on which excise duty is charged. Following the same principle, CENVAT credit of canteen services availed by the assessee was allowed in the case of CCE V/s. GTC Industries Ltd. Reported at 2008 (12) STR 468 (Tri.-LB).

12. It is submitted that rule 3 of CCR, 2004 provides that a manufacturer or producer of final products shall be allowed to take credit of the duty of excise and service tax paid on any input or capital goods and any input service received by the manufacturer.

13. It is submitted that the taxable services received by the noticee necessarily qualify as input services within the definition of the term 'input service' under the Rules. They have referred to the case of the Commissioner of Central Excise, Hyderabad-IV V/s. Deloitte Tax Services India Pvt. Ltd. Reported at 2008 (11) STR 266 (Tri. Bang.), M/s. ABB Ltd. V/s. CCE & ST Bangalore 2009 (15) STR 23 (Tri.-LB), Manikgarh Cement V/s. CCE & C 2008 (9) STR 554 (Tri.-Mum) etc.

14. The noticee submitted as follows in respect of individual Services how the same qualify as input service for the purpose of availing CENVAT credit.

(a) Security Services :- Provision of security services at residential colony of the noticee is admissible since the residential colony is meant for continuous supply of manpower to the manufacturing operations of the notices. In this regard reliance is placed upon the decision in the case of Manikgarh Cement V/s. CCE & C 2008 (9) STR 554 (Tri. Mum) and CCE V/s. Ultratech Cements Ltd. Reported at 2009 (13) STR 694 (Tri. Mum). The contention of the department that the security services are used at Pipavav Port and therefore not eligible is also erroneous. The security services at Pipavav Port is obtained for security of input namely coal. Any services availed for the procurement of input is specifically covered by the definition of input services and therefore Cenvat credit thereof is admissible. They relied upon the decision in the case of CCE V/s. Alidhara Textool Engineers Pvt. Ltd. Reported at 2009 (14) STR 305 (Tri.-Ahmd). They submitted that the issue of availment of Cenvat Credit of service

tax paid on Security services is settled in their favour in their own case. In final orders No. A/1466/WZB/AHD/09 dated 15.07.2009 and A/815/WZB/AHD/09 dated 23.04.2009, the CESTAT, Ahmedabad has in identical situation held that the Cenvat credit of service tax is available to the noticee. As regards the allegation that the invoice raised by the service provider is incomplete in terms of Rule 4A of STR, 1994 in as much as the address mentioned in the Invoice is GHCL, Coal Yard, Pipavav instead of address of the factory premises, it is submitted that said Rule 4A of STR, 1994 prescribes that the service is to be provided on invoice or challan. The invoice or challan, as the case may be, should contain certain information such as the invoice should be serially numbered, contain name, address of the service recipient etc. In this case, the address is mentioned of the noticee but it is different than the factory premises of the noticee. As submitted above, the place of receipt of service may be different than the factory premises. The invoice contain all the details as prescribed in Rule 4A of STR, 1994. Therefore Cenvat Credit availed by them is correct.

(b) Analysis and Inspection Service :They have availed the analysis and inspection service for their export products and for the import of inputs. They exported Soda Ash Dense from Porbandar Port and for the technical analysis of the export product availed the services of technical inspection agency. Similarly, for import of their inputs namely non-coking coal, the noticee availed the services of technical inspection agency to check whether the inputs meet the requisite qualities at Pipavav Port. It is submitted that so far as the services availed for the export products, the noticee are the owner of the goods till the time it is exported. In case of export of goods, the port of export is the place of removal and therefore, all the services availed up to the place of removal are input services and therefore, credit cannot be denied to them. They placed reliance on the decision of CESTAT in case of CCE V/s. Rolex Rings Pvt. Ltd. reported at 2008 (230) ELT 569 (Tri.-Ahmd.). It is also submitted that the Cenvat Credit of service tax paid on technical analysis and inspection services for inputs also cannot be denied because the definition of 'input services' in Rule 2(l) of CCR, 2004 specifically mentions all the services availed for procurement of inputs are input services. Here in this case, the noticee have availed the technical inspection agency's services for technical analysis of non-coking coal imported by them which is an input. Therefore, Cenvat credit of service tax paid on technical inspection agency's services cannot be denied.

