



कार्यालय आयुक्त केंद्रीय उत्पाद शुल्क एवं सेवाकर
OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX
प्लॉट नं. ६७-७६ / बी-१ "सिद्धि सदन" बिल्डिंग
PLOT NO. 67-76/B-1, "SIDDHI SADAN" BUILDING,
नारायणभाई उपाध्याय मार्ग, भावनगर - ३६४ - ००१
NARAYAN UPADHYAY MARG, BHAVNAGAR-364 001.

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रजिस्टर्ड डाक पावती द्वारा
By Regd. Post A. D.

फाइल नं. - V/15-06/Adj/DGCEI/HQ/2012-13
F. No. - V/15-06/Adj/DGCEI/HQ/2012-13

आदेश की तारीख : 28-02-2014
Date of Order : 28-02-2014.

जारी करने की तारीख : 31-03-2014
Date of Issue : 31-03-2014

पारितकर्ता,

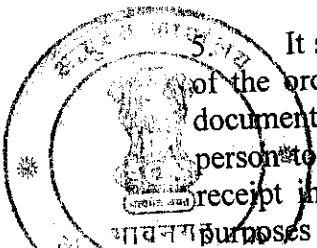
श्री नवनीत गोयल

आयुक्त केंद्रीय उत्पाद शुल्क एवं सेवाकर, भावनगर
Passed by,
SHRI NAVNEET GOEL
Commissioner,
Central Excise and Service Tax, Bhavnagar

मूल आदेश नं.: BHV-EXCUS-000-COM-009-13-14 DT 28-02-2014
Order-in-Original No.: BHV-EXCUS-000-COM-009-13-14 DT 28-02-2014

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. 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 lie to the Joint Secretary to the Government of India, Department of Revenue, Ministry of Finance, New Delhi.
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. The appeal should be filed within three months from the date of communication of this order. (Section 35B of the Central Excise Act, 1944).

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 Registrar 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.

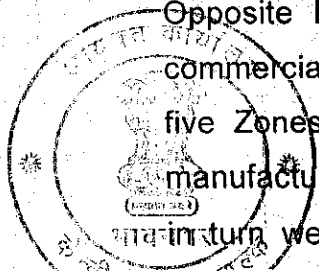


BRIEF FACTS OF THE CASE:

M/s Ultratech Cement Limited, (Unit-Gujarat Cement Works) Kovaya, Tal. Rajula, Amreli, Gujarat, {hereinafter referred to as M/s UTCL (GCW)} have been engaged in the manufacturing, of Cement of various grades falling under Chapter-25 of the First Schedule to the Central Excise Tariff Act, 1985. They are holding Central Excise Registration No AAACL6442LXM007. They have been availing cenvat credit on various inputs and input services under the Cenvat Credit Rules, 2004.

2. M/s Ultratech Cement Limited (Unit-Gujarat Cement Works) has been engaged in clearance of their finished directly to the their own RMC (Ready Mix concrete) manufacturing units, as well as to M/s Ultratech Cement Ltd. (Navi Mumbai) (hereinafter referred as M/s UTCL (NMCU), which is registered as a separate Central Excise entity. Part of the finished goods were cleared to the RMC (Ready Mix Concrete) plants of M/s Ultratech Cement Ltd., which is also a separate identity. In the investigation carried out by DGCEI, it was found that during the period from June'2007 to January'2011, M/s UTCL, Amreli, Gujarat had availed irregular cenvat credit on the GTA services availed and utilised for transportation of its finished goods to the RMC plants. Further, during the period from May'2008 to July'2009, they also availed irregular Cenvat credit on the supply of tangible i.e. hiring of ships for transportation of cement, utilised for transportation of cement from the GCW plant to M/s UCTL (NMCU) and further to their own RMC plants. In this regard, during the material time i.e. from June'2007 to February'2011, the RMC (Ready Mix Concrete) was exempt from payment of duty upto 28-02-2011 and an equivalent amount input credit availed was required to be reversed/paid, when the clearances were made for exempted final product. The brief facts of the case are as under :

3. As a group, M/s Ultratech Cement Limited have been engaged in the manufacture of Cement and Ready Mix Concrete (hereinafter referred to as RMC). They are having plants and units located at various places all over India. The Cement and RMC manufacturing Plants were not located in the same premises. They were independent of each other for operation and accounting purposes. All the Cement manufacturing Plants are registered with Central Excise Department whereas, RMC units/plants (being exempt from central excise duty till Feb-2011) were not registered with the central excise department. M/s Ultratech Cement Ltd were having Corporate office at Ahura Centre, 1st Floor, Near Mahakali Caves Road, Opposite MIDC Office, Andheri (East), Mumbai-400093. For Administrative and commercial convenience, cement business of M/s UltraTech had been divided into five Zones - North, East, West, South Zone-A and South Zone-B. The Cement manufacturing plants were controlled by the Zonal Cement Marketing Offices, which were controlled by the Head/ Corporate office. These Zonal Offices were

