Audit-I
S.Tax

Govt. of India
Office of the Commissioner of Central Excise
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By R.P.A.D.
F. No. V/15-67/Dem-ST/HQ/2010-11.

Date of Order: 30/01/2012
Date of Issue: 21/02/2012

Passed by

IMAMUDDIN AHMED
Joint Commissioner
Central Excise
Bhavnagar

Order-in-Original No: 16 / BVR / Jt.Commr / 2012

Any person(s) deeming himself aggrieved by this Order may appeal against this order to the Commissioner Central Excise(Appeals), Rajkot, Central Excise Bhavan, Race Course Ring Road, Rajkot-360001 within 60 days from the date of its communication. The appeal should bear a court fee stamp of Rs 2.50/- paise only.

The appeal should be filed in form EA 1 in duplicate, as per the provisions of Section 35(1) of the Central Excise Act, 1944 read with Rule 3 of the Central Excise (Appeals) Rules, 2002. It should be signed by the appellants in accordance with the provisions of sub-rule (2) of Rule 3 of the Central Excise (Appeal) Rules, 2002.

- It should be accompanied with the following:
- Copy of appeal in duplicate

Copies of the order, one of which shall be certified copy **OR** the other must bear a court fee stamp of Rs 2.50/- paise as per Schedule 1 to Article 6 of the Court Fee Stamp Act, 1870.

BY R.P.A.D.

To,
M/s. Saurashtra Cement Ltd.,
Ranavav-360560.
Distt. Porbadar (Gujarat)

Subject: Show Cause Notice Number No. V/15-67/Dem-ST/HQ/2010-11 dated 29.11.2011 issued to M/s. Saurashtra Cement Ltd., Ranavav demanding Central Excise duty of Rs. 23,55,060/- on account of wrong availment of CENVAT Credit.

Brief facts :

01. M/s Saurashtra Cement Ltd., Ranavav (hereinafter referred to as "the noticee") are holding Central Excise Registration No. AAHFS5211JXM001 for manufacture of Cement and Cement Clinker falling under Chapter 25 of the First Schedule to the Central Excise Tariff Act, 1985 and are availing CENVAT credit of Central Excise Duty / Service Tax paid on Inputs, Capital Goods and Input Services under rule 3 of CENVAT Credit Rules, 2004 (hereinafter referred to as CCR, 2004).

02. During the course of Central Excise Audit of the records maintained by the noticee, it was observed that the noticee had availed CENVAT credit of Service Tax paid on various services viz. (1) Port Charges (Rent charged by Gujarat Maritime Board at port), (2) Pest Control Services, (3) Gardening Expenses, (4) Guest house & Colony maintenance, (5) Cable Services (T.V Channel charge). As per definition of the "input service" given under Rule 2(l) of the CCR, 2004, these Services viz. (1) Port Charges (Rent charged by Gujarat Maritime Board at port), (2) Pest Control Services, (3) Gardening Expenses, (4) Guest house & Colony maintenance, (5) Cable Services (T.V Channel charge) do not fall within the purview of the definition of "Input service" as the same were not being used in or in relation to manufacture and /or clearance of final products and also not falling under the category of services covered under inclusive portion of the definition of "Input service". As such, these services do not fall within the purview of "Input service".

03. As per the Audit Report No.171/08-09, the noticee availed CENVAT credit of Service Tax amounting to Rs.6,87,674/- (Service Tax Rs.6,74,494/- + Edu. cess Rs.12,237/- + Sec. & H. Edu. cess Rs.943/-). Out of the above amount, CENVAT credit of Rs. 268/- (Service Tax-Rs.262/- + Edu. cess Rs.6) availed on Telephone Bill (which was not in their name) and TV Chanel Subscription have been reversed by the noticee along with interest of Rs.51/-. The remaining amount of CENVAT credit of Rs. 687406/- (Service Tax Rs.6,74,232/- + Edu. cess Rs.12, 231/- and Sec. & H. Edu. cess Rs.943/-) have not been reversed / paid back by the noticee.

04. On verification of records/documents provided by the noticee, the actual amount of CENVAT credit of Service Tax availed by the noticee on these services, are as under:-

November-2006 to December-2007					
Sr.No.	Description of services	Service Tax	Edu. Cess	S & H. E. Cess	Total
1.	Rent charged by M/s.GMB	17400	345	0	17745
2.	Pest Control Services	15122	299	23	15444
3.	Gardening Expenses	166775	3337	517	170629

4	Guest house & Colony Maintenance	408716	8179	495	417390
5	Telephone not in the name of the noticee	154	3	0	157
6	S.K. Chanels.	108	3	0	111
TOTAL		608275	12166	1035	621476
Less Credit of Sr.No. 5 & 6 already reversed		262	6	0	0
TOTAL (A)		608013	12160	1035	621208
January-2008 to December-2008					
1.	Rent charged by M/s.GMB	17400	345	180	17925
2.	Pest Control Services	4509	89	44	4642
3.	Gardening Expenses	169987	3403	1702	175092
4	Guest house & Colony Maintenance	291880	5873	2524	300277
TOTAL (B)		483776	9710	4450	497936
January to December-2009					
1.	Rent charged by M/s.GMB	26825	537	268	27630
2.	Pest Control Services	6944	136	71	7151
3.	Gardening Expenses	115213	2305	1151	118669
4	Guest house & Colony Maintenance	216935	4338	1907	223180
	TOTAL (C)	365917	7316	3397	376630
January-2010 to December-2010					
1	Rent charged by M/s.GMB	29725	595	297	30617
2	Pest Control Services	2100	42	23	2165
3	Gardening Expenses	171204	3424	1710	176338
4	Guest house & Colony	324914	6484	3221	334619

	Maintenance				
	TOTAL (D)	527943	10545	5251	543739
January-2011 to August-2011					
1	Rent charged by M/s.GMB	20300	406	203	20909
2	Pest Control Services	5280	105	60	5445
3	Gardening Expenses	86815	1734	866	89415
4	Guest house & Colony Maintenance	193981	3876	1921	199778
	TOTAL (E)	306376	6121	3050	315547
Grand Total (A+B+C+D+E)		2292025	45852	17183	2355060

05. As per rule 9 (6) of CCR, 2004, the manufacturer of final products or the provider of output services shall maintain proper records for the receipt and consumption of the input services in which the relevant information regarding the value, tax paid, CENVAT credit taken and utilized, the person from whom the input service has been procured, is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit.

06. The noticee did not disclose the exact nature of services received by them and how such services are used in or in relation to manufacture of final products & clearance of final product. The noticee also did not disclose as to how these services are covered under inclusive portion of the definition of "Input service". If, the services are neither used in or in relation to manufacture of final products & clearance of final product nor for the purpose specified in the inclusive portion of the definition of "Input service", the CENVAT credit are not admissible to it. The noticee has never disclosed to the department about exact nature & usage of the subject services in the activity which is not directly or indirectly related to the manufacture of final products and clearance of final product or for any other purpose covered under inclusive portion of definition of "Input Service" thereby suppressed the material facts.

07. Whereas, the noticee has availed CENVAT credit of Service Tax paid on various services which have not been used in or in relation to manufacture of final products & clearance of final product as well as for the purposes covered under inclusive portion of the definition of "Input service". Thus, CENVAT Credit of Service Tax availed on such services do not qualify as "Input service" as provided under Rule 2(l) of the CCR, 2004, thereby the noticee has availed CENVAT credit in contravention to rule 2(l) of CCR, 2004 and also failed to prove the admissibility of the same as provided under rule 9(6) of CCR, 2004. Moreover, the Noticee

has also utilized the said CENVAT credit for the payment of Central Excise duty on clearance of its final product. Therefore, the CENVAT credit of Service Tax paid on such services amounting to Rs. 23,55,060/- taken and utilized by the noticee during the period from November-2006 to August-2011, is wrongly taken and utilized by the noticee. This wrongly availed CENVAT credit is required to be recovered from them under the provisions of rule 14 of the Rules, 2004 alongwith interest read with proviso to Section 11A(1) of the Central Excise Act, 1944 therefore, a show cause notice F.No.V/15-67/Dem-ST/HQ/2010-11 dated 29.11.2011 was issued to the noticee, as to why :

(1) CENVAT credit aggregating to Rs. 23,55,060/- (Rs. Twenty Lakhs, Sixty Three Thousand, Sixty only), being amount of Service Tax Rs.22,92,025/- + Education Cess Rs. 45,852/- + Sec. & H. Edu. cess Rs. 17,183/- wrongly taken, as detailed in table hereinabove, should not be recovered from them under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11A (1) of the Central Excise Act, 1944.

