



आयुक्त (अपील्स) का कार्यालय, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क:
O/O THE COMMISSIONER (APPEALS), CENTRAL GST & EXCISE.



द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan,

रेस कोर्स रिंग रोड, Race Course Ring Road,

राजकोट / Rajkot - 360 001

Tele Fax No. 0281 - 2477952-2441142 Email: cexappealsrajkot@gmail.com

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील आदेश संख्या Appeal File No.	मूल आदेश नं. OID No.	दिनांक / Date
	V2/281/BVR/2017	85/Demand/Excise/2016-17	31.03.2017

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

BHV-EXCUS-000-APP-201-2017-18

आदेश का दिनांक /
Date of Order: **15.03.2018** जारी करने की तारीख /
Date of issue: **16.03.2018**

कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by **Shri Kumar Santosh, Commissioner (Appeals), Rajkot**

ग अथवा आयुक्त/सचिव/आयुक्त उत्पाद शुल्क/सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क सेवाका, राजकोट / जामनगर / गांधीधाम द्वारा उपरोक्तित जारी मूल आदेश से मुक्ति /
Arising out of above mentioned OID 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 Appellants & Respondent :-**
M/s Madhu Silica Pvt. Ltd. DU-IV Plot No.147 Vartej, Bhavnagar.

इस आदेश(अपील) से व्यक्ति कोई व्यक्ति निम्नलिखित अधिक से उपयुक्त अधिकारी / प्राधिकरण के समक्ष अपील द्वारा 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 अपील विभागीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अन्तर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अन्तर्गत 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) विशेष न्यायाधीश की समन्वित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील विभागीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, ए.के. पुरम, नई दिल्ली, की जा सकती है।

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 उल्लेखित अपील के अलावा वेच सभी अपील सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील विभागीय न्यायाधिकरण (सिस्टट) की क्षेत्रीय शाखा पीठियां, द्वितीय तल, भुसावली भवन असावा अहमदाबाद-380016, की जा सकती है।

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd Floor, Bhaumik Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपील विभागीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) विनियम, 2001, के नियम 8 के अन्तर्गत निर्धारित किए गए फॉर्म EA-3 की धारा परिचय में दृष्टि किया जाता है। इसमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मात्रा, प्रत्येक की मात्रा और लागत का जमाना, तथा 5 लाख से अधिक कम, 5 लाख तथा या 50 लाख तथा एक अथवा 50 लाख तथा से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न की। निर्धारित शुल्क का भुगतान संबंधित अपील विभागीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के पास में किसी भी सर्वजनिक क्षेत्र के बैंक द्वारा जारी रेगुलर बैंक ड्राफ्ट द्वारा किया जाता है। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपील विभागीय न्यायाधिकरण की शाखा स्थित है। स्थान आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये 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 8 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) अपील विभागीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अन्तर्गत सेवाकर विनियम, 1994 के नियम 2(1) के अन्तर्गत निर्धारित फॉर्म S.T.5 में धारा परिचय में की जा सकती है। इसमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मात्रा, प्रत्येक की मात्रा और लागत का जमाना, तथा 5 लाख से अधिक कम, 5 लाख तथा या 50 लाख तथा एक अथवा 50 लाख तथा से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न की। निर्धारित शुल्क का भुगतान, संबंधित अपील विभागीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के पास में किसी भी सर्वजनिक क्षेत्र के बैंक द्वारा जारी रेगुलर बैंक ड्राफ्ट द्वारा किया जाता है। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपील विभागीय न्यायाधिकरण की शाखा स्थित है। स्थान आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये 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 2(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 fee 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/-

202

(i) क्लिप अपीलेशन, 1994 की धारा 86 की उप-धारा (2) एवं (2A) के अंतर्गत दिये की गयी अपील, सेवानियमिका, 1994 के नियम 9(2) एवं 9(2A) के तहत सिटीडिल फॉर्म ST-7 में की जा सकती है। इसका साथ अनुसूची, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियां संलग्न की जा सकती हैं। एक प्रति प्रमाणित होनी चाहिए। और अनुसूची द्वारा सहायक अनुसूची अथवा उपानुसूची, केन्द्रीय उत्पाद शुल्क सेवानियमिका, को अपीलेशन न्यायाधिकारण को संबोधित करने का निर्देश देने वाले आदेश की प्रति को 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 Form 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 सेवानियमिका अपीलेशन (सेवाटैट) के प्रति अपील के अंतर्गत में केन्द्रीय उत्पाद शुल्क अपीलेशन 1994 की धारा 35एक के अंतर्गत, जो की क्लिप अपीलेशन, 1994 की धारा 83 के अंतर्गत सेवानियमिका को भी लागू की गई है, इस आदेश के प्रति अपीलेशन प्रमाणित में अपील करने समय उत्पाद शुल्क/सेवा के साथ के 10 प्रतिशत (10%), जब साथ एक तुलना विवरण है, को संलग्न करना चाहिए। यह तुलना, जब कबल तुलना विवरण है, का अनुमान किया जाय, बतानी कि इस धारा के अंतर्गत जमा कि जमा वाली अपीलेशन टेप एडिशन टैक्स करीब रूप से अधिक न हो।