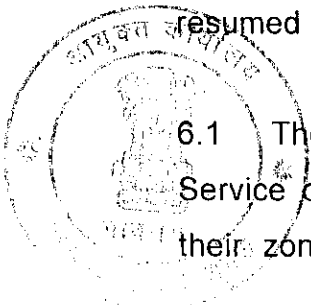


registered with the jurisdictional Central Excise Authorities for payment of Service Tax under the category "GTA" service. They make payment of service tax on freight Expenses incurred for transportation of Cement from the plants to various Customers, Distributors, Depots, Dealers and to their own RMC plants. The zonal offices were also registered with the Service Tax department as Input service Distributor (i.e. ISD) for distributing the credit of service tax paid by the zonal office to various Plants. These Zonal Offices issued Input Service Distribution Challans, on the basis of which, respective plants in the zone avail the cenvat Credit.

4. M/s Ultratech Cement Limited (West Zone), Ahura Centre, 1st Floor, Near Mahakali Caves Road, Opposite MIDC Office, Andheri (East), Mumbai {hereinafter referred to as M/s UTCL (West Zone)} were holding central excise registration No. AAACL6442LST006 for payment of service tax on GTA service & supply of tangible goods service, on reverse charge basis. They were paying the service tax on freight paid to various transporters under the category of GTA service. Likewise, they were paying service tax under reverse charge, on hiring of ships from foreign companies, under Section 66A of the Finance Act 1994 and distribute credit of the service tax so paid, to various factories /Plants of M/s UTCL under their zone, by issuing Input Service Distributor Challans. M/s UTCL (GCW) falling under West Zone Cement Marketing office, were availing CENVAT credit on various inputs like Gypsum and other chemicals and on input services like - Manpower Recruitment or Supply Agency Service, Technical Testing Service, Goods Transport Agency (GTA) Service, Supply of Tangible goods and Port Services etc. They also availed Service Tax credit on the basis of input Service Distribution Challans issued by M/s UTCL (West Zone) in respect of service tax paid on the GTA and Supply of Tangible goods (Service tax paid on ships hired from foreign suppliers for transportation of cement).

5. An intelligence received interalia indicated that the Zonal offices of M/s Ultra Tech Cement Ltd. had wrongly distributed cenvat credit of Service Tax paid on freight expenses and on hiring of ships (incurred for transportation of cement from the cement manufacturing plants to RMC Plants which were not registered with Central Excise department) which had been availed and utilized by various cement manufacturing plants and Bulk packaging Terminals of M/s. Ultra Tech Cement Ltd. as input service credit. In pursuance of this intelligence, the cement manufacturing plants located at Hotgi, Hirni, Awarpur and Head office of M/s Ultra Tech Cement Ltd. at Andheri were searched by the Officers of DGCEI, Pune on 6.1.2011 under Panchanama, the Head Office of M/s UTCL under Panchanama dated 7.1.2011 i and resumed various documents required for further inquiry.

6.1 The investigation revealed that M/s UTCL (West Zone) had distributed Input Service credit, which was wrongly availed by the cement manufacturing plants of their zone. Therefore, the Zonal in charge Shri R. S. Agarwal, Assistant Vice



President (F&C) of M/s UTCL (West Zone) was called upon and his statements was recorded on 2.5.2011 and he stated that the West Zone looked after the cement business in the state of Maharashtra and Gujarat. He further submitted that their office looks after marketing, distribution, Advertisement, Depot Control and other related activities; that M/s UTCL had also hired ship from a foreign owner for transportation of cement, that the West Zone office was having three registrations under the Finance Act, 1994 - i) The registration, No. AAACL6442LST006 for making payment of Service Tax on freight paid for transportation of Cement from the Factory to Depots/ Customers/ their own RMC units and from Depots to Customers and payment of Service Tax under supply of tangible goods service ii) Registration No.- MUM/DIVIII/CENVAT/162 for distribution of Service Tax credit to plants in Maharashtra and Gujarat as Input Service Distributor and iii) the third registration bearing No.- AAACL6442LST025 for distribution of Service Tax credit to the plants in Gujarat as Input Service Distributor; that under GTA Service, the zonal office was paying the Service Tax on freight paid for transportation of Cement from the Cement Plants to Depots/ Customers/ their own RMC units and Depots to Customers; that as Input Service Distributor, they distributed the credit of Service Tax paid by them on reverse charge basis as well as service tax paid by other service providers of M/s UTCL by issuance of Distributor Challan(s), to the cement manufacturing Plants / Bulk Packaging units falling under their zone; that on the basis of these Distributor challans, cenvat credit was availed by the plants and Packaging units; that till June-2009, M/s UTCL (GCW) paid the service tax on all types of primary outward transportation of cement at the factory level and availed the cenvat credit; that similarly, M/s UTCL (GCW) paid the service tax in respect of ship hired from the foreign supplier, under supply of tangible goods service till June-2009 and availed the cenvat credit.

