S सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

वस्तु एवं सेवा कर भवन, सातवीं मंजिल,पोलिटेकनिकके पास, आम्बावाडी, अहमदाबाद-380015

GST Building ,7th Floor,, Near Polytechnic, Ambavadi, Ahmedabad-380015

☎: 079-26305065 टेलेफैक्स : 079 - 26305136

क फाइल संख्या :File No :**V2(72)&3/AHD-III/2017-18** 937

ख अपील आदेश संख्या :Order-In-Appeal No.: **AHM-EXCUS-003-APP-0184-185-17-18**

दिनाँक Date :**25.01.2018** जारी करने की तारीख Date of Issue: 13-2-2018

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker** Commissioner (Appeals)Ahmedabad

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश : **AHM-CEX-003-ADC-AJS-066-069-16-17** दिनाँक : **30.03.2017** से सृजित

Arising out of Order-in-Original: **AHM-CEX-003-ADC-AJS-066-069-16-17,** Date: **30.03.2017** Issued by: Additional Commissioner, Service Tax, Div:Gandhinagar, Ahmedabad-III.

घ **अपीलकर्ता** एवं प्रतिवादी का नाम एवं पता

Name & Address of the **Appellant** & Respondent

M/s. ARCHON ENGICON LIMITED (Shri CHANDRASHEKHAR PANCHAL)

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूवोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

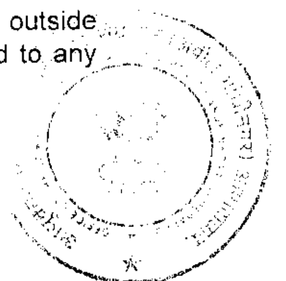
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.



(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक से तीन मास के भीतर मूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35–इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर–6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/– फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/– की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35– ण0बी/35–इ के अंतर्गतः–

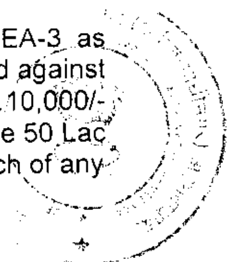
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण **(सिस्टेट)** की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ–20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद–380016.

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए–3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणें की गई अपील के विरूद्व अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/– फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखाकिंत बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registar of a branch of any



nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश के लिए फीस का भुगतान उपर्युक्त ढ़ंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall beer a court fee stamp of Rs.6.50 paisa as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।
Attention in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१४(२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है. बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल है

(i) धारा 11 डी के अंतर्गत निर्धारित रकम
(ii) सेनवैट जमा की ली गई गलत राशि
(iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगे।

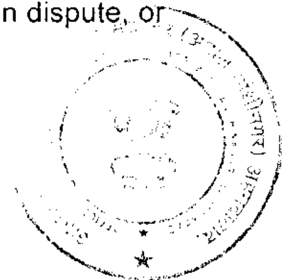
For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,
Under Central Excise and Service Tax, "Duty demanded" shall include:

(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(6)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

(6)(i) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

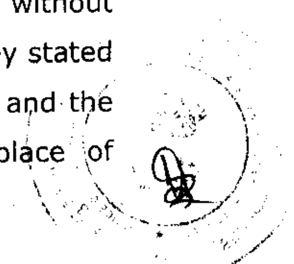


ORDER IN APPEAL

M/s. Archon Engicon Ltd., Plot number 1, 2, 3 and 5, Navkar Industrial Estate, Santej-Khatraj Road, Santej, Taluka: Kalol *(hereinafter referred to as 'the appellants')* have filed two appeals against the Orders-in-Original number AHM-CEX-003-ADC-AJS-066-069-16-17 dated 30.03.2017 *(hereinafter referred to as 'impugned order')* passed by the then Additional Commissioner, Central Excise, Ahmedabad-III *(hereinafter referred to as 'adjudicating authority')*;