- केन्द्रीय उत्पाद शुल्क एवं सेवानियमिका के अंतर्गत "संग क्लिप एवं शुल्क" में निम्न शामिल है।
- (i) धारा 11 डी के अंतर्गत रकम
- (ii) सेवाटैट जमा की गयी मात्रा एडिशन
- (iii) सेवाटैट जमा सेवानियमिका के नियम 6 के अंतर्गत टैक्स रकम
- बतानी यह कि इस धारा के अंतर्गत क्लिप (सं. 2) अपीलेशन 2014 के अंतर्गत में पूरे किसी अपीलेशन प्रमाणिकरी के समस्त विवरणों संलग्न करनी एवं अपील को लागू करनी होगी।

For an appeal to be filed before the CESTAT 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 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 Cervat Credit taken;
- (iii) amount payable under Rule 6 of the Cervat 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 प्रमाणिकरी प्रमाणित मामलों में, केन्द्रीय उत्पाद शुल्क अपीलेशन, 1994 की धारा 35EE के प्रथम परतक के अंतर्गत अपील अपील, भारत सरकार, पुनरीक्षण आवेदन इकाई, क्लिप संलग्न, राज्य विभाग, चौथी मंजिल, जीवान दीप भवन, संसद भवन, 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-35B ibid.

(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के परिवहन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह परासम के दौरान, या किसी भंडार गृह में या भंडारण में माल के परिवहन 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 विभिन्नता में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (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 इच्छा करीब इस अपीलेशन एवं इसके विभिन्न धाराओं के तहत मजबूती की गई है और ऐसे आदेश जो अनुसूची (अपील) के द्वारा क्लिप अपीलेशन (सं. 2), 1998 की धारा 109 के द्वारा नियत की गई तरीक अथवा समानाधिकार पर या बट में पारित किए गए हैं। / 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 प्रथम संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमिका, 2001 के नियम 9 के अंतर्गत सिटीडिल है, इस आदेश के संकेत 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 अपीलेशन, 1944 की धारा 35-EE के तहत सिटीडिल शुल्क की अदावती के साथ, के और या 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 प्रमाणित शुल्क की अदावती की जानी चाहिए। / जहां संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाय और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाय। / 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 आदेशों का संश्लेषण है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपरोक्त इस में किया जाना चाहिए। इस तथ्य के होते हुए भी की विचार नहीं करने से बचने के लिए अपीलेशन अपीलेशन अपीलेशन को एक अपील को केवल एक माल को एक आवेदन किया जाना 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 filed to avoid scripps work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) न्यायाधिकारण न्यायालय शुल्क अपीलेशन, 1975 के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर सिटीडिल 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 सेवानियमिका अपीलेशन (अपील) नियमिका, 1982 में वर्णित एवं अन्य संबंधित मामलों को सुनिश्चित करने वाले नियमों की और भी ध्यान आकर्षित किया जाय 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) उपर अपीलेशन प्रमाणिकरी को अपील दायित्व करने से संबंधित व्यापक, विस्तृत और नवीनतम परामर्श के लिए, अपीलेशन 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 ::

M/s. Madhu Silica Pvt. Ltd., DU-IV, Plot No. 147, Vartej, Bhavnagar (*hereinafter referred to as "Appellant"*) filed appeal against Order-In-Original No. 85/ Excise/Demand/2016-17 dated 31.03.2017 (*hereinafter referred to as 'the impugned order'*) passed by the Assistant Commissioner, Central Excise, City Division, Bhavnagar (*hereinafter referred to as 'the lower adjudicating authority'*).