(c) Custom House Agents' service : The noticee submitted that they availed the services of CHA on import of coal at Porbandar. Even if the services are not received at the factory premises of the noticee, credit is available. It is submitted that the allegation that the services are availed before the commencement of manufacture/ or post manufacture of the final product and therefore, credit is not available, is not sustainable. The department has not alleged that the services are not availed in relation to business activity of the noticee. The credit is being denied simply on the ground that the service is availed before

commencement/ post manufacture of final product. Going one step ahead in favour of the assessee, the Hon'ble Larger Bench in the case of M/s. ABB Ltd. V/s. CCE & ST, Bangalore 2009 (15) STR 23 (Tri.-LB) has held that there is no qualification to the word 'activities'. There is no restriction that the activities relating to business should be relating to only the main activities or essential activities and therefore, all other activity relating to business falls within the definition of input service. The larger bench further held that the expression 'such as' is purely illustrative. The usage of the words 'such as' after the expression activities relating to business in the inclusive part of the definition further supports the view that the definition of the term input service would not be restricted to services specified thereafter. Therefore, whatever may be the activity, either pre manufacture or post manufacture of the final product, if it is related to the business activity of the noticee, credit cannot be denied.

(d) Commissioning and Installation Service :- They have erected a boiler at their factory premises and for the erection and commissioning of the boiler, they have availed the services of an agency. It is submitted that the boiler has been erected in the continuous process of manufacture of final product of the noticee. Even if it is presumed (without admitting) that the boiler has been erected for pre manufacture activity of the noticee, then also credit cannot be denied. As per Rule 2(l) of CCR, 2004, the services availed for modernization, setting up of the factory premises are also input services. Going by the same logic, even if it is presumed that the boiler has been erected before manufacture of final product of the noticee, it is in relation to modernization of the factory and therefore, it is an input service.

(e) Cost of facility management and maintenance and support fee :- It is submitted that they have installed ERP software for better control over the financial and accounting functions as well as factory operations. The ERP software requires frequent updating and maintenance in order to provide the desired purposes. It is submitted that as per the definition of input services as defined in Rule 2(l) of the CCR, 2004, the services in relation to accounting, financing and quality control are input services. The ERP software serves the purpose of accounting, financing and quality control and therefore, any service in relation to ERP software will appropriately fall under the category of 'input services'. The accounting, financing and quality control are necessarily having nexus with the final product and therefore, the services are input services and Cenvat credit cannot be denied.

(f) Mobile Phone Services : It is submitted that the department has not alleged that the mobile phones are not used for the business purposes. The only reason for denial of credit is that the mobile phones are used at Ahmedabad office of the noticee. They relied on the decisions in case of Indian Rayon & Industries Ltd. V/s. CCE reported at 2006(4) STR 79 (Tri.-Mum), CCE V/s. Excel Corp. Care Ltd. Reported at 2008 (12) STR 436 (Guj.). They also referred to the case of Force Motors Limited V/s. CCE, Pune reported at 2009 (13) STR 692 (Tri.-Mum).

(g) Service Charges for coal shipment :- They submitted that even if the services are received at the place other than factory of the manufacturer, credit cannot be denied. Further, relying on the Larger Bench's decision in the case of ABB Ltd. (supra), it is submitted that when the activities are related to the business, the credit would be available. There is nothing in the Cenvat Credit Rules which bifurcates the activities related to business in post manufacturing and pre manufacturing activities. On this basis, the credit of service charges would be admissible to the noticee even if it is related to pre commencement of manufacture of final product.

15. It is submitted that the expenditure incurred towards security services, analysis and inspection services, CHA services, Commissioning and Installation services, mobile phone services qualify as business expenditure for the purpose of deduction under section 37 of Income Tax Act, 1961. Drawing conclusion from the aforesaid, it can be submitted that the aforesaid services are relatable to the business of the noticee and thus qualifies as input service. In this regard, they relied upon the decision in the case of Manikgarh Cement V/s. CCE & C reported at 2008 (9) STR 554 (Tri.-Mum).

16.1 As regards the proposed denial of Cenvat Credit on the ground that in some of the invoices, the address of the noticee is different than its registered premises, the documents are incomplete as it do not contain all the details, the services are availed by the noticee at different ports, it is submitted that once a service qualifies as an input service, the Cenvat Credit cannot be denied simply on the ground that the invoice was not raised in the name of registered office. They submitted that it is not necessary that such services should be received in the registered premises of the service provider, as input services are qua the service providers and not qua the registered premises of the service provider. No such condition has been prescribed in the definition of input service that the service must be received in the registered premises. They submitted that as per the provisions of rule 4(1) of the Rules, Cenvat Credit can be availed when the inputs are received in the factory. Similar restrictions do not exist as regards Cenvat Credit on input services. The Cenvat Credit is available even where the input services are received in the Head Office/ Registered Office or any Regional Offices or any other place of business of the service provider. They referred to Rule 3(1) of CCR, 2004 in this regards. They submitted that unlike in respect of capital goods or inputs, it is not necessary that input services should be received in the premises or registered premises of the service provider. As the situs of the receipt of the input service is not specified in the Rules, Cenvat Credit can be availed on the input services received by them in any of their offices.

16.2 It is submitted that without prejudice to the submissions that the invoices do not contain the registration number and serial number, either do not have the full address of the recipient of service or name of the service receiver is missing even assuming that some of the invoice do not contain such particulars, still it is submitted that the substantial benefit of Cenvat credit cannot be denied for such a procedural irregularity. Rule 9(2) of the CCR, 2004 provides that Cenvat Credit shall not be denied if any of the documents mentioned in Rule 9(1) of the CCR, 2004 does not contain all the particulars required to be contained therein. It is submitted that Cenvat credit cannot be denied merely for the procedural lapse. It is not the case of the Department that the invoices raised by the suppliers / service provider does not contain the details of payment of duty etc.

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service tax, description of taxable service, assessable value, name and address of the factory or warehouse or provider of the input service. The only objection raised is that the invoices do not contain the minor details like category of service or classification of services is missing. These details are not amongst the essential information mentioned in rule 9(2) of the CCR, 2004. Hence the Cenvat credit cannot be denied for the reason that such particulars are not mentioned in the invoice. They relied upon the following decisions.

(a) Kamakhya Steel Ltd. V/s. CCE, Meerut - 2000 (121) ELT 247.
(b) Modi Xerox Financial Services V/s. CCE – 2005 (191)ELT 457
(c) Zinc-O-India V/s. CCE - 1996 (88) ELT 373
(d) Bajaj Tempo Ltd. V/s. CCE – 1999 (108) ELT 145
(e) J.K. Cement Works V/s. CCE – 1999 (114) ELT 35
(f) Mangalore Chemicals and Fertilizers V/s. D.C. – 1991 (55) ELT 437 (SC)

17. It is submitted that charging of interest under the provisions of rule 14 of CCR, 2004 read with section 11AB of the Act is not proper and legal since the denial of Cenvat credit itself is not sustainable. The noticee have also not contravened any of the provisions of the Rules, therefore, no penalty can be imposed on the noticee. It is also submitted that for imposing penalty, there should be an intention to evade payment of excise duty, or there should be suppression or concealment. The penal provisions are only a tool to safeguard against contravention of the rules. It is submitted that the noticee has always been and is still under the bona fide belief that they had rightly availed the credit of input services based on the invoices issued by the service providers. The noticee had no intention to evade payment of excise duty as mentioned above. Therefore, no penalty is imposable on the noticee. They relied upon the decisions in the case of Hindustan Steel Ltd. V/s. The State of Orissa reported in AIR 1970 (SC) 253 and Kellner Pharmaceuticals Ltd. V/s. CCE reported at 1985 (20) ELT 80.

**PERSONAL HEARING :-**

18 The noticee was requested vide letter dated 22.09.2010 to file their written submission in reply to the remaining show cause notices and it was intimated that Personal Hearing was fixed on 28.09.2010. However the noticee vide their letter dated 27.09.2010 requested for further time to make representation in the matter. The noticee was again requested vide letter dated 10.01.2011 to file their written submission in reply to the remaining show cause notices and it was intimated that Personal Hearing was fixed on 17.01.2011. The noticee vide their letter dated 12.01.2011 again requested for further 3 weeks time to compile the data & facilitate verification. Thereafter, Personal Hearing was fixed on 07.03.2011

19. Shri Jigar Shah, Advocate, Shri Deepak Singhal, Manager Accounts, GHCL Ltd. and Shri Manish Depala, Officer, Indirect Taxation, GHCL Ltd. appeared for Personal Hearing on 07.03.2011 and stated that they are filing the written reply for the SCN and submissions made therein may be taken up as submission during Personal Hearing as well. They requested for two weeks time to provide bifurcation details of services availed on residential colonies/ township which was granted. They also requested for passing a common order in all these SCNs.

20. The noticee filed separate but similar written submission on 07.03.2011 in respect of five SCNs viz. (i) SCN F. No. V/15-66/Dem/HQ/2009 dated 28.10.2009, (ii) SCN F. No. V/15-106/Dem/HQ/2009 dated 06.01.2010, (iii) SCN F. No. V/15-121/Dem/HQ/2009 dated 15.04.2010, (iv) SCN F. No. V/15-11/Dem/HQ/2010-11 dated 30.07.2010 and (v) SCN F. No. V/15-22/Dem/HQ/2010-11 dated 19.10.2010.

21. It is inter-alia submitted that the credit has been denied on the following grounds:-

a. The services on which the Cenvat credit has been taken do not qualify the definition of input services as defined in Rule 2(l) of Cenvat Credit Rules, 2004;

b. The invoices issued by the service provider do not contain all the particulars as prescribed under Service Tax Rules, 1994 as required under Rule 9(2) of Cenvat Credit Rules, 2004;

c. The Noticee have failed to take due care and prove the admissibility of the Cenvat Credit as prescribed in Rule 9(6) of Cenvat Credit Rules, 2004.

They denied all the allegations contained in the SCNs as incorrect and unsustainable on the following grounds which are independent and without prejudice to each other.

22.1 Services received by the Noticee is used in relation to manufacture and clearance of final products from place of removal. Hence, the same is covered under "means" part of definition of "input service. Therefore, the Noticee has correctly availed credit.

22.2 Rule 3(1) of the CENVAT Credit Rules, 2004 provides that a manufacturer of final products shall be allowed credit of service tax paid on input services. Rule 3(4) of the said rules provides that the Cenvat credit may be utilized for payment of excise duty on final products or service tax on any output service.

22.3 They referred to the definition of 'Input service'.

22.4 They submitted that first leg of the definition which is commonly called 'means' portion would cover every service used directly or indirectly, in or in relation to manufacture of final products and clearance of final products upto the place of removal.

22.5 Second leg of the definition which is commonly called 'includes' portion could be dissected as under:

(a) 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,
(b) advertisement or sales promotion,
(c) market research
(d) storage up to the place of removal,
(e) procurement of inputs,
(f) activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security,
(g) inward transportation of inputs or capital goods and outward transportation up to place of removal

22.6 The Noticee submitted that the CHA Services, mobile telephone services, security services, consulting engineer services, advertising agency services etc. would be used in relation to manufacture of the final product i.e. the Soda Ash and Sodium Bicarbonate. Hence, the said services would be covered under the "means" part of the definition.

22.7 The Noticee submitted that the 'means' part of the definition is widely worded. The words 'directly or indirectly' and 'in or in relation to' further widen the scope of the definition. The words 'in or in relation to' have been interpreted by the Supreme Court in the case of CCE V/s Rajasthan State Chemical Works 1999 (55) ELT 444 (SC) and Union of India V/s Ahmedabad Electricity Co. Ltd 2003 (158) ELT 3 (SC) wherein it has been held that such words widen and expand the scope, meaning and content of expressions. Hence, services which are integrally connected with the process of manufacture without which such manufacture would be impossible or commercially inexpedient shall be covered within the definition of 'input service'.

22.8 The scope of the words 'directly or indirectly' as well as 'in or in relation to manufacture' has been explained by the Hon'ble Supreme Court in the decision of Doypack Systems (P) Ltd Vs UOI 1988 (36) ELT 201 SC wherein it was held by the Hon'ble Apex Court that the expressions "in relation to" is a very broad expression, which pre-supposes another subject matter. These are words of comprehensiveness which might both have a direct significance as well as an indirect significance depending on the context. The term "relating to" has been held to be equivalent to or synonymous with as to "concerning with" and "pertaining to". Moreover, it is well settled that the word "includes" is an inclusive definition and expands the meaning.

22.9 In CCE V/s East End Paper Industries Limited 1989 43 ELT 201 (SC), the Hon'ble Apex court held that the expression "in the manufacture of goods" should normally encompass the entire process carried out by the dealer in converting raw materials into finished goods. Where any particular process is so integrally connected with the ultimate production of goods that but for that process, manufacture or processing of goods would be commercially inexpedient, goods required in that process would fall within the expression "in the manufacture of goods".

22.10 Therefore, the Noticee submitted that the aforesaid services are certainly required 'in or in relation to manufacture' of the final products as it would not be possible to carry on the activity of manufacture i.e. the business of the manufacturer. The input services are so integrally connected with the process of manufacture of final products that without availing the input services the manufacture would not have been possible, therefore, it would be incorrect to suggest that the said services does not qualify as 'input service' in terms of Rule 2(l) of the said rules.

23. Without prejudice, the Noticee submitted that they have correctly availed credit as the aforesaid service is an "activity relating to business" which is covered by the includes clause of the definition.

23.1 The Noticee submitted that it is clear from the above definition of the term 'input service' that services which are specifically enumerated and similar activities which qualify as 'activities relating to business' would fall within

the purview of the definition of 'input service' provided it is received by the manufacturer of final products.

23.2 Few of the services mentioned in the 'includes' portion of the definition of the 'input service' such as procurement of inputs, inward transportation of inputs etc. are used directly or indirectly, in or in relation to manufacture of final products and therefore did not require specific enumeration in the 'includes' portion. However, the Central Government out of abundant caution enumerated these services to make the things clear beyond any doubt.

23.3 However, there are few services such as advertisement or sales promotion, share registry, security etc. which are not at all used either directly or indirectly or in or in relation to manufacture of final product. These services are in the nature of post manufacturing activities or activities in relation to other aspects of the business.

23.4 Thus, the definition of 'input service' is very wide. It not only includes the services used in manufacture of final products but also services used in post manufacturing activities or activities which are necessary to run day to day business of the assessee.

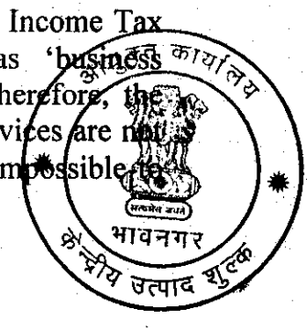
23.5 The aforementioned services are used for/necessary for the business purposes of the Noticee company. Hence, it is submitted that all activities relating to smooth functioning and/or day-to-day running of the business should be termed as 'input service'.

23.6 The general purpose or the overall object of the CENVAT Credit Rules, 2004 is to avoid cascading effect. In other words, the purpose is not to collect duty on duty. Therefore, the excise duty paid on the inputs and service tax paid on input services used in the manufacture of final product are given as credit for payment of excise duty on the final products. However, this purpose is to be interpreted on the basis of language used in the Rules. In support of this submission, reliance is placed on the following decisions:-

a. Ichalkaranji Machine Center (P) Ltd. v. CCE 2004 (174) ELT 417 (SC)
b. Dai Ichi Karkaria Ltd. v. CCE 1996 (81) ELT 676 (T-LB)
c. Jayashree Industries v. CCE 1993(63) ELT 492 (Tri-Bom)
d. Heal well pharmaceuticals Ltd v. CCE 1994 (72) ELT 446 (Tri-Bom)

23.7 The Noticee has received the services from various service providers. The Noticee has paid service tax on the receipt of such input services. The said services are essential for day-to-day functioning of the Noticee company's business. It would be commercially inexpedient to run the business without the aforesaid input service. These facts are undisputed. Therefore, the Noticee submitted that the said services would certainly be an 'activity relating to business' of the Noticee. Hence, it would qualify as 'input service' as defined under Rule 2(l) of the said rules.

23.8 The Noticee submitted that under the provisions of the Income Tax Act, 1961 deduction of the aforesaid expenses is allowed as 'business expenditure'. There is no dispute regarding this aspect as well. Therefore, the Noticee submitted that it would be incorrect to hold that the said services are not an activity relating to the business of the Noticee's company. It is impossible to



suggest that the same expenditure is held to be for wholly and exclusively for the purpose of business by the Income Tax department and the same expenditure is to be held as not relating to business by the Central Excise Department. The law does not permit blowing the bugle on both ends.

23.9 In this regard, the Noticee placed reliance on the decision of the Hon'ble Supreme Court in the case of Shahzada Nand & Sons V/s Commissioner of Income Tax 1997 (108) ITR 358 (SC). In the said case, the Hon'ble Apex Court held that the commission paid to the employees to increase the prosperity of the assessee's business is to be allowed as "business expenditure".

23.10 Furthermore, in the case of Jagarnath Therani Vs Commissioner of Income Tax 1925 Patna 408, the question before the Hon'ble Patna High Court was whether expenditure called as "Basa Kharch" and "Bidagri" is an admissible allowance or not. The Hon'ble Patna High Court held that "Basa Kharch" is stated by the Commissioner of Income Tax to be expenses of the servant's travel and "bidagri" to be payment made to the servant for the expenses incurred in going to the place of employment and back again. In such circumstances, the Patna High Court held that these expenses cannot be by any sense construed to have any charitable element. These payments were apparently made the service in order or to retain the services for the benefit of their business and to increase their efficiency. Therefore, such payments were made solely for the purpose of earning profit or gain and therefore allowance should be made on account of its sums.

23.11 The Noticee submitted that in view of the aforesaid decisions allowing similar expenditure incurred for the purpose of business and the over all smooth functioning of the day to day affairs of the Noticee's company, the above show cause notice is clearly in error in holding that the aforesaid services are not input services for the Noticee's company. Therefore, the above show cause notice is liable to be dropped on this ground alone.

23.12 Further, in the case of Victor Gaskets V/s CCE 2008 (10) STR 26, the Hon'ble Tribunal has allowed credit of service tax paid on outdoor catering viz. canteen services holding that the same would qualify as 'input service' under Rule 2(l) of the Cenvat Credit rules, 2004 on the ground that the same is an activity relating to business.

23.13 Further, the Noticee submitted that ROM application filed by the Department against the said order of the Tribunal in the case of Victor Gaskets cited supra has been rejected by the Hon'ble Tribunal vide order reported at 2008-TIOL-1179-CESTAT-Mum.

23.14 Furthermore, the decision of the Tribunal in the case of Victor Gaskets has been followed by the Tribunal in the case of Indian Card Clothing Co. Limited V/s CCE 2008 (11) STR 175 (T).

23.15 Moreover, recently in the case of CCE V/s Cable Corporation of India Limited 2008-TIOL-1180-CESTAT-Mum, the Hon'ble Tribunal has allowed credit of service tax paid on rent-a-cab scheme operator services.

23.16 Further, recently in the case of Force Motors Limited V/s CCE 2008-TIOL-1199-CESTAT-Mum, the Hon'ble Tribunal has allowed credit of service tax paid on airport services.

23.17 Further, in the case of Grasim Industries V/s CCE 2008 (11) STR 168, the Hon'ble Tribunal has allowed credit of service tax paid on mobile phones on the ground that the same are an activity relating to business.

23.18 Moreover, recently the Larger Bench of the Tribunal in the case of GTC Industries 2008 (12) STR 468 (Tri.-LB), has held that services which form a part of the cost of the final product would qualify as an input service in terms of Rule 2(l) of the Cenvat Credit Rules, 2004. The said decision of larger bench of the tribunal is also affirmed by Nagpur Bench of Bombay High Court in case of Ultratech Cement Ltd. 2010-TIOL-745-HC-MUM-ST. The court observed as under:

> *28. In the present case, the question is, whether outdoor catering services are covered under the inclusive part of the definition of input service. The services covered under inclusive part of the definition of input service are services which are rendered prior to the commencement of manufacturing activity (such as services for setting up, modernization, renovation or repairs of a factory) as well as services rendered after the manufacture of final products (such as advertisement, sales promotion, market research etc.) and includes services rendered in relation to business such as auditing, financing etc. Thus, the substantive part of the definition input service covers services used directly or indirectly in or in relation to the manufacture of final products, whereas the inclusive part of the definition of input service covers various services used in relation to the business of manufacturing the final products.* ***In other words, the definition of input service is very wide and covers not only services, which are directly or indirectly used in or in relation to the manufacture of final products but also includes various services used in relation to the business of manufacture of final products, be it prior to the manufacture of final products or after the manufacture of final products. To put it differently, the definition of input service is not restricted to services used in or in relation to manufacture of final products, but extends to all services used in relation to the business of manufacturing the final products.***

23.19 In support of the above submission, the noticee further submitted reliance on the following decisions:

(i) ABB Limited Vs CCE
2009 (15) STR 23 (Tri.-LB)

(ii) Coca Cola India Private Limited Vs CCE
2009 (15) STR 657 (Bom)

(iii) CCE Vs Danke Products
2009-TIOL-1337-CESTAT-AHM

(iv) CCE Vs Ali Dhara Textool Engineers Pvt. Ltd.
2009 (14) STR 305

(v) CCE Vs Deloitte Tax Services India Pvt. Ltd
2008 (11) STR 266

23.20 Further, the Noticee also relied upon decision of the Hon'ble Bombay Court in the case of Greaves Cotton & Co. Ltd. Vs CIT reported at (2005) 279 ITR 42 (Bom.). In that case, the Hon'ble high Court allowed deduction of expenditure towards "maintenance of guest house" as extended