2. The facts of the case, in brief, are that the appellants are engaged in the manufacture of Transmission Lines, Towers and MS Structures, Towers for Solar Energy Park and Windmill Towers falling under Chapter 72 and 73 of the Central Excise Tariff Act, 1985 and are holding Central Excise Registration number AAECA9924AXM001. During the course of CERA audit, it was noticed that for the period from 2010-11 to 2012-13, the appellants had collected a sum of ₹6,28,79,189/- from various buyers as freight charges for delivery of the goods at their doors. The appellants recovered the cost of transportation on the excise invoices separately after charging Central Excise duty. As the place of removal of the goods were the door of the customers, freight charges recovered from the customers should form the part of the transaction value and Central Excise duty should have been discharged. However, it was found that no duty was levied on the amount of freight so collected. Therefore, show cause notices dated 05.01.2015, 22.09.2015, 04.12.2015 and 21.09.2016 were issued to them for the periods April 2010 to September 2014, October 2014 to March 2015, April 2015 to August 2015 and September 2015 to March 2016 respectively. The adjudicating authority, vide the impugned order, confirmed the demand of Central Excise duty amounting to ₹ 2,01,35,124/- (₹ 1,67,60,092/- + ₹ 29,57,595/- + ₹ 1,69,271/- + ₹2,48,166/-) under Section 11A of the Central Excise Act, 1944 and demanded interest under Section 11AB/AA of the Central Excise Act, 1944. The adjudicating authority further imposed penalty under Sections 11AC(1)© and 11AC(1)(a) of the Central Excise Act, 1944 amounting to ₹ 96,31,247/- (₹25,02,402/- + ₹71,28,845/-) and ₹3,37,503/- respectively. He further imposed penalty amounting to ₹ 10,00,000/- on Shri Chandrasekhar Panchal, Managing Director of the appellants, under Rule 26(1) of the Central Excise Rules, 2002.

3. Being aggrieved with the impugned orders the appellants have preferred the present appeal. The appellants have submitted that the adjudicating authority has passed the order in routine and superfluous manner without taking into consideration the facts and legal aspects of the issue. They stated that place of delivery and place of removal are two different issues and the adjudicating authority has construed the place of delivery as place of



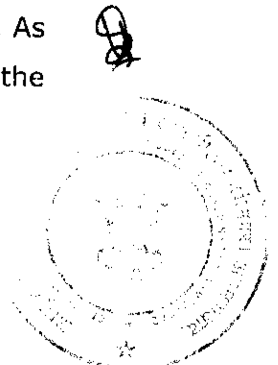
removal. They cited the verdict of the Hon'ble Supreme Court in the case of M/s. Escorts JCB Ltd. [2002(146)ELT-31] where it was held that goods to be treated as delivered to buyer and property and possession of the goods passed on to the buyer when the goods were handed over to transporter. The appellants argued that in their case too, the goods were handed over to the transporter at the factory gate and in all the documents name of the buyer was shown as consignee. They further informed that Service Tax was paid on the freight charges.

4. Personal hearing in the matter was granted and held on 21.12.2018. Shri P. G. Mehta, Advocate, appeared before me and reiterated the contents of appeal memo. He urged that new Section 4 pertains to post 2003. Section 4 has not been discussed in the impugned order. He submitted several citations in support of his arguments.

5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellants at the time of personal hearing.

6. I find that the issue is that the appellants are supplying the goods at the door of their clients. After the goods are removed from the factory gate, same are handed over to respective transporters for delivery at the door of the clients. The appellants show freight charges separately in their Excise invoices and get the same reimbursed from their clients. The appellants contested that in all the documents, name of the buyer was shown as consignee. A party (usually a buyer) named by the consignor (usually a seller) in transportation documents as the party to whose order a consignment will be delivered at the port of destination. The consignee is considered to be the owner of the consignment for the purpose of filing the customs declaration, and for paying duties and taxes. Formal ownership of the consignment, however, transfers to the consignee only upon payment of the seller's invoice in full. Thus, just mentioning the buyer as a consignee, in the transportation documents, does not make the buyer the owner of the goods unless full and final payment of the goods is made and legally the ownership of the goods is transferred to the buyer.

I find that, in the grounds of appeal, the appellants have placed emphasis on the place of delivery. In fact, they want the department to consider their place of delivery as the place of removal. But that is not the case. I agree with the view of the adjudicating authority who, by quoting the Board's Circular number 988/12/2014-CX dated 20.10.2014, clarified the fact that the place of removal is the actual place where the goods have been passed on from the seller to the buyer. Accordingly, it has been clarified that the credit of input services would also be available up to the place of removal. As per the said circular, the place of removal has to be decided in terms of the



provisions of the Sale of Goods Act, 1930 and the place where the property in goods passes from the seller to the buyer is to be considered as the place of removal. For a better view, I would like to reproduce the required contents of the circular below;

> *"........ It is; therefore, clear that for a manufacturer/consignor, the eligibility to avail credit of the service tax paid on the transportation during removal of excisable goods would depend upon the place of removal as per the definition. In case of a factory gate sale, sale from a non-duty paid warehouse, or from a duty paid depot (from where the excisable goods are sold, after their clearance from the factory), the determination of the 'place of removal' does not pose much problem. However, there may be situations where the manufacturer/consignor may claim that the sale has taken place at the destination point because in terms of the sale contract/agreement (i) the ownership of goods and the property in the goods remained with the seller of the goods till the delivery of the goods in acceptable condition to the purchaser at his door step; (ii) the seller bore the risk of loss of or damage to the goods during transit to the destination; and (iii) the freight charges were an integral part of the price of goods. In such cases, the credit of the service tax paid on the transportation up to such place of sale would be admissible if it can be established by the claimant of such credit that the sale and the transfer of property in goods (in terms of the definition as under Section 2 of the Central Excise Act, 1944 as also in terms of the provisions under the Sale of Goods Act, 1930 occurred at the said place."*
>
> *3) The operative part of the instruction in both the circulars gives similar direction and is underlined. They commonly state that **the place where sale takes place is the place of removal**. **The place where sale has taken place is the place where the transfer in property of goods takes place from the seller to the buyer.** This can be decided as per the provisions of the Sale of Goods Act, 1930 as held by Hon'ble Tribunal in case of Associated Strips Ltd Vs Commissioner of Central Excise , New Delhi [2002 (143) ELT 131 (Tri-Del)] . This principle was upheld by the Hon'ble Supreme Court in case of M/s. Escorts JCB Limited v. CCE, New Delhi [2002 (146)E.L.T.31 (S.C.)] .*
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> ....
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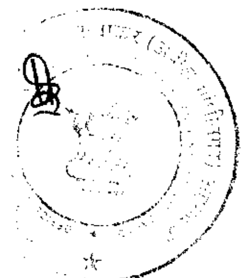
> *6) It is reiterated that the place of removal needs to be ascertained in term of provisions of Central Excise Act, 1944 read with provisions of the Sale of Goods Act, 1930. Payment of transport, inclusion of transport charges in value, payment of insurance or who bears the risk are not the relevant considerations to ascertain the place of removal. The place where sale has taken place or when the property in goods passes from the seller to the buyer is the relevant consideration to determine the place of removal.*

Thus, from the above, it is quite clear that the place of removal is the most important place in the entire transaction proceeding and the place where the property in goods passes from the seller to the buyer is to be considered as the place of removal. In the instant case, same is the situation and hence, I



consider that the buyer's place is the place of removal as sale has actually taken place at the door of the buyer. Further, agreeing with the view of the adjudicating authority, I would like to quote the contents of Section 39 of the Sale of Goods Act, 1930 below;

"Delivery to carrier of wharfinger.—

(1) Where, in pursuance of a contract of sale, the seller is authorised or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer, or delivery of the goods to a wharfinger for safe custody, is prima facie deemed to be a delivery of the goods to the buyer.

(2) Unless otherwise authorised by the buyer, the seller shall make such contract with the carrier or wharfinger on behalf of the buyer as may be reasonable having regard to the nature of the goods and the other circumstances of the case. If the seller omits so to do, and the goods are lost or damaged in course of transit or whilst in the custody of the wharfinger, the buyer may decline to treat the delivery to the carrier or wharfinger, as a delivery to himself, or may hold the seller responsible in damages.

(3) Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit, in circumstances in which it is usual to insure, the seller shall give such notice to the buyer as may enable him to insure them during their sea transit and if the seller fails so to do, the goods shall be deemed to be at his risk during such sea transit."

In the case of M/s. Madras Cements Ltd. [2015(40)STR 645(Kar)], the Hon'ble High Court of Karnataka proclaimed that the sale of goods is complete only when the buyer receives the goods. This order has also tested the validity of Board's Circular number 988/12/2014-CX dated 20.10.2014. I quote below the head notes of the said judgment for ready reference;

Cenvat credit of Service Tax - Input service - GTA service - Used for outward transportation of final product from place of removal to customers premises - HELD : As long as sale of goods is finalized at destination, which is at doorstep of buyer, change in definition of "input service" which came into effect w.e.f. 1-4-2008 would not make any difference - Invoices shows that goods were to be delivered and sale completed at buyer's address without levying any change by assessee for such delivery - Sale of goods completed only when buyer received the goods - C.B.E. & C. Circular No. 988/12/2014-CX, dated 20-10-2014 clears that place of removal to be ascertained in terms of Central Excise Act, 1944 read with provisions of Sale of Goods Act, 1930 - Sale of Goods Act, 1930 says that intention of parties as to the time when property in goods has to pass to buyer is of material consideration - Appellant's records clearly shows that intention of parties was that sale would be complete only after goods delivered by seller at buyer's address -

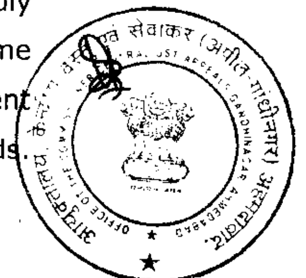
Payment for insurance or bearing risk of goods in transit not a material consideration - Sale of goods concluded only after delivery of goods made at buyer's address, assessee entitled for benefit of Cenvat credit even after 1-4-2008. [paras 8, 9, 12]

In paragraph 9 of the above said judgment, the Hon'ble High Court has held that as the sale proceeds complete only after the delivery of the goods at the buyer's doorstep, the seller is entitled for the Cenvat credit of the expanses from factory gate to buyer's door; *"As per the said Circular, the place of removal has to be ascertained in terms of Central Excise Act, 1944 read with the provisions of the Sale of Goods Act, 1930 which has been dealt with in detail in the said Circular. According to the provisions of the Sale of Goods Act, 1930, the intention of the parties as to the time when the property in goods has to pass to the buyer is of material consideration. The record clearly shows that the intention of the parties was that the sale would be complete only after goods are delivered by the seller at the address of the buyer. The assessing officer as well as the appellate authority have held that the assessee would not be entitled to the benefit merely because no documentary evidence has been adduced to establish the fact of insurance coverage by the assessee. In our view, who pays for insurance or bears the risk of goods in transit would not be a material consideration. The same has also been made clear by the Central Board of Excise and Customs, Department of Revenue, Ministry of Finance, in its Circular dated 20-10-2014".*

7. In their grounds of appeal and during the course of personal hearing, the appellants have regularly quoted the judgment of Hon'ble Supreme Court in the case of The Commissioner of Central Excise, Nagpur versus **M/s. Ispat Industries Ltd.** [2015(324) E.L.T. 670(S.C.)]. In the above said case, the Hon'ble Supreme Court had settled the issue which pertains to the period prior to 31.03.2003. I reproduce the related head notes of the said judgment as below;

*Valuation (Central Excise) - Freight charges - For period from 28-9-1996 up to 1-7-2000, could not be included in assessable value on ground that sale took place at buyer's premises - **For period 1-7-2000 to 31-3-2003, there was no extended place of removal, factory premises or warehouse, alone being places of removal - For these periods, under no circumstances buyer's premises could be place of removal for purpose of Section 4 of Central Excise Act, 1944** - Hence, on facts, cost of insurance Policy to cover risk to loss or damage of goods while in transit, was not includible in assessable value. [para 24]*

The said judgment of Hon'ble Supreme Court has been repeatedly misunderstood by the trade. In the said judgment, the Hon'ble Supreme Court has discussed both the situations prevailed in the pre amendment period as well as the post amendment period i.e. from 14.05.2003 onwards.



In the above mentioned judgment, the Hon'ble Supreme Court, in paragraph 18, proclaimed that the in the amended version of Section 4, the place of removal is any premises related to the manufacture of excisable goods. I reproduce paragraph 18 below for better understanding of the facts;

*"**18.** By an Amendment Act which came into effect on 1-7-2000, Section 4 was substituted yet again as follows :-*

***"Section 4. Valuation of excisable goods for purposes of charging of duty of excise.** - (1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall -*

(a) In a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, by the transaction value;

(b) In any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed.

(2) The provisions of this section shall not apply in respect of any excisable goods for which a tariff value has been fixed under sub-section (2) of section 3.

(3) For the purpose of this section, -

(a) "assessee" means the person who is liable to pay the duty of excise under this Act and includes his agent;

(b) Person shall be deemed to be "related" if -

(i) they are inter-connected undertakings;

(ii) they are relatives;

(iii) amongst them the buyer is a relative and a distributor of the assessee, or a sub-distributor of such distributor; or

(iv) they are so associated that they have interest, directly or indirectly in the business of each other.

Explanation. - In this clause -

(i) "inter-connected undertakings" shall have the meaning assigned to it in clause (g) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 (64 of 1969); and

(ii) "relative" shall have the meaning assigned to it in clause (41) of section 2 of the Companies Act, 1956 (1 of 1956);

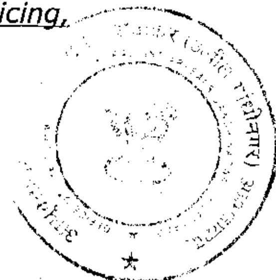
(c) "place of removal" means -

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

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

from where such goods are removed;

(d) "transaction value" means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing,



warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods."

However, in the said judgment, the Hon'ble Supreme Court has not discussed the Board's Circular number 988/12/2014-CX dated 20.10.2014 because the period under consideration of the impugned order of Apex Court was prior to 2003. The Circular dated 20.10.2014 has been examined by the Hon'ble High Court of Karnataka (as discussed in paragraph 7 above) and held to be valid. But in paragraph 22 of the said order, the Hon'ble Supreme Court has clarified that the place of removal can be any other place or premises (along with the premises of the manufacturer or consignment agent) from where the excisable goods are to be sold after their clearance from the factory [Amended Section 4(3)©(iii)]. For better clarification, I, hereby, reproduce the relevant portions of paragraphs 22, 23 and 24 below;

*"**22.** To complete the picture, by an Amendment Act with effect from 14-5-2003, Section 4 was again amended so as to re-include sub-clause (iii) of old Section 4(3)(b) (pre 2000) as Section 4(3)(c)(iii). This amendment reads as follows :-*

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

Also, Rule 5 of the Central Excise Rules was substituted, with effect from 1-3-2003, to read as follows :

*"**Rule 5.** Where any excisable goods are sold in the circumstances specified in clause (a) of sub-section (1) of section 4 of the Act except the circumstances in which the excisable goods are sold for delivery at a place other than the place of removal, then the value of such excisable goods shall be deemed to be the transaction value, excluding the cost of transportation from the place of removal upto the place of delivery of such excisable goods.*

Explanation 1. - "Cost of transportation" includes -

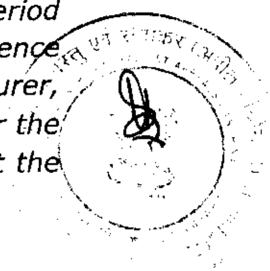
(i) the actual cost of transportation; and

(ii) in case where freight is averaged, the cost of transportation calculated in accordance with generally accepted principles of costing.

Explanation 2. - For removal of doubts, it is clarified that the cost of transportation from the factory to the place of removal, where the factory is not the place of removal, shall not be excluded for the purposes of determining the value of the excisable goods.

__23.__ It is clear, therefore, that on and after 14-5-2003, the position as it obtained from 28-9-1996 to 1-7-2000 has now been reinstated. Rule 5 as substituted in 2003 also confirms the position that the cost of transportation from the place of removal to the place of delivery is to be excluded, save and except in a case where the factory is not the place of removal.

__24.__ It will thus be seen that, in law, it is clear that for the period from 28-9-1996 up to 1-7-2000, the place of removal has reference only to places from which goods are to be sold by the manufacturer, and has no reference to the place of delivery which may be either the buyer's premises or such other premises as the buyer may direct the manufacturer to send his goods..........".



Thus, from the above it is very much evident that the Hon'ble Apex Court's decision in the case of Ispat (supra) is not applicable in the present case and in terms of the decision of the Hon'ble Karnataka High Court in case of Madras Cement (supra) it is quite clear that the buyer's premises is the sole place where the actual sale took place in the nstant case and thus, whatever charges collected by the appellants, outside their factory premises should have been included in the assessable value.

8. In view of above discussions, I up held the impugned order passed by the adjudicating authority and reject the appeal filed by the appellants.

9. अपीलकर्ता द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है।

9. The appeal filed by the appellants stands disposed off in above terms.

(उमा शंकर)

CENTRAL TAX (Appeals),

AHMEDABAD.

ATTESTED

(S. DUTTA)

SUPERINTENDENT,

CENTRAL TAX (APPEALS),

AHMEDABAD.

To,

1. M/s. Archon Engicon Ltd.,
   Plot number 1, 2, 3 and 5, Navkar Industrial Estate,
   Santej-Khatraj Road, Santej,
   Taluka: Kalol.

2. Shri Chandrasekhar Panchal,
   Managing Director,
   M/s. Archon Engicon Ltd.,
   Plot number 1, 2, 3 and 5, Navkar Industrial Estate,
   Santej-Khatraj Road, Santej,
   Taluka: Kalol.

Copy to:

1) The Chief Commissioner, Central Tax, Ahmedabad.
2) The Commissioner, Central Tax, Gandhinagar.
3) The Dy./Asst. Commissioner, Central Tax, Kalol Division.
4) The Asst. Commissioner (System), Central Tax, Hq., Gandhinagar.
5) Guard File.
6) P. A. File.