(2) Interest at appropriate rate should not be levied under provisions of Rule 14 of CCR, 2004 read with Section 11AB of Central Excise Act, 1944

(3) Penalty should not be imposed upon them under Rule 15(2) of CENVAT Credit Rules, 2004 read with Section 11AC of Central Excise Act, 1994.

Defence :

8.1 The noticee vide their letter Ref. SCL/2011/3696 dated 23.12.2011 submitted reply to the said show cause notice and reproduced definition given under rule 2(l)(2) of the CENVAT Credit Rules, 2004 and submitted that rule 3(1) of CCR, 2004 allow the manufacturer or producer of the final products or a provider of taxable service to take credit of specified duty / service tax paid on any input or capital goods received in the factory of the manufacturer of final product or premises of provider of output service on or after 10th day of September, 2004; and any input service received by the manufacturer of final product, or by the provider of output service on or after 10th day of September, 2004. Further as per provision of sub-rule 1 of rule 3 of the CCR, 2004 CENVAT credit taken I sub-rule 1 of rule 3 can be utilized inter alia for payment of any duty of excise on any final products or service tax on any out put service. From the definition of input service, it is explicit that the scope of the services defined for eligibility for CENVAT credit is very wide and extensive.

8.2 They submitted that the input service detailed in the SCN relates to period from November, 2006 to August, 2011. However, it may be noticed that with effect from 01.04.2011 vide Not. No. 3/2011-CE (NT) dated 01.03.2011, the definition of input services stand amended to exclude the following from the inclusive definition "setting up", "activities relating to business such as" and further the following has been added "business exhibition", "legal services". Further certain services relating to construction etc have been excluded by proviso A, B & C to the said sub section. Hence, it has to be recognized that till 01.04.2011 any input service relating to business are entitled for CENVAT credit without any limiting factor. Hence, all the services mentioned in the SCN till March 31,

2011 are eligible for input service credit without any ambiguity whatsoever.

8.3 They further submitted that the expression used in the said Rule 2(l) upto the period March, 2011 activities relating to business such as and "such as" means that the stipulated activities that follow the said expression in the definition are only illustrations and not limitations. They relied upon the following judgments :

(i) Good Year India Limited reported in 1997 (95) ELT 450 (SC),
(ii) Solaris Chemtech Ltd. -2007 (214) ELT 481 (SC) = 2007 - TIOL – 135 –SC,
(iii) Doypack Systems Pvt. Ltd.- 1988 (36) ELT 201 (SC) = 2002 TIOL-389-SC-MISC.

The illustrative list of activities relating to business in the inclusive definition of "input service" consists of accounting , auditing, financing, recruitment and quality control, coaching and training, computer, networking, credit rating, share registry, security. The credit of service tax paid on activities like coaching and training, credit rating, although not directly or indirectly related to manufacture of goods, is admissible as input service credit to a manufacturer of final products as well as to output service provider treating the same as activities in relation to business. They submitted specific reply to each of the items mentioned in the said SCN.

09. <u>Service tax on rent charged by GMB</u>.

(i) Company has availed storage facility at port to keep its products namely cement / clinker for export / onward transportation and storage of raw material input imported coal storage and then transportation to factory for use in manufacture of excisable product on which GMB has charged rent and recovered service tax on it. It may be noticed that since storage facility availed by the company is for the purpose of business and earning revenue, credit of service tax paid on rent is to be treated as "input service" related to business and accordingly company has rightfully claimed credit of the same. Further this storage takes place before clearance of goods from the place of removal, which is delivered on board the ship in respect of export and delivery at other destination in case coastal movement of finished products for delivery and sale at other Indian ports.

(ii) It flows from the definition of "input services" under CCR, 2004 and definitions of the term "place of removal" and "sale " under Section 4(3) (c) and Section 2(h) respectively of CEA that for a place or premise to be termed as place of removal for the purpose of the Act, what is required is that the place or premise should be the place or premise from where the excisable goods are to be sold which means that such goods are to be transferred by way of transfer of possession of goods by the seller to the buyer in the course of trade or business for cash or other valuable consideration after their clearance from the factory. As the place of removal has not been defined in CCR, 2004, the definition of this word has to be understood and given effect to in terms of the definition as found in the Central Excise Act, 1944. In the Central Excise Act, in Section 4(3) (c) (iii) the place of removal has been defined as "a depot premises of a

consignment agent or any other place of premises from where the excisable goods are to be sold after they are cleared from their factory. In addition, the time of removal has been defined in section 4(3) (CC) to mean that in respect of excisable goods removal from the place of removal referred to sub-clause (iii) of clause (c) of Section 4(3) shall be deemed to be the time at which the said goods are cleared from the factory. It is also worthwhile to notice that the term sale has also been defined in section 2(h) of the Central Excise Act to mean "any transfer of the possession of goods by one person to another in the ordinary course of trade or business for cash or deferred payment or other valuable consideration."

(iii) In the light of above facts and legal position the input service regarding storage of goods at GMB is eligible for input credit, as the said service is received and used before the goods were cleared from the place of removal. It may also be mentioned here that for purpose of excise duty also, value has been taken as the value at the place of removal in terms of Section 4 and the said value includes all these expenses.

10. Input service of Pied Piper – Pest Control Services :

(i) Company has availed the pest control services from M/s. Pest Control (India) Pvt. Limited to protect its various delicate instruments / machines, computers and office records from rodent and / or pests. Since the pied piper pest control service is essential for running its manufacturing activities, the same is an input service used in relation to manufacture of dutiable products. As such, pied piper pest control service is entitled for input credit and accordingly company has rightfully claimed the pied piper pest control services of m/s. Pest Control India Limited.

11. Service Tax on Gardening Expenses :

(i) The plantation is required to be maintained statutorily under the Mining Act and under the Pollution Control Board Regulations related to its mining and manufacturing activities. Accordingly company has undertaken plantation and its maintenance and this service has been taken. Since plantation and its maintenance is required under the statutory law to carry out the mining and manufacture of cement and run the business, as such service tax paid to be treated as "input service" and accordingly company has rightfully claimed credit on service tax paid on gardening services.

12. Service Tax on Guest House and colony maintenance :

(i) The manufacturing facility of the company is located remotely. To maintain continuous operation, company had constructed residential colony for its employees so that their availability is ensured on the spot to maintain continuity in the process of manufacturing. As such, service tax paid by the company on maintenance or repair services of the colony is to be treated as "input service" and accordingly company is correctly claimed credit of service tax paid on repair and maintenance of the colony.

(ii) Also Guest House is maintained at the factory to accommodate technical as well as other personnel called for various services of the plant. As such this service is to be treated as "input service" indirectly in relation to manufacture and also for business activities and accordingly

credit on service tax paid on the service availed for Guest House is to be allowed.

They relied upon the following decisions in this respect.
(a) Manikgadh Cement Vs. CCE, Nagpur – 2008 (9) STR 554.
(b) UltraTech Cement Vs. CCE, Bhqavnagar – 2010 – 258 – ELT -266.

13. Service Tax on Telephone not in the name of SCL .
(i) CENVQAT credit on this service for a sum of Rs. 157/- has already been reversed.

14. Service Tax paid by M/s. S. K. Channel, Ahmedabad on TV Channel subscription.
(i) CENVAT credit pertaining to this service amounting to Rs.111/- has already been reversed.

15. They further submitted that there is no case for imposition of any penalty as it has been held that in case of possibility of various interpretation, penalty is not imposable. They further denied that they have suppressed any material facts from the department and this information is available from the books and records of the company and further department has been issuing SCNs from time to time on the basis of returns filed by them therefore, they have not suppressed any material facts or made any misstatements or contravened any provision or rules with intention to evade any taxes. This is also explicit from the SCN as the SCN has not made any averment that they have suppressed any material facts with intent to evade any tax. Hence, there are no ingredients to invoke extended period of limitation in this case and the demand is time barred.

Personal Hearing :
16. Personal hearing in this case was held on 20.01.2011 which was attended by Shri A. Jankiraman, CA, Shri P. Balakrishnan, Consultant and Shri O. P. Malpani, Asstt. V. P. of the noticee firm. They re-iterated the submissions made by them vide written reply dated 23.12.2011. They submitted case law namely Coca-Cola Vs. CCE, Pune (HC-Bom.) and some documents explaining the statutory requirement of activities such as pest control , gardening etc. on which CENVAT has been availed as input service. They requested to decide the case accordingly. They also cited a judgment -2010 (20) STR 346, where credit has been allowed on gardening expenses.

Findings :

17. I have carefully gone through the facts of the case available on records and the submissions made by the noticee in writing and orally. The issue to be decided in this case is whether the noticee has correctly availed the CENVAT credit of the amount of service tax paid on following services :

(i) Rent charged by GMB,
(ii) Pest Control Services,
(iii) Gardening Expenses,
(iv) Guest house & Colony Maintenance,
(v) Telephone not in the name of the noticee,

(vi) T. V. Chanels (cable services).

18.1 I find that the noticee has already reversed CENVAT credit amounting to Rs.157/- and Rs.111/- which was availed by them on the services of telephone not in the name of the noticee and on the T.V. cable services and also these amounts are not the subject matter of the present matter therefore, I do not take up these for discussion here.

18.2 Regarding eligibility of credit taken / availed by the noticee, of service tax paid on remaining services I find that the department has proposed to deny these credits on the ground that these services cannot be considered as 'in-put service' as they are not concerned with the manufacturing or clearance of finished goods. The definition of "input service" is provided under rule 2(l) of the CENVAT Credit Rules, 2004 :

> "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 removal;"*

Accordingly, for consideration of a service as 'in-put service', it has to pass either of the two conditions, either it is used by provider of taxable service for providing an output service or it is used by a manufacturer in or in relation to manufacture of final products and clearance of final products upto the place of removal. The definition has included services like 'storage up to the place of removal', 'activities relating to business' etc. for the purpose of consideration as 'input service'.

18.3 In the present matter, the noticee is a cement / clinker manufacturing unit. They manufacture these finished products and supply them to various buyers in domestic and foreign markets as well. Also the noticee imports or procure through sea route, input viz. coal for utilizing it in manufacture of finished products. According to them they have taken on rent, a storage place at port where they store coal after import for onward movement to factory and also store finished products after clearance from the factory and from this place they supply it in domestic market and/or export through sea rout. Thus, the storage place at port is their 'place of removal' for finished products which is rented by GMB to them. They pay rent and service tax on it to GMB. I find that upto this storage place the goods (finished products) are in possession of the noticee i.e. the ownership remains with them, with all risks therefore, the

service tax paid on rent of plot to GMB is required to be considered as service tax paid on 'input service' and the noticee is eligible to take credit of service tax of Rs.114826/- on this service.

18.4 Similarly, pest control service has been availed by the noticee to protect their various instruments, records, computer etc. The machineries and the instruments and also the records are necessary for running their business therefore, the pest control service is considered to be utilized in connection with the business activities by them and they are eligible for credit of Rs. 34847/- of Service Tax paid on this service.

18.5 Regarding, credit of service tax paid on gardening expenses I find that the noticee in reply to the impugned SCN has submitted that the plantation is required to be maintained statutorily under the Mining Act and the pollution Control Board Regulations related to its mining and manufacturing activities; that accordingly company has undertaken plantation and its maintenance as it is a statutory requirement therefore it should be considered 'input service'. They have also submitted abstract of some writ-up (appears to be college student's Project Report) and some Project Report submitted to Bureau of Mines, Govt. of India underling the portion under heading 'Afforestation' and like paras. On scrutiny of these papers, I find that all these activities i.e. plantation and afforestation pertaining to mining activities only and they pertain to Aditya Lime Stone & Clay Quarries at Village – Adityana & Ranavav. In other words, their responsibility of plantation is for mining area only and accordingly they have undertaken these activities in and around mines pertaining to Aditya Lime stone & clay quarries, situated away from the factory premises. As such these activities are not connected with the manufacturing of final products in the factory premises and they cannot be considered as input service for production of cement / clinker. Therefore, the noticee is not eligible for credit of service tax of Rs. 1475244/- paid on gardening expenses and this wrongly availed credit is required to be recovered from the noticee under provisions of rule 14 of the CENVAT Credit Rules, 2004 read with proviso to Section 11A (1) of the Central Excise Act, 1944.

18.6 The noticee has also availed CENVAT credit of Rs.1475244/- of service tax paid on maintenance service of guest house and residential colony. Guest house of the noticee and the residential colony are not in any way connected with the manufacturing and clearance of finished products therefore, the maintenance service for these places cannot be considered as input service for noticee and they are therefore, not eligible for availing credit of service tax paid on these services.

18.6(i) The noticee has contended that the manufacturing facility of the company is located remotely and to maintain continuous operation

company had constructed residential colony for its employees so that their availability is ensured on the spot to maintain continuity in the process of manufacturing as such this service should be considered as input service. This contention of the noticee is without any basis and cannot be accepted. In fact the manufacturing unit is not located in a remote place. It is located at Ranavav which is a Taluka Place in Porbander District. Ranavav is a small town on main road / highway, where all facilities, including transportation are easily available. It is connected with other towns/villages and district HQ with road/rail and therefore, by any stretch of imagination it cannot be called a remote place. Thus, the construction of residential colony may be considered as a welfare step for employees, voluntary in nature as it is not required under any statutes thus, it cannot be considered as an activity related to business and certainly not in connection with production and clearance of finished products. Thus, the service tax of Rs. 1475244/- paid on maintenance service and availed as CENVAT credit by the noticee is legally not correct and the same is required to be recovered from them under rule 14 of the CENVAT Credit Rules, 2004 read with Section 11A(1) of the Central Excise Act, 1944. In support of above findings, I rely upon the following judgments of Hon'ble High Courts :

(i) C.C.E & C Vs. GHCL, - 2011 (22) S.T.R. 610 (Guj.)
(ii) C.C.E., Nagpur Vs. Manikgarh Cement - 2010 (20) S.T.R. 456(Bom)

18.6(ii) The noticee has relied upon the following judgments in support of their contention:

(a) Manikgarh Cement Vs. CCE, Nagpur – 2008(9) STR 554;
(b) Ultratech Cement Vs. CCE, Bhavnagar-2010 -258-ELT-266.

However, I find that the ratio of the relied upon judgments cannot be made applicable in the present case. The services in the above mentioned Ultratech case was different than the present case. Moreover, this judgment was passed after relying on the judgment of CESTAT in the case of Manikgarh Cement case. The said judgment of CESTAT (reported as 2008 (9) STR 554 – Manikgarh Cement case), has already been reversed by the Hon'ble High Court at Mumbai. As reported in 2010 (20) S.T.R. 456 (Bom.) Hon'ble High Court, vide its judgment, has allowed department's appeal. Para 8 and 9 of the said judgment are very specific and the same are reproduced here :

> "8. In our opinion, establishing a residential colony for the employees and rendering taxable services in that residential colony may be a welfare activity undertaken while carrying on the business and such an expenditure may be allowable under the Income Tax Act. However, to qualify as an input service, the activity must have nexus with the business of the assessee. The expression 'relating to business' in Rule 2(l) of CENVAT Credit Rules, 2004 refers to activities which are

integrally related to the business activity of the assessee and not welfare activities undertaken by assessee.

9. Applying the ratio laid down by the Hon'ble Apex Court in the case of Maruti Suzuki Limited V. Commissioner of Central Excise, Delhi (supra), we hold that unless the nexus is established between the services rendered and the business carried on by the assessee, the benefit of CENVAT credit is not allowable. In the present case, in our opinion, rendering taxable services at the residential colony established by the assessee for the benefit of the employees, is not an activity integrally connected with the business of the assessee and therefore, the Tribunal was not justified in holding that the services such as repairs, maintenance and civil construction rendered at the residential colony constitutes 'input service' so as to claim credit of service tax paid on such services under Rules 2(l) of the CENVAT Credit Rules, 2004."

19.1 The noticee has contended that they have not suppressed any material facts from the department as all the information are available on records of the company and periodical returns being filed by them with departments and they have not made any mis-statement or contravened any provisions or rules with intent to evade payment of taxes and therefore, the demand is time barred.

19.2 In this regard I find that this contention cannot be accepted. The noticee is a major unit and registered with Central Excise department since long. As per provisions of the Central Excise law they have to self assess their duty liability. In this case they have not assessed their liability correctly as they have availed inadmissible CENVAT credit and thus have contravened the provisions of the CENVAT credit Rules, 2004. The fact of wrongly availed CENVAT credit was never disclosed to the department , it came into knowledge of the department only on audit of the records maintained by them. It is the responsibility of the assessee to correctly assess the liability and inform the department. The noticee in this case has not disclosed about the availment of CENVAT credit of duty paid on ineligible services. Thus, they have suppressed the facts therefore, the SCN / demand is not time barred and has been correctly issued. The noticee has contravened the provisions of the CENAT Credit Rules, 2004 with an intention to evade Central Excise duty knowingly therefore, they have become liable for penal actions under Rule 15 (2) of the CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.

20. In view of the above findings and the provisions of law I hold that the noticee is eligible for CENVAT credit of service tax paid on service (i) rent paid to GMB S.T. Rs.114826/-), (ii) Pest Control Service (Rs.34847/-) and they are not eligible for CENVAT credit of service tax paid on services (i) Gardening expenses (Rs.730143/-), and (ii) Maintenance of residential colony and guest house (Rs. 1475244/-). The ineligible amount of

CENVAT credit is required to be recovered from them under rule 14 of the CENVAT Credit Rules, 2004 read with Section 11(A) of the Central Excise Act, 1944 along with interest. They are liable for penal action under Rule 15(2) of the CENVAT Credit Rules, 2004. Therefore, I pass the following order.

ORDER

21. (i) I confirm the demand of Rs.22,05,387/- (basic Rs.21,46,420/- + Edu. Cess Rs.42,953/- + S. & H. Edu. Cess Rs.16014/-) (Rupees twenty two lakhs five thousand three hundred eighty seven only) and order for recovery of the same from M/s. Saurashtra Cement Limited, Ranavav -360 560, Distt.- Porbander, Gujarat under Rule 14 of the CENVAT credit Rules, 2004 read with Section 11 (A) of the Central Excise Act, 1944.

(ii) I also order for recovery of interest at appropriate rate on the above confirmed demand under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11AB of the Central Excise Act, 1944.

(iii) I impose a penalty of Rs. 22,05,387/- (Rupees twenty two lakhs five thousand three hundred eighty seven only) on M/s. Saurashtra Cement Limited, Ranavav -360 560, Distt.- Porbander, Gujarat under Rule 15 (2) of the CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.

(iv) I drop the demand of Rs.149673/- (rupees one lakh forty nine thousand six hundred seventy three only) raised under SCN F. No.V/15-67/Dem-ST/HQ/2010-11 dated 29.11.2011 against M/s. Saurashtra Cement Limited, Ranavav -360 560, Distt.- Porbander, Gujarat.

21/2/12

(Imamuddin Ahmed)
Joint Commissioner,
Central Excise, Bhavnagar.

BY REGD. POST A. D. / HAND DELIVERY

To,
M/s. Saurashtra Cement Ltd.,
Ranavav-360560,
District Porbandar, Gujarat.

Copy to:-

1. The Commissioner, Central Excise, Bhavnagar(RRA Section).
2. The Assistant / Deputy Commissioner, Central Excise, Junagadh.
3. The Assistant / Deputy Commissioner (Audit / Recovery), C.Ex., Bhavnagar.
4. The Superintendent, Central Excise, A.R.II, Porbandar.
5. Guard File.