::आयुक्त (अपील-III) का कार्यालय,केंद्रीय उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS-III), CENTRAL EXCISE,
द्वितीय तल, केन्द्रीय उत्पाद शुल्क, भवन / 2nd Floor, Central Excise, Bhavan,
रेस कोर्स रिंग रोड,/ Race Course Ring Road,
राजकोट / Rajkot- 360001
Tele Fax No. : 0281 – 2477952/2441142 Email cexappealsrajkot@gmail.com

सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/93 /BVR/2016 2926 to 2922	**BHV-EXCUS-000-JC-025-031-2015-16**	**30.03.2016,**

ख अपील आदेश संख्या (Order-In-Appeal No.):

BHV-EXCUS-000-APP-013-2017-18

आदेश दिनांक / Date of Order :	**29.05.2017**	जारी करने की तारीख / Date of issue:	**05.06.2017**

श्री उमा शंकर, आयुक्त (अपील-III) द्वारा पारित /
Passed by Shri Uma Shanker, Commissioner (Appeals-III)

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित: /

Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham :-

घ **अपीलकर्ता/** प्रतिवादी का नाम एवं पता / Name & Address of the **Appellant/** Respondent :-

M/s. G.H.C.L. Limited, Sutrapada, Veraval-Kodinar Highway, Dist : GIR- Somnath

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क ,केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम ,1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है ।/
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए ।/
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, ओ-20, न्यू मेन्टल होस्पिटल कम्पाउंड, मेघाणी नगर, अहमदाबाद-380016, को की जानी चाहिए ।/
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad: 380016, in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए । इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की माँग ,ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/

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.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/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 Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की माँग ,ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

...2...

(i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमावली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी । /
The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

(ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की ली गई गलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगे।/
For an appeal to be filed before the CES
TAT, 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, 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, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 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.

(C) **भारत सरकार को पुनरीक्षण आवेदन :**
Revision application to Government of India:
इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलो में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, 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:

(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में।/
In case of any loss of goods, where the loss occurs 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

(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /
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.

(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी केडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायावधि पर या बाद में पारित किए गए है।/
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 such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए । उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी 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.

(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए ।
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए ।
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

(D) यदि इस आदेश में कई मूल आदेशो का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय नयाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है । /
In case, if the order covers various numbers 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 lakh fee of Rs. 100/- for each.

(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। /
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act,1975, as amended.

(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। /
Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं । /
For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in

:: ORDER IN APPEAL ::

The present appeal has been filed by M/s. GHCL Ltd., Sutrapada, Veraval Kodinar Highway, Tal.: Veraval, Dist. Junagadh-362275 (*hereinafter referred to as* "the appellant") against Order-in-Original No.BHV-EXCUS-000-JC-025-031-2015-16 dated 30.03.2016 (*hereinafter referred to as* "the impugned order") passed by the Joint Commissioner, Central Excise & Service Tax, Bhavnagar (*hereinafter referred to as* "the adjudicating authority") in their own case.

2. Briefly stated facts of the case are that the appellant holders of Central Excise Registration are engaged in the manufacture of Soda Ash and Sodium Bio-Carbonate, falling under Chapter Sub-Heading No. 28362010 and 28013020 respectively of the First Schedule to the Central Excise Tariff Act, 1985 (*hereinafter referred to as* "the final products"). They were availing CENVAT Credit under the CENVAT Credit Rules, 2004 (*hereinafter referred to as* "the CCR"). The appellant had availed Cenvat Credit in respect of Capital Goods and utilized the same for payment of Central Excise Duty on clearance of their final products which was not in accordance with the CCR as the said capital goods had been exclusively used in the manufacture of Coke Briquette attracting 6% Advalorem Tariff Rate w.e.f. 28.02.2011 and which were captively consumed by them without payment of duty under Notification No.67/95-CE dated 16.03.1995, whereas the said Notification was not covered by exceptions specified under Rule 6(6) of the CCR. Thus, the appellant had availed Cenvat Credit on the subjected capital goods which were exclusively used in the manufacturing of exempted final goods i.e. Coke Briquette. On being asked by the department, the appellant had denied to the reversal of such cenvat credit on the ground that Coke Briquette was intermediate product in view of the Board's Circular No.665/56/2002-CX dated 25.09.2002. Further, they had also availed cenvat credit on some items which were not covered in the definition of Capital Goods. Hence, the cenvat credit so availed was not allowable to them. Thus, they have violated Rule 2(a), Rule 6(4) and Rule 6(6) *ibid* by wrongly availing the Cenvat Credit of Rs.60,26,486/- and Rule 12 of the Central Excise Rules, 2002 by not declaring the production and clearance of the said products, pertaining to the period of April, 2012 to September, 2015. These observations led into issuance of six show cause notices which includes five periodical show cause notices, which were adjudicated by the adjudicating authority vide impugned order wherein he confirmed the entire demand of the said wrongly availed Cenvat credit alongwith interest under Rule 14 of the CCR readwith Section 11A(1)/11AA of the Central Excise Act, 1944 and imposed penalty equal to the confirmed demand under Rule 15(1) *ibid*.

3. Being aggrieved by the impugned order, the appellant filed the present appeal on the various grounds with case laws. It is observed that the appellant has come up with the same grounds and citations as was submitted before the adjudicating authority in the present case. Therefore, for the sake of repetitions I refrain to reproduce the same. However, for brevity, the appellant mainly contended that the disputed capital goods were used for manufacture of Coke Briquette, which was used as intermediate products in the manufacture of final products chargeable to Central Excise Duty, hence it could not be said that the said capital goods were exclusively used in the manufacturing of exempted goods. They were availing benefit of the Notification dated 16.03.1995 *supra* for production and clearance of said intermediate goods and the same were declared in their ER-1 Returns filed for the relevant period. They also contended that the Coke Briquette was not leviable to Central Excise Duty since the process thereof did not amount to manufacture. They also submitted that the CCR did not define the intermediate products, however the same has been consistently interpreted by the courts to mean products made by a deliberate process of manufacture for utilization in captive consumption. They further submitted that Cenvat Credit could not be denied on such capital goods which were used in intermediate products even if exempted, used in the factory premises directly or indirectly in relation to the manufacture of dutiable final products, as has also been clarified by the Board vide Circular dated 25.09.2002 *supra*. Further, they contested that the items alleged to be not covered by the definition of capital goods were used for maintenance of capital goods, which were used in the factory in relation to manufacture of dutiable final products and without repairing the capital goods could not function properly for the manufacture of the goods. Therefore, the said items could be qualified as inputs for availing the cenvat credit. Therefore they were rightly availing the cenvat credit under dispute and thus, no interest and penalty could be demanded from the. In view of their submission, the impugned order is liable to be set aside.

4. Personal hearing in the matter was held 16.03.2017 which was attended by S/Shri Deepak Singhal and Manish Depala on behalf of the appellant. They reiterated the grounds of appeal filed by them and also referred to the Board's Circular No.665/56/2002-CX dated 25.09.2002. Further, the respondent-department has neither submitted any comments on the grounds raised by the appellants in their present appeals nor appeared for the hearing. I therefore proceed to decide the case on merit on the basis of records available on file.

5. I have carefully gone through the facts of the case, impugned order, grounds of appeals and submissions made by the appellant. The issue to be decided in

the present appeal is that whether the impugned order confirming the proposed demand of Cenvat credit alongwith interest and imposing penalty equal to the confirmed demand with regard to the subjected capital goods used in the manufacture of so called exempted final products viz. Coke Briquette, which were captively consumed by the appellant without payment of duty under Notification No.67/95-CE dated 16.03.1995, for further manufacture of dutiable goods, in terms of Rule 6(4) readwith Rule 6(6) of the CCR is proper or otherwise.

6. It is observed that the dispute involved in the present appeal is related to the (i) Cenvat Credit on capital goods used for manufacture of Coke Briquette being held to be exempted goods, which were used in their factory in the manufacturing of their final products viz. Soda Ash and Soda Bio-Carbonate and (ii) cenvat credit on other items stated not to be covered by the definition of capital goods. The adjudicating authority has denied the impugned cenvat credit for the reason of the said capital goods which were used exclusively in the manufacture of so called exempted final products viz. Coal Briquette.

7. The adjudicating authority has held that Briquettes being excisable goods arising out of manufacturing process, falling under CETSH 270120, and used as fuel, could not be regarded as intermediate goods, hence denied the impugned cenvat credit for the reason of the said capital goods used exclusively in the manufacture of so called exempted final products viz. Coal Briquette.

8. I find that the adjudicating authority has after detail discussion and in view of decision of the Apex Court in the case of M/s. Sonebhadra Fuels reported at 2006(206)ELT29(SC) arrived to conclude that Coke Briquettes is an excisable goods, falling under CETSH No.270120, arises out of process of manufacture as defined under the Central Excise Law. The same is also evident from the fact that the appellant were using the said goods captively by availing benefit of Notification No.67/1995-CE dated 16.03.1995. Hence, I do not find any deviation from the said facts.

9. I find undisputed facts of the present case that the Coke Briquettes so manufactured by them were used for decomposition process during the course of manufacture of final products viz. Soda Ash, as is evident from the fact of availing the benefit of the Notification dated 16.03.1995 *supra*, which exempts such goods from central excise duty for captive consumption.

10. As regard the intermediate goods, it is observed that the goods

manufactured and used within the factory of production for further manufacture of other goods is called 'intermediate goods' and such use is termed as 'captive consumption'. As per aforesaid Notification dated 16.03.1995, such intermediate goods are exempt from duty if final product is chargeable to duty. Here, it cannot be said that the said intermediate goods are exempted goods since final products are chargeable to duty. Similar is the situation in the present case as the subjected capital goods were used for manufacture of Coke Briquettes which were further used for manufacture of final products viz. Soda Ash, chargeable to central excise duty and thus, the Coke Briquette would qualify as an intermediate products for manufacture of dutiable final product as is also supported by the Board's Circular dated 25.09.2002, *supra*, whereby it has been clarified that cenvat credit is available on such capital goods, if final product is chargeable to duty. I also find that Hon'ble Supreme Court in the case of M/s. Vikram Cement reported at 2006(194)ELT3(SC), though with reference to Rule 57B of erstwhile Central Excise Rules, 1944 but akin to Rule 2(k) *ibid*, which provides for credit on inputs used for generation of electricity or steam used for manufacture of the final products or for any other purposes "within the factory of production", has observed that the phrase "within the factory of production" means only such generation of electricity or steam which is used within the factory would qualify as an intermediate product and held that whatever goes into generation of electricity or steam which is used within the factory would be an input for the purpose of obtaining credit on the duty payable thereon.

11. I further observe that as per Rule 2(k) of the CCR, 'input' includes goods used in manufacture of capital goods which are further used in the factory of manufacturer. Thus, goods used to manufacture capital goods would be eligible as 'input' and cenvat credit thereon is admissible. Here, it is pertinent to note that capital goods so manufactured and used within the factory are exempt from Central Excise duty vide Notification No. 67/1995-CE dated 16.03.1995. Even in a plethora of judgments of various Courts as well as Tribunals, such credit was consistently held eligible. I also find support from the case of Sudalagunta Sugars Ltd. reported in 2006(199)ELT760(CESTAT), wherein assessee was using capital goods for generation of electricity and it was held that cenvat credit on capital goods could not be denied. Therefore, in view of above, it could not be said that the said capital were used exclusively for exempted goods and thus, question of application of Rule 6(4) readwith Rule 6(6) *ibid* did not arise in the present case.

12. As regard the other subjected items (i.e. ineligible capital goods) which were stated not to be covered by the definition of the capital provided under Rule 2(a), I

find that first of all, the adjudicating authority vide the impugned order has confirmed the entire demand which also includes the demand of the cenvat credit on such items, however, nothing was discussed on this issue. In the instant case, the appellant has availed cenvat credit on the said items stated to have been used in repair and maintenance of capital goods. The appellant has not provided any details as to how and in which manner the disputed goods have been used for repair and maintenance work. Further, I also find that the appellant is engaged in manufacture of Soda Ash and such items cannot be stated to have any relationship with the manufacture of their said final product. Thus, I find that the claim of the appellant fails in 'user test' of the disputed goods. I further find that the Board vide Circular No.267/11/2010-CX.8 dated 08.07.2010 has also clarified that credit is not admissible on inputs used for repair and maintenance of capital goods. Therefore, the cenvat credit availed on these items by treating the same as "Capital Goods" is not admissible to the appellant and the wrongly availed cenvat credit is therefore required to be recovered alongwith interest from the appellant.

13. In view of above, I find that the appellant is eligible for the cenvat credit with reference to the capital goods used for manufacturing of Coke Briquette, whereas cenvat credit in respect of other items used for repair and maintenance of capital goods is not allowable which is required to be recovered along with interest and penalty from them. Thus, I partially allow the present appeal of the appellant and I hold that the impugned order stands modified to the above extent.

१४. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

14. The appeal filed by the appellant stands disposed off in above terms.

(उमा शंकर)
आयुक्त (अपील्स - III)

By Speed Post

To
M/s. GHCL Ltd.
Sutrapada, Veraval Kodinar Highway,
Tal:- Veraval, Dist: Junagadh 362275

Copy to:

1. The Chief Commissioner, Central Excise and Service Tax, Ahmedabad.
2. The Commissioner, Central Excise and Service Tax, Bhavnagar.
3. The Assistant Commissioner, Central Excise, Junagadh.
4. The Dy./Assistant Commissioner (Sys.), Central Excise, H. Q., Bhavnagar – with a request to upload the OIA on website.
5. The Superintendent, Central Excise, AR-II, Veraval.
6. P.A. to Commr. (Appeal-III), C. Ex. Ahmedabad
7. Guard File