6.2 He submitted the details of service tax paid on GTA service for transportation of cement from their manufacturing plants to their own RMC units, under letter dated 02.05.2011, from which it was seen that during the period from **July-2009 to Jan-2011**, M/s UTCL (GCW) had availed cenvat credit of **Rs 8,53,937/-** on such GTA services. He deposed that the decision for availment of credit of service tax paid on GTA in relation to RMC plants (even though RMC was exempted product) was as per the direction of their Central Marketing Office (CMO), Mumbai; that all the policy matters relating to Central Excise are decided at their CMO; that as per the directions of CMO, they had paid / reversed inadmissible cenvat credit of **Rs 6,62,937** on GTA service for transportation of cement to their own RMC plants, vide challan No. 263 dated 28.02.2011 alongwith interest of **Rs 52,680/-** for the period from **Jan-2010 to Jan-2011**; that regarding reversal of remaining amount of wrongly availed cenvat credit on GTA service, he promised to take up the matter with the CMO; that if they find lapses on their part, they would reverse the same voluntarily

along with interest; that from Jan 2011, their units/plants have stopped availing the cenvat credit of service tax paid on transportation of cement to RMC plants.

6.3 Further, Shri Agarwal submitted that the reason for non reversal of credit at the time of clearances from cement plant was that they thought that freight was the integral part of the Assessable value. So there was no need for reversal of Cenvat credit. As regards, methodology followed for determination of value of cement cleared from the cement plants to RMC plants, Shri Agarwal stated that they have followed Rule 8 of the Central Excise Valuation Rules, 2000.

7. Vide letter dated 6.5.2011 the requisite details, Zone wise and Plant wise, for the last five years, of Cenvat Credit of Service Tax paid on transportation of cement by road to their own RMC units was submitted by them. From the said information, it was seen that M/s UTCL(GCW) had availed Cenvat credit of Rs 8,53,937/- during the period from **July-2009 to Jan-2011** on the basis of input service distributor challans issued by M/s UTCL (West Zone). In the, said letter, it was also confirmed that M/s UTCL (GCW) had paid / reversed inadmissible Cenvat credit of Rs 6,62,937/- along with interest of Rs 52,680/- availed during the period from **Jan-2010 to Jan-2011**.

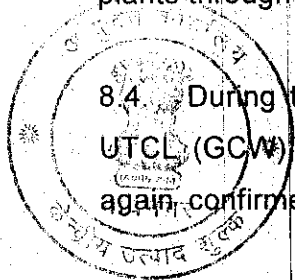
8.1 Further, as the service tax on GTA service (availed for transportation of cement by road) and on hiring of ship from foreign suppliers under Supply of Tangible goods Service was paid by M/s UTCL(GCW) for the period till June-2009 and credit thereof was also availed by M/s UTCL(GCW), so information was called for, from M/s UTCL(GCW) regarding proportionate cenvat credit involved in supply of tangible goods service and GTA service in relation to clearance of cement to RMC units. Vide letter dated 30th May, 2011, M/s UTCL (GCW) submitted the required information, from which, it was seen that during the period from **June-2007 to June-2009**, M/s UTCL (GCW) had availed cenvat credit of Rs 3,54,155/- of service tax paid on GTA services for clearance of cement from their plant to RMC units. Regarding cenvat credit of service tax paid on transportation of cement by sea using the hired ship, they mentioned that said data may be available with M/s UTCL (Navi Mumbai Cement unit) as part of this quantity was also delivered from Navi Mumbai Cement unit to RMC units.

8.2 Shri Mohan. B. Prabhu, plant incharge of UTCL (Navi Mumbai Cement unit) in his statement dtd: 01.06.2011 submitted that M/s UTCL(NMCU) were registered with Central Excise department since March-2007, (i.e. the date when packing of loose cement amounted to deemed manufacture) and follow all the procedures of Central Excise and file returns accordingly; that their unit was a bulk terminal; that the cement procured from M/s UTCL(GCW) in loose form was further cleared by them either as such or after bagging in 50Kg Bags; that cement was also cleared to their

own RMC as such i.e. in loose form; that as M/s UTCL(NMCU) cleared cement to their own RMC plants in loose form, no central excise duty was paid by them and only Cenvat credit availed on cement was reversed; that no packed cement was cleared to these RMC units and cement in loose form only was cleared to RMC units; that after receipt of cement from M/s UTCL(GCW) by ship at JNPT, it was unloaded and transported to M/s UTCL(NMCU) unit by road where it was stored in Silos; that as per the sales order, dispatches are made by the terminal on invoices generated in SAP system; that in the monthly ER-1 returns, the quantity shown as manufactured was actually the quantity received by the unit from UTCL(GCW) and the quantity, shown as cleared was category wise clearance i.e. in duly packed bags or in bulk/loose; that in ER-6 returns, quantity removed as such for home consumption includes the quantity removed to their own RMC units, Self consumption, and cleared in loose form to independent customer; that M/s UTCL(NMCU) availed Cenvat credit of Central Excise Duty paid on cement, Input bags; paid on Outward GTA service and Supply of Tangible goods service; that in addition, they also availed cenvat credit of service tax paid by them on other services like security, manpower, telephone, mobile etc; that out of total cement received from M/s UTCL(GCW), approximately 30 to 35% was cleared to Own RMC units in loose form; that another 30 to 35% was cleared as such to key customers; that even though they know that approximately 70% of the cement received, would not be subjected to packaging/ manufacturing, still they took cenvat credit on the entire quantity of cement received by them as the same was unloaded in storage silo at their factory; that when clearances of cement in loose form are made to key customers, the duty was paid at the transaction value, which was higher than the credit availed; that however in respect of clearances of cement in loose to RMC units, M/s UTCL(NMCU) only reversed the cenvat credit availed by them; **that in respect of clearances of cement to key customer and RMC units, M/s UTCL(NMCU) had acted just like depot;** that at the time of removal of cement to own RMC units, M/s UTCL(NMCU) have only reversed the cenvat credit availed on Cement and no service tax credit availed on supply of tangible goods service or GTA service had been reversed.

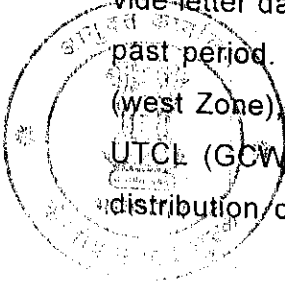
8.3 Vide letter dated 12.07.2011, M/s UTCL(NMCU) provided the detail of the quantity of cement cleared as such to their own RMC units and the proportional cenvat credit of service tax involved on hiring of ship for transportation of cement from M/s UTCL(GCW) to M/s UTCL(NMCU) during the period from **May-2008 to June-2009**. From these details, it was found that M/s UTCL(GCW) had availed Input Service credit of Rs **73,65,179/-** on clearance of loose cement to their own RMC plants through M/s UTCL(NMCU) during **May-2008 to June-2009**.

8.4 During the course of further investigation, Shri Satish Jain, Manager of M/s UTCL(GCW) in his statement dtd. 10-10-2011, submitted that M/s UTCL(GCW) again confirmed that they had availed cenvat credit on the basis of Input service



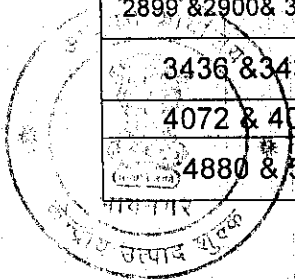
Distributor Challan issued by M/s UTCL(West Zone) for distributing the credit of service tax paid under GTA service, for transportation of cement from the plant; that M/s UTCL(GCW) had availed cenvat credit of Rs 8,53,937/- on the basis of these Input Service Tax distributor challans in respect of transportation of cement from M/s UTCL(GCW) to RMC units for the period from July-2009 to Jan-2011; that they had already reversed cenvat credit of Rs 6,62,937/- so availed for the period from Jan-2010 to Jan-2011; that prior to June-2009, payment of service tax on GTA services was made by M/s UTCL(GCW) and they were availing the credit accordingly; that these details stand furnished; that similarly, upto June-2009, M/s UTCL(GCW) were making payment of service tax on supply of tangible goods service in respect of ships hired from foreign agencies; that payment to these foreign agencies were made by their Central Finance Division, Mumbai; that they were getting the calculation of such payments on Monthly basis on which they were making payment of Service Tax under the head of "Supply of Tangible Goods service"; that after making the payment, entire cenvat credit was availed by M/s UTCL (GCW); that these ships were used for transportation of cement from M/s UTCL (GCW) to M/s UTCL (NMCU) and thereafter, cement was cleared to various RMC units; that M/s UTCL (NMCU) were only reversing the credit availed of Central Excise duty on Cement and were not reversing the proportionate cenvat credit of Service Tax paid on Supply of Tangible Goods service by M/s GCW: that M/s GCW had not reversed the Cenvat Credit availed on Supply of Tangible Goods service GTA service even though cement was cleared by M/s UTCL (NMCU) to RMC units: that at the time of clearances of cement from M/s UTCL (GCW), they could not ascertain the exact proportionate quantity of Cement going to RMC units: that details of such proportionate credit availed for the period from May-2008 to June-2009, had been supplied by M/s UTCL(NMCU) and their Central Finance Division according to which, the figures worked out to Rs.73,65,179/-; that he undertook that he would also verify these details and intimate month-wise Service Tax credit availed by M/s GCW on supply of tangible goods for the entire period from May-2008 to June-2009 within short period.

8.5 Vide letter dated 17.10.2011, M/s UTCL (GCW) submitted the month-wise details of payment of service tax for hiring of ships under "supply of Tangible goods" service. They also provided month-wise breakup of cenvat credit availed on basis of Input distributor challans issued by M/s UTCL (West Zone) for distribution of service tax paid under GTA services for transportation of cement from M/s UTCL (GCW) to RMC units during the period from July-2009 to December-2009. Further, vide letter dated 20.3.2012, M/s UTCL (GCW) also provided the information for the past period. From the information submitted by M/s UTCL (GCW) and M/s UTCL (west Zone), it was seen that during the period from July-2009 to Jan-2011, M/s UTCL (GCW) had taken cenvat credit of Rs. 8,53,937/- on the strength of input distribution challans issued by their zonal office. Further, during the period from



June-2007 to June 2009, they had availed cenvat credit of Rs.3,54,155/-. The cenvat credit details were given as per below:-

Cenvat Credit Entry No.	Date	Amount of Credit involved in Rs.
825	06.06.2007	273
1146	05.07.2007	4955
2284	05.10.2007	4192
2701	05.11.2007	5350
3533	05.01.2008	10329
3899	05.02.2008	21286
4321	05.03.2008	11868
4729	31.03.2008	4051
850	05.05.2008	7039
1370	05.06.2008	30646
1808	05.07.2008	23494
2185	05.08.2008	4684
2655	05.09.2008	16544
3154	04.10.2008	16051
4038	05.11.2008	38420
4561	05.12.2008	1929
5012	05.01.2009	2184
5789	05.02.2009	6317
6307	05.03.2009	
6834	31.03.2009	
1046	18.05.2009	
1704	19.06.2009	
2139	29.06.2009	
3065	24.09.2009	
3065	24.09.2009	
3065	24.09.2009	
3768	30.09.2009	
3768	30.09.2009	
4623	24.11.2009	
4623	24.11.2009	
4623	24.11.2009	15690
4624	24.11.2009	733
4624	24.11.2009	18753
4624	24.11.2009	16381
5104	22.12.2009	15938
5104	22.12.2009	24434
5104	22.12.2009	598
5722	29.01.2010	
5722	29.01.2010	
5723 & 6948	29.01.2010&31.03.2010	63892
6949 & 6950	31.03.2010	
7888 & 552	31.03.2010 & 30.04.2010	
775 & 776 & 1291 & 1292	28.04.2010 & 31.05.2010	
1293 & 1294 & 1717 & 1718	31.05.2010 & 30.06.2010	
1719 & 1720 & 2292 & 2293	30.06.2010 & 31.07.2010	
2294 & 2295 & 2897 & 2898	31.07.2010 & 31.08.2010	54001
2899 & 2900 & 3434 & 3435	31.08.2010 & 30.09.2010	
3436 & 3437 & 4071	30.09.2010 & 31.10.2010	
4072 & 4073 & 4879	31.10.2010 & 30.11.2010	
4880 & 5464	30.11.2010 & 31.12.2010	

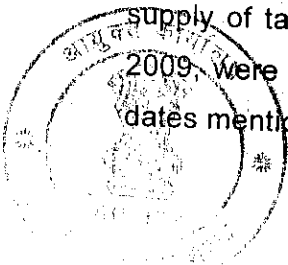


5465 & 6217	31.12.2010 & 31.01.2011	61571
	Total	1208092

From the above, it was seen that M/s UTCL(GCW) had availed input service credit of Rs **12,08,092/-** on GTA service utilized for transportation of cement from the plant to RMC units during the period **June-2007 to Jan-2011**. Further, they also utilized this cenvat credit for payment of Central Excise duty on finished goods cleared by them. Out of the total cenvat credit of Rs 12,08,092/-, M/s UTCL(GCW) have reversed/paid inadmissible cenvat credit of **Rs 11,45,783/-** along with Interest **Rs 2,42,752/-** through GAR-7 challans as mentioned below:

E-receipt number	Date of e-receipt	Amount reversed / paid (Rs.)	Interest (Rs.)
263	28.2.2011	662937	52680
103	13.01.2	291851	130124
104	13.01.2	190995	59948
TOTAL		1145783	242752

8.6 Further, vide letter dated 23.12.2011, M/s UTCL (GCW) supplied the information regarding proportionate input service credit availed on ship hire charges for supply of cement to own RMC units through M/s UTCL (NMCU). From the details provided by them, it was seen that the proportionate cenvat credit worked by them comes to Rs. 73,65,181/-. On scrutiny of the same, prima-facie certain discrepancies were noticed in the said calculation. To remove these discrepancy and ascertain the exact quantity of cement removed as such by M/s UTCL(NMCU) to RMC units Shri Prabhu, General Manager M/s UTCL (NMCU) was again called upon and in his 11.06.2012 he stated that the statement of proportionate credit as furnished by M/s UTCL (NMCU) on 12.07.2011 in which the proportionate credit of input service on hired ship in respect of quantity going in for RMC was calculated as Rs. 73,65,181/- needed correction as the quantity of 22925.26 MT shown as cleared to RMC units in the month of May-08 was for the entire month of May-2008 and the service tax on supply of tangible goods was imposed with effect from 16.5.2008 and cenvat credit was availed thereafter, therefore, the quantity of cement cleared to RMC units from 16.5.2008 to 31.5.2008 was required to be considered for calculation of proportionate cenvat credit on input service - namely supply of tangible goods; that during the period from 16.5.2008 to 31.5.2008 a quantity of 11,944.42 MT only was dispatched in loose to RMC units; he submitted the details of invoice wise clearances of cement in loose to RMC units for the period 16.05.2008 to 31.5.2008. On being asked, Shri Prabhu further submitted that two consignments of cement comprising 16103 MT and 7040 MT on which cenvat credit on input services i.e. supply of tangible goods was availed by M/s UTCL (GCW) in the month of June, 2009, were actually received by M/s UTCL (NMCU) in the month of July-2009 on dates mentioned below:

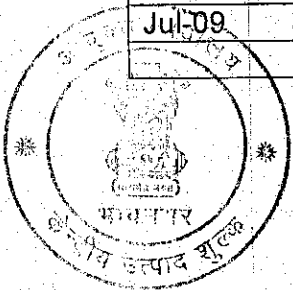


Month	Name of ship I	Quantity of cement (in Mts)	Date of actual receipt in NMCU
Jun-09	Daryaa Maan	16103	01.07.2009
Jun-09	Daryaa Shaan	7040	18.07.2009
	TOTAL	23,143	

Shri Prabhu further stated that as on 01.07.2009, the opening balance of cement was 9,429.97 MT. After considering the receipt of said two consignments totaling to 23,143 MT, the total quantity works out to 32,572.97 MT out of which M/s UTCL(NMCU) have cleared 13880.01 MT cement to RMC unit in loose form considering FIFO method (First in First out method); that the said quantity of cement i.e. 13880.01 MT, was required to be considered for calculation of proportionate credit on input services of hired ship in addition to quantity of 19804.92 MT as shown in earlier statements /information furnished; that he furnished relevant Bill of Lading dated 22.06.2009 and 28.06.2009 relevant Invoices and details of Invoices showing clearance of 13880.01 MT cement to RMC units, as documentary proof showing receipt of the above quantity of cement in July 2009. Further, during interrogation, M/s UTCL (NMCU) submitted the revised calculation of service tax, proportionate credit availed by M/s UTCL (GCW) on hired ship in respect of cement cleared in loose form to their various RMC plants for the period from 16.5.2008 to 30.06.2009. From the said statements it was found that proportionate cenvat credit comes to Rs 75,03,301/- instead of Rs 73,65,181/- as submitted by them earlier.

8.7 From the facts of case as narrated above, it was found that month-wise proportionate credit so availed on input services- (i.e. supply of Tangible goods service) in respect of cement cleared in loose to various RMC units is as under:-

Month	Loose cement transferred by M/s UTCL(GCW) to own RMC units through UTCL(NMCU)	Proportionate Service Tax (Rs.)
16.05.08 to 31.05.2008	11944.42	367606
Jun-08	17000.24	611458
Jui-08	14637.98	624193
Aug-08	13593.1	341062
Sep-08	16790.42	386005
Oct-08	19815.66	445757
Nov-08	15187.7	294722
Dec-08	17341.1	567992
Jan-09	19326.9	494484
Feb-09	19746.9	617503
Mar-09	19219.1	368200
Apr-09	19931.2	57818
May-09	22681.7	654141
Jun-09	19804.9	679289
Jul-09	13880.0	476070
	260901.65	7503301



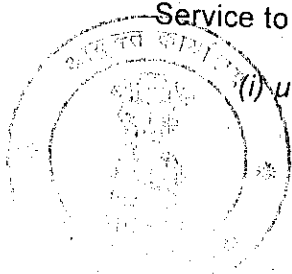
In the above calculations, the quantity of 13880.01 MT cement cleared by M/s. UTCL (NMCU) to RMC units in the month of July-2009 had also been considered as the said quantity was supplied out of the quantity of cement cleared by M/s UTCL (GCW) in month of June-2009. M/s. UTCL (GCW) had already availed input service credit (i.e. on supply of tangible goods service) on this quantity in the month of June 2009.

9.1 From the above facts, it can be found that M/s UTCL (GCW) had hired ship from the foreign suppliers under charter agreement which were used for transportation of cement from M/s UTCL (GCW) to M/s UTCL (NMCU) by sea. Further, on the basis of clearances of Invoices of M/s UTCL (GCW), M/s UTCL (NMCU) were availing input cenvat credit. However, while dispatching the cement to their own RMC units, they were treating the said clearances as such. While clearing the cement as such, M/s UTCL (NMCU) reversed the input credit so availed on the cement only. Prior to June-2009, M/s UTCL (GCW) were paying the service tax on hiring of these ships from the foreign suppliers under 'Supply of tangible goods' services under reverse charge as per Section 66A of the Finance Act, 1994. As the ships were also used for transportation of cement to foreign countries, so they paid service tax by considering the number of days it was in Indian Territory. On the basis of these service tax payment challans, M/s UTCL (GCW) availed the Cenvat credit treating the same as input service. The details of which were mentioned at Para -8.5 above. From these details, it is seen that M/s UTCL (GCW) had transported/ cleared cement to M/s UTCL (NMCU) during the period from May-2008 to June-2009 by using these hired ship. They availed the cenvat credit of the service tax so paid as input service. Out of the said quantity of cement (received from M/s UTCL (GCW)), M/s UTCL (NMCU) had cleared 260901.65 MT cement as such, in loose form, to their own RMC units, without any manufacturing process. These RMC units were not registered with the Central Excise department, as 'Ready Mix Concrete (RMC)' was exempted from payment of duty (till Feb 2011). Therefore, it appeared that proportionate input service credit of Rs. 75,03,301/- availed by M/s UTCL (GCW) under the category of 'Supply of Tangible goods service' was not admissible as detailed at para-8.7 above.

9.2 Vide the said letter, M/s UTCL (GCW) also communicated that they had reversed/ paid the said proportionate cenvat credit of Rs 73,65,179/- vide challan, e-receipt No. 468 dated 30.11.2011 along with interest of Rs 38,14,675/-.

10.1 In this regard, Rule 2(l) of the Cenvat Credit Rules 2004 defines - Input Service to mean any service, -

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



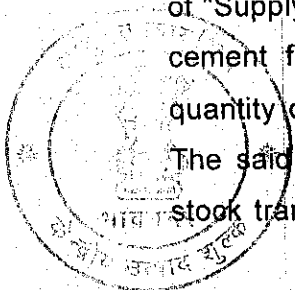
(ii) used by the manufacturer, whether directly or indirectly, in or relation to the manufacture of final products clearance of final products from the place of removal,

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

10.2 Vide Notification No. 10/2008 C.E. (N.T.) – dated 01-03-2008 the above definition was amended and for the words "clearance of final products from the place of removal", the words "clearances of final product up to place of removal" were substituted.

10.3 From the above details, it appeared that during the period from **July-2009 to Jan-2011**, M/s UTCL(GCW) had availed cenvat credit on the strength of Input service distribution challans, issued by their West Zonal office for distribution of cenvat credit of service tax paid on GTA service. They also had availed cenvat credit on the strength of service tax challans showing payment of service tax on the GTA services availed for transportation of cement from the manufacturing plants to RMC plants during the period from **June-2007 to June 2009**. The said GTA service does not appear to be covered within the definition of input services as defined under Rule-2(l) of the Cenvat credit Rules 2004. The input service credit of Rs **12,08,092/-** availed and utilized by M/s UTCL (GCW) was in relation to service tax, paid on GTA services availed for transportation of Cement from the cement manufacturing plants to Ready Mix concrete Plants. This service appeared to be an input service for the RMC plants as it had been used for inward transportation of inputs (i.e. cement) for manufacture of RMC (Ready Mix Concrete) which was exempt from duty till Feb 2011. Since, this GTA service (availed for transportation of cement from the manufacturing plants to RMC Plants) was utilized after cement was completely manufactured in the plant, hence the said service cannot be treated as input service for manufacture of Cement by M/s UTCL(GCW) as defined under Rule-2(l) of Cenvat Credit Rules.

10.4 From the facts of the case as discussed above, it also appeared that M/s UTCL (GCW) had availed the cenvat credit on the strength of challans showing payment of service tax on hiring of ship from the foreign vendors under the category of "Supply of Tangible goods service". These ships were utilized for transportation of cement from M/s UTCL(GCW) to M/s UTCL(NMCU) {where they cleared some quantity of cement as such to the RMC plants without any manufacturing activity}. The said supply of tangible goods service availed for transportation of cement as stock transfer was input services for the RMC plant which manufactured exempted



goods till 28.02.2011. These services cannot be treated as input Services for the manufacture of cement by M/s UTCL(GCW) as defined under Rule-2(l) of the Cenvat Credit Rules, 2004. Therefore, it appeared that proportionate cenvat credit of Rs75,03,301/- availed by M/s UTCL(GCW) on Supply of Tangible goods service was not admissible to them as it was the input service for the RMC plants.

10.5 Further, it appeared that the cenvat credit of Rs 87,11,393/- (Rs. 12,08,092/- on GTA service/- + Rs 75,03,301/- on supply of tangible goods service) availed by M/s UTGL (GCW) was in relation to input services availed and used by the RMC plants of M/s UTCL for manufacture of RMC (Ready Mix Concrete) which was exempt from payment of duty up to 28.2.2011. Therefore, it appeared that the said cenvat credit (which was in relation to manufacture of exempted product) was not admissible to M/s UTCL (GCW) in terms of Rule-6(1) of the Cenvat Credit Rules-2004 which reads as under:

"The CENVAT credit shall not be allowed on such quantity of input or input service which is used in the manufacture of exempted goods or for provision of exempted services, except in the circumstances mentioned in sub-rule (2). [Amended vide Notification No. 10/2008 - CE (N. T.), dated 01-03-2008] the words "exempted goods or exempted services" were substituted."

In the case of M/s UTCL (GCW), Rule-6(2) of the Cenvat Credit Rules, 2004 was also not applicable as till 28.02.2011; the RMC plant(s) were manufacturing only the exempted goods (i.e. Ready Mix Concrete) and not any other products.

10.6 From the facts of the case as discussed above, it appeared that M/s UTCL (GCW) had availed inadmissible Cenvat credit of Rs 75,03,301/- on supply of tangible goods service (i.e. hiring of ship for transportation of cement) a part of which was in relation to cement cleared as such to the RMC plants through M/s UTCL(GCW). Since, the RMC plants were manufacturing exempt goods till 28.02.2011 hence, input service credit to this extent does not appeared admissible to them. However, while clearing cement as such (through M/s UTCL (NMCU)) M/s UTCL (GCW) did not reverse the said cenvat credit. As per the provision of Rule 3(5) of the Cenvat Credit Rules, 2004, when the inputs were cleared as such the person availing credit was required to reverse/ pay an amount equal to the credit availed in respect of such Inputs. In the instant case, M/s UTCL (GCW) had availed the input service credit (on the supply of tangible goods service) and cleared the cement as such to RMC plants through M/s UTCL (NMCU) without paying the amount of credit so availed. In fact, neither M/s UTCL (GCW) nor M/s UTCL (NMCU) did reverse or pay the proportionate credit on supply of tangible goods service availed in respect of cement cleared to their own RMC units.