2. The brief facts of the case are that the audit of records of Appellant by CERA for the period from March, 2014 to February, 2015 revealed that the Appellant had used Angles, M.S. Beams, MS Plates / Stainless Steel plate / HR Plates / Channels etc. treating items as capital goods which appeared to have been used for Civil construction purposes or repairs and taken Cenvat credit of Rs. 15,12,729/- as Capital goods in contravention of provisions of Rule 2 of the Cenvat Credit Rules, 2004 (*hereinafter referred to as "the Rules"*) as the disputed goods on which Cenvat credit has been availed and are falling under Chapter 72 and 73 Central Excise Tariff Act, 1985 are not specified as and capital goods in terms of Rule 2(a) of the Rules. It was also alleged that as per Rule 2(a)(A)(ii) of the Rules components, spares and accessories of the goods specified would qualify as capital goods only if the components, spares and accessories fell under Chapter 82, 84, 85, 90 of the Central Excise Tariff Act, 1985 and as per Explanation – II to Rule 2(k) of the Rules Cement, angles, channels, CTD or TMT and other items if used for construction of factory shed, building or laying of foundation or making of structures for support of capital goods, then it would not be eligible for Cenvat Credit. Show Cause Notice No. V/15-29/Audit-III/SCN/2015-16 dated 23.12.2015 was issued to Appellant demanding Central Excise duty under Section 11A of the Central Excise Act, 1944 (*hereinafter referred to as "the Act"*) read with Rule 14 of the Rules and interest under Section 11AA of the Act and proposing penalty under Rule 15(2) of the Rules read with Section 11AC of the Act on the ground that the appellant has wrongly availing Cenvat credit on ineligible items. The lower adjudicating authority, vide the impugned orders, confirmed demand of Rs. 15,12,729/- along with interest and also imposed penalty of Rs. 15,12,729/- under Rule 15(2) the Rules read with Section 11AC of the Act.

3. Being aggrieved with the impugned order, the appellant preferred the present appeal, *inter alia*, contending that the Explanation – II of Rule 2(k) of the Rules was not existing during the disputed period of March, 2014 to February, 2015 and hence, the lower adjudicating authority has not examined Rule 2(k) of the Rules properly; that the appellant had explained to the Audit

officers that all the disputed items were used or utilized as spares or accessories of capital goods by submitted Certificate of Chartered Engineer dated 16.03.2015 but the same has not been considered; that component, spares and accessories of any chapter, including items falling under chapter 72 of the Central Excise Tariff Act, 1985 are eligible for Cenvat credit as per Rule 2(a)(A)(iii) of the Rules; that the case laws of M/s. Nava Bharat Ferro Alloys Ltd. reported as 2004 (174) ELT 375 and M/s. Vandana Global Ltd. reported as 2010 (253) ELT 440 (Tri-LB) are not applicable and in support of their case cited the following case laws :-

- (i) Singhal Enterprise P. Ltd. reported as 2016(341)ELT(372)(Tri-Del.)

"Cenvat credit - Input credit - Eligibility - Welding electrodes used in manufacture of capital goods - HELD : Issue no longer res integra - Welding electrodes held as covered under definition of 'Input' in Cenvat Credit Rules, 2004 and Cenvat credit allowed as per several decisions of Tribunal and High Courts, such as, decision in case of Hindustan Zinc Ltd. [2008 (228) E.L.T. 517 (Raj.)] - Following ratio of said decisions, Cenvat credit admissible on duty paid welding electrodes - Rule 2(k) of Cenvat Credit Rules, 2004. [para 12]

Cenvat credit of capital goods - Structural steel items, such as MS Angles, channels, TMT Bar, etc., used in fabrication of support structures for various capital goods - Eligibility - HELD : Applying 'User Test' evolved by Apex Court in case of Jawahar Mills Ltd. [2001 (132) E.L.T. 3 (S.C.)], for classifying goods as capital goods, impugned structural steel items used necessarily to support and facilitate functioning of various capital goods such as, kiln, conveyor system furnace, etc., entitled to credit admissible under Rule 57Q of erstwhile Central Excise Rules, 1944 - Smooth functioning of machines not possible without such structural items, therefore, said structural items can be considered as parts and components of relevant machines - Since definition of 'Capital goods' under Rule 2(a) of Cenvat Credit Rules, 2004 includes components, spares and accessories of capital goods, impugned items fall within the ambit of 'capital goods' contemplated under Rule 2(a) ibid - Cenvat credit admissible on impugned items - Rules 3 and 4 of Cenvat Credit Rules, 2004. [para 15]"

- (ii) Saraswati Sugar Mills reported as 2011(270) ELT 465 (SC)

"Iron and Steel structures - Captive consumption - Exemption under Notification No. 67/95-C.E. - Iron & Steel structures manufactured and used captively in factory for installation of sugar manufacturing plant - Exemption denied as structures fell under Chapter 73 of Central Excise Tariff which not mentioned in Rule 57Q of erstwhile Central Excise Rules, 1944 while notification ibid exempted goods mentioned in Rule 57Q ibid - Assessee's submission that structurals are components of capital goods and covered under Item (5) under Rule 57Q ibid and hence exempted - "Component" in common parlance is integral part necessary to constitution of whole article and without which article is not complete - Test of being integral part of machinery, not satisfied -

Iron and Steel structures would not go into composition of vacuum pans, crystallizers etc. and are not essential requirements in sugar manufacturing unit - C.B.E. & C. Circular No. 276/110/96-TRU, dated 2-12-1996 not brought before Tribunal but not helpful now as Iron and Steel structures held as not components of machineries used in installation of sugar manufacturing plant. [paras 13, 17, 18, 19, 23]

Appeal to Supreme Court - New plea - Exemption - Captive consumption of Iron and Steel structurals in installation of capital goods - Benefit of Notification No. 67/95-C.E. denied as goods not components of capital goods - Plea that structures fabricated at site for use in construction of machineries and hence attract nil rate under sub-heading 7308.50 of Central Excise Tariff - Issue neither raised nor canvassed before Tribunal by assessee - Not permissible to argue issue before Supreme Court for first time - Contention rejected - Section 35L of Central Excise Act, 1944. [para 20]

Cenvat/Modvat - Parts/components of capital goods - Joints, channels, angles and MS beams used in fabricating supporting structures for installation of equipments - Tribunal in case of Simbhaoli Sugar Mills [2001 (135) E.L.T. 1239 (Tribunal)] allowed Modvat credit finding that items used for raising structures to support various machines covered under Explanation to Rule 57Q of erstwhile Central Excise Rules, 1944 - Tribunal in order ibid referred to decision in Malvika Steel Ltd. [1998 (97) E.L.T. 530 (Tribunal)] without any discussion - Iron and Steel structures held as not components of capital goods used in sugar manufacturing plant by Apex Court presently - Finding that structures not essential requirements in sugar manufacturing unit - Tribunal's reasoning not agreed with. [para 24]

Interpretation of exemption notification - Notification to be strictly construed - Conditions for taking benefit under notification also to be strictly interpreted - Wordings of notification when clear, plain language of notification be given effect to - Court cannot add or substitute any word while construing notification either to grant or deny exemption. [para 7]

Interpretation of statutes - Rules - Rules are framed under statute and should be read as part of statute itself - Rules required to interpreted as intra vires to Act under which they issued. [para 8]

Components - Whether particular article is component of another - Test is to look at article and consider its uses and whether its only use or its primary or ordinary use is as component part of another article. [para 12]

Words and Phrases - Components - Common parlance meaning - Component part of an article is an integral part necessary to constitution of whole article and without which, the article will not be complete. [para 13]

3.1 The appellant contended that CBEC Circular No. 267/11/2010-CX dated 08.07.2010 clarified that "The credit on inputs used in the manufacture of Capital Goods, which are further used in the factory of the manufacture is also available, except for items like Cement, Angles, Channels, CTD or TMT bars and other

items used for Construction of Factory shed, building or laying of foundation or making of structure for support of capital goods."; that in the instant case disputed items were not used for construction of the factory shed, building or laying of foundation or making of structures for support of capital goods and therefore denial of Cenvat credit on disputed items by the lower adjudicating authority is not proper as per law; that the judgment of M/s. Quality Steel Tubes (P) Ltd. reported as 1995 (75) ELT 17 (SC) and M/s. SDM Sugar reported as 2006 (206) ELT 721 (Tri-Del) referred by the lower adjudicating authority are not applicable in the present case.

3.2 The appellant contended that invocation of the extended period is not proper as they have reported availment of Cenvat credit in their monthly ER-1 returns by taking 50 % Cenvat credit; that the demand has been raised after a period of one year from the date of availment of Cenvat credit in respective ER-1 returns and there invocation of the extended period of demand is erroneous. In view of their above submission, demand of Cenvat credit has been wrongly confirmed and therefore interest and penalty imposed under Rule 15 of the Rules read with Section 11AC is required to be set aside.

4. The Assistant Commissioner, Central Excise and CGST Division, Bhavnagar submitted report vide F. No. IV/11-08/Misc.Corres.Recovery/2017-18/1187 dated 18.12.2017 wherein he, *inter alia*, submitted report in respect of Order-in-Original No. 12/Demand/ Excise/2017-18, Order-in-Original Nos. 49, 85 and 86/Demand/2016-17, stating that the disputed goods have been used in different plants of the factory viz. packing plant, boiler, coal crusher, melter etc.; that one-to-one correlation of the disputed goods and its actual usage at particular plant could not be ascertained; that the disputed goods have been mostly used in structural construction for supporting capital goods / machinery; that structures such as stairs, platforms, barriers with the help of channels, beams, plates etc.; that cables are placed on the structural construction carried out with the help of TMT bars/angles/channels etc.; that the disputed goods like, SS Patti, SS HR Plates, Sheet, beam used under the duct; ISMC used in Cerawool, Plates used in Coal fire hot air generator; SS Patti, Coil, SS Flat used in hot air duct were not visible; that racks, conventional pellet packing, spares were used in racking system spray dryer for storage of finished goods; that MS angles, SS Round were used in maintenance of storage of all plant spares; that some pipes were used to transport waste water to effluent treatment plant, wherein water is purified and then discharged outside the factory premises.

4.1 Personal hearing in the matter was attended by Shri R. R. Dave, Consultant wherein he, *inter alia*, reiterated the grounds of appeal and submitted written submission and photographs detailing use of inputs in the manufacture of parts of capital goods at factory site for use in the manufacture of the finished goods; that they also submitted pointing out the capital goods heading number and use of each specific parts in the manufacturing process; that flow chart of manufacturing process and Write-up showing machineries used/required and inputs used to manufacture parts of machineries; that Certificate of Chartered Engineer submitted to the lower adjudicating authority was ignored by him for no reasons; that no inputs credit has been taken on any goods which have not been used in the manufacture of parts of machineries (capital goods) and hence, appeal needs to be allowed and impugned order needs to be set aside. The appellant submitted item / input-wise explanation along with photographs as under :-

Photo No. 01 :-

This is a photo of **Bag Filter Flash Dryer** made out of M.S. Channels, M.S. Angle, M. S. Beam (Sr. No. 08 to 12 of Annexure of Show Cause Notice). This Dryer is fall under Chapter Sub-Heading No. 8421 19 91 of Central Excise Tariff Act, 1985 and the function of this Bag Filter Flash Dryer is the Dryer is attached to Bag Filter, the Semi Finished Products is having 80 % moisture which evaporated in Dryer, hence it is one of the essential to manufacture goods.

Photo No. 02 :-

This is a photo of **Boiler ESP Structure** made out of M.S. Beam (Sr. No. 17 of Annexure to Show Cause Notice), this Electro Static Precipitated (ESP) is functioned as collector of Fly Ash partials from flue Gas generated in Boiler and this ESP is essential equipment to reduce the Air Pollution, as per the statue under the Law of GPCB as well as CPCB. This ESP is fall under the definition of Capital Goods provided under Rule-2 (a)(A)(ii) of the Cenvat Credit Rules, 2004.

Photo No. 03 :-

This is a photo of **Melter Elevator**, made out of M.S. Bucket (Sr. No. 21 to 22 of the Annexure to Show Cause Notice) and fall under Chapter Sub-Heading No. 84283200 of the Central Excise Tariff Act, 1985; which used as conveyor of Silicate Glass from ground floor to Melter Hopper, hence, it fall within the definition of Capital Goods provided under Rule -2(a) of the Cenvat Credit Rule, 2004.

Photo No. 04 :-

This is a photo of **Bunker** made out of (Indian Standard Medium Channels ISMC, M.S. Plate, and M.S. Beam (Sr. No. 37 to 38 of Annexure to Show Cause Notice) and fall under Chapter Sub-Heading No. 84029090 of the Central Excise Tariff Act, 1985, and it is meant for storage of Coal Imported or procured Locally in huge Quantity for generation of Steam in Boiler as well as to

protect the Coal from Rain or other residues of the process.

Photo No. 05:-

This is a photo of **Hot Air Duct holding frame**, made out of M.S. Channel M.S. Plate, (Indian Standard Medium Channels (ISMC) and M.S. Angle (Sr. No. 15 to 29 of Annexure to Show Cause Notice) and fall under Chapter Sub-Heading No. 8414 90 90 of the Central Excise Tariff Act, 1985, and this holding frame is a parts of HOT Air Dust.

Photo No. 06:-

This is a photo of **Cable Re-routing line for Cable** lying wherein TMT Bar (Sr. No. 60 to 64 of Annexure to Show Cause Notice) used as Parts / Accessories to hold the cable so the Cable is not disclosed. This is fall under Chapter Sub-Heading No. 85381010 of Central Excise Tariff Act, 1985. This TMT Bars are used for protecting the cable carrying energy up to Machinery used for Manufacturing Process.

Photo No. 07:-

This is a photo of **Hot Air Duck** made our of S.S. Plate, S.S. Coil and S.S. Flat (Sr. No. 68 to 75 of Annexure to Show Cause Notice) which used as convey of Hot Air from Hot Air generator to Dryer without it the product cannot Dry and Marketable. This item fall under Chapter Sub-Heading No. 84199090 of the Central Excise Tariff Act, 1985.

Photo No. 08:-

This is a photo of **Hot Air Duct holding frame**, made out of M.S. Channel M.S. Plate, (Indian Standard Medium Channels (ISMC) and M.S. Angle (Sr. No. 76 of Annexure to Show Cause Notice) and fall under Chapter Sub-Heading No. 8414 90 90 of the Central Excise Tariff Act, 1985, and this holding frame is a parts of HOT Air Duct.

Photo No. 09:-

This is a photo of **Hopper**, which made of M.S. Channel M.S. Plate, M.S. Beam and Indian Standard Medium Channel (ISMC) - (Sr. No. 105 to 118 of Annexure to Show Cause Notice) which is place above the Melting Machines having Capacity of 8 to 10 M.T S.S. Glass (Inputs) to store and used as feeder of S.S. Glass of Melting Machine, by using this hopper is save the time of process and Labor may be save which effectively reduced the cost of Final Products. This hopper is fall under Chapter Sub-Heading No. 84199090 of the Central Excise Tariff Act, 1985.

Photo No. 10:-

This is a photo of **Flash Dryer Internal Ducting** made out of S.S. Coil, S.S. Patty, Indian Standard Medium Channel (ISMC), M.S. Beam and CSRR Coil (Sr. No. 49 to 56 and 102 to 104 of Annexure to Show Cause Notice), it is conveyed the Dry Powder from Dryer to Bag Filter for further products. This item fall under Chapter Sub-Heading No. 84199090 of Central Excise Tariff Act, 1985.

293

Photo No. 11:-

This is a photo of **Roller Compactor Platform** made out of Indian Standard Medium Channel (ISMC), M.S. Beam and M.S. Plate (Sr. No. 15 to 29 of Annexure to Show Cause Notice) which required for operation of Machine i.e. roller Compactor Machine by the person who operated the said machine. This plat form is a part of the Roller Compact machine and fall under Chapter Sub-Heading No. 84314990 (Part of 84306900) of the Central Excise Tariff Act, 1985.

Photo No. 12:-

This is a photo of **Storage (Tank) made out of H.R. Plate**, (Sr. No. 131 of Annexure to Show Cause Notice) and fall under Chapter Sub-Heading No. 7309 & 7310 of Central Excise Tariff Act, 1985 and covered under the definition of Capital goods provided under Rule-2 (a) (A) (vii) of the Cenvat Credit Rule, 2004.

Photo No. 13:-

This is a photo of **Raking System in spray Dryer Plant** made out of M. S. Channels and M.S. Plate (Sr. No. 122 to 126 of Annexure to Show Cause Notice) which is necessary for storage of Finished Products taken out from Spray Dryer. This Rack is used as storage purpose it falls within the definition of Capital Goods provided under Rule-2 of the Cenvat Credit Rule, 2004.

Photo No. 14:-

This is a photo of **Roller Compactor Platform** made out of Indian Standard Medium Channel (ISMC), M.S. Beam and M.S. Plate (Sr. No. 135 of Annexure to Show Cause Notice) which required for operation of Machine i.e. roller Compactor Machine by the person who operated the said machine. This plat form is a part of the Roller Compact machine and fall under Chapter Sub-Heading No. 84314990 (Part of 84306900) of the Central Excise Tariff Act, 1985.

Photo No. 15:-

This is a photo of **Roller Compactor Platform** made out of Indian Standard Medium Channel (ISMC), M.S. Beam and M.S. Plate (Sr. No. 119 of Annexure to Show Cause Notice) which required for operation of Machine i.e. roller Compactor Machine by the person who operated the said machine. This plat form is a part of the Roller Compact machine and fall under Chapter Sub-Heading No. 84314990 (Part of 84306900) of the Central Excise Tariff Act, 1985.

Photo No. 16:-

This is a photo of **Hopper**, which made of M.S. Channel M.S. Plate, M.S. Angie, M.S. Beam and Indian Standard Medium Channel (ISMC) - (Sr. No. 39 to 47 of Annexure to Show Cause Notice) which is place above the Melting Machines having Capacity of 8 to 10 M.T S.S. Glass (Inputs) to store and used as feeder of S.S. Glass of Melting Machine, by using this hopper is save the time of

process and Labour may be save which effectively reduced the cost of Final Products. This hopper is fall under Chapter Sub-Heading No. 84199090 of the Central Excise Tariff Act, 1985.

Photo No. 17:-

In Photo No. 17 relate to **Machinery Additional Support** wherein M.S. Beam, (Sr. No. 7 of Annexure to Show Cause Notice) used.

Photo No. 18:-

This is a photo of **Chequered Plate platform** situated at Flash Dryer Warehouse made out of M.S. Plate (Sr. No. 35 of Annexure to Show Cause Notice) where the Finished Products received from silo to pre-hopper and subsequently fall under Automatic Packing Machine.

All machineries have been are fabricated within our Factory Premises and Installed / Erected / Commissioned without carrying out any Civil Construction Work as well as no activity of Construction of Structural Foundation is required. Moreover, in case of any requirement of updated Technology all the above Machines may be dismantle easily with nominal % of waste and it may be assemble at other Place of Factory Premises. It is further to clarify that the Materials Covered under Sr. No. 01 to 06 and 13 to 14, 30 to 34, 36, 48, 57 to 59, 65, 66, 67, 77 to 101, 120 to 121, Sr. No. 127 to 130 and Sr. No. 132 to 134 of Annexure to Show Cause Notice, have been also used in above machineries as parts / components or the utilization of respective Material is described in Last column of Annexure where no Civil Construction Work is carried out / required.

All the above machinery is operated for the purpose of Manufacture of dutiable Excisable Goods which were either Exported or removed on payment of Duty in DTA."

4.2 The appellant also submitted Write-up during personal hearing wherein stage-wise process and utilization of various machineries is shown. The details of the processes submitted by the appellant are reproduced as under :-

" Stage 1

The sodium silicate glass from the truck unloaded in the melter section silicate Unloading platform through Truck Tripler operated with the help of Jack. The whole truck gets tilted on the Platform and unloads the SS glass within short period of time. This will save the manpower to unload the material and time also.

Then the sodium silicate Glass is being feed in the melter hopper (Melter Hopper – Annex. Sr No. 105 – 118 – MS Plate – MS Channel – MS beam – ISMC- Photo no. 9) through melter bucket elevator (Melter Bucket Elevator – Annex. Sr. No. 21 to 22 – MS Bucket – Photo No. 3). The Melter hopper is situated above the melter having load cell to feed the fixed quantity of SS glass in to melter. At the melter Hopper outlet we have connected Y chute – Called Y piece –to feed the SS Glass in two melters from one hopper.

292

The function of melter is to dissolve the glass in water under the pressure of 4 KG at temp. of 150 degree. In the meter the SS glass is being feed from the feed hopper after opening the top lid of melter. There is a platform on the melter where the operator is feeding the glass. Then the water is being feed in the melter and steam is given to raise the temp. up to 150 degree with pressure of 4 kg/cm². The Water is being circulated in the melter through pump and after 2.5 hrs the complete glass is being dissolved in the water. By this way the solid sodium silicate is get melt in the water and become liquid silicate.

The steam is generated in the boiler. We use imported Coal in boiler for steam generation. The crushed coal is filled in the coal bunker (Coal bunker structure – Annex. Sr. No. 37 to 38 – ISMC – MS Plate – MS Beam – Photo no. 4) and send it to boiler for combustion through Blowers. In the Boiler we have installed ESP – which is mounted on the structure (Boiler ESP Structure – Electro static precipitator – Annx. Sr. No. 17- MS Beam - Photo No. 2) & (Additional Support – Annex. Sr. No. 7 – MS Beam _ Photo No. 17) ESP is used to collect the ash particles from the flue gas and allow the flue gas to pass through chimney as per GPCB requirement.

This liquid silicate is transferred to the unloading tank where we check the quality and then transfer it to settling tank. In settling tank the liquid silicate is being kept for 24 hrs to settle all the impurities in liquid silicate. The Settled liquid silicate is being transferred to process tank. We use this settled liquid silicate during the process in reactor.

Stage 2.

In stage 2 we are doing reaction between liquid silicate & Sulphuric Acid and water in reactor. We provide steam to maintain the required temp. in reactor. With the controlled flow of liquid silicate, Acid and water at a required temp. the precipitation start inside the reactor. We have a reaction batch time cycle from 1 hr to 3 hrs, as per the grade & quality to be produced. Once the reaction completed the slurry is being transferred to Slurry holding tank. The reaction process is fully automatic for all the batches and controlled by DCS hence there is no error in the reaction occur.

Stage 3

The slurry produced in the reactor is being feed in to filter press through pump for separation of liquid to solid. During filter feeling the High TDS water is coming out from the filter press. In this High TSD water there are chances of silica going – when any cloth got damaged. So we are collecting the High TDC water in to HTDS tank and pass this water again through filter press so that silica could not goes in waste.

In the filter press - from the slurry the water gets removed and cake of silica formed The cake is being transferred through belt conveyor to Scrapper hopper which give control feed of cake to the dryer via paddle mixer. The silica cake is having 80% moisture.

Stage 4

There are two types of dryers - 1. Flash dryer and 2. Spray dryer.

In Flash Dryer the silica cake is being feed to the cage mill where the cake gets disintegrate. We inject hot air in the cage mill. The hot air is

generated from the hot air generator and conveyed from hot air generator to the cage mill through hot air duct made from SS material (Hot Air Duct – Annex. Sr. No. 68 to 75 – SS Plate – SS Coil – SS flat – Photo No. 7) Hot air duct is fixed in the frame as support (Hot air duct Support – Annex. Sr. No. 15 to 29 – MS Channel – MS Plate – ISMC – MS Angle – Photo No.5) & (Hot air duct Support – Annex. Sr. No. 76 – MS Channel – Photo No.8).

We are using imported coal in Hot air generator to produce hot air for process. The Hot air generator is having coal feed hopper (Coal feed Hoper CFHAG – **Coal Fired Hot Air Generator** – Annex. Sr. No. 39 to 47 – MS Plate , MS Beam , MS Angle , MS Flat- Photo No. 16.) thro which we feed the coal in hot air generator.

The cake come in contact with hot air and water gets evaporated from the cake hence Cake is converted in to powder. The stream of powder and air pass through the internal ducting (Flash Dryer Internal Ducting – Annex .Sr. No. 49 to 56 & 102 to 104 – SS coil – SS Patti – ISMC – MS Beam – CSRR Coil- Photo no. 10) to bag filter (Bag Filter Flash Dryer – Annex. Sr. No. 8 to 12 – MS Channel, MS Angle, MS Beam, HR Coil- Photo No.1) for the separation of air & solid (powder). The bag filter is fixed on the resting structure

The finished powder from the bag filter is being passed through the vibro shifter to remove any foreign material from the finished product. The vibro shifters are mounted on the vibro shifter plat form (Vibro shifter plat form – Annex. Sr. No. 135 – ISMC – Photo No. 14).

The powder is being conveyed to the finished product storage silo (Finished Product storage silo Annex. Sr no. 131 – HR Plate – Photo No. 12) - with the help of pneumatic conveying system for packing.

In Spray Dryer the silica cake sends to the slurry preparation tank (Liquefaction tank) where it gets mixed with the small proportion of acid and the cake is converted in to slurry. The slurry is being transferred to slurry holding tank.

The slurry is feed in to spray dryer through screw feed pump. In spry dryer the slurry is passing through atomiser wheel. The hot air is being injected in to the dryer chamber where the water gets evaporated from slurry and powder separated. The fine particles of powder are being collected in bag filter and the heavy particles are collected at chamber. Both the silica powder is conveyed through the screw conveyor vibro screen for removal of foreign material from the finished product.

The powder is being conveyed to the finished product silo with the help of pneumatic conveying system for packing.

In Spray Dryer plant we have roller compactor machines which produce the granules from the powder. To operate the machine we have fabricated the platform (Roller Compactor Platform Annex. Sr. No. 15 to 29 – MS beam – MS Plate – ISMC- Photo No. 11) attached to the compactor machine. It is required for ease in operation and maintenance.

Stage 5

The finished powder is then conveyed to Pre hopper with the help of rotary valve & screw conveyor and screen from the vibro shifter (platform Chequered plate for vibro shifter support – Annex. Sr. No. 119 – HR Plate – Photo No. 15) to remove any foreign material. The pre hopper is a feed

Butler

hopper for automatic packing machine. For proper functioning of pre hopper Chequered plate (Chequered Plate – Flash Dryer Warehouse – Annex. S. No. 35 – Photo No. 18) platform is being made. There is slide gate valve below pre hopper which control the flow of powder for packing.

The automatic packing machine ate of two types one is for small bags and another is for jumbo bag packing.

After packing the material is being stacked in the racks of the racking system (**Racking System Spray Dryer** - Annex. Sr. No. 122 to 126 – Racks – Conventional Packing & Spares – Photo no. 13) arranged in finished ware house.

In Spray dryer plant we have roller compactor machines which produce the granules from the powder. To operate the machine we have fabricated the platform attached to the compactor machine. It is required for ease in operation and maintenance."

4.3 No one appeared from the Department despite personal hearing notices sent to the Commissionerate.

Findings :-

5. I have carefully gone through the facts of the case, the impugned order, the grounds of appeals, written and oral submissions made by the appellant. The issues to be decided in the instant appeal are -

- (i) Whether the impugned order confirming demand of irregularly availed Cenvat credit of Rs. 15,12,729/- under Rule 14 of Cenvat Credit Rules read with Section 11A(4) of the Act is correct or not;
- (ii) Whether interest is payable under Rule 14 of Cenvat Credit Rules, read with Section 11AA of the Act; and
- (iii) Whether penalty equal to demand under Rule 15(2) of Cenvat Credit Rules read with Section 11AC of the Act is imposable on the Appellant or not.

6. The lower adjudicating authority has confirmed demand for Cenvat credit availed on items like M.S. Channels, M.S. Beam, M.S. Plates etc. holding availment against Rule 2(a)(A)(iii) & (v) and Rule 2(k) of the Rules. The lower adjudicating authority has found that Explanation - II to Rule 2(k) of the Rules inserted vide Notification No. 16/2009-Central Excise(NT) dated 07.07.2009 and also CBEC Circular issued vide F. No. 267/11/2010-CX.8 dated 08.07.2010 deny Cenvat credit and held that the goods have been used for laying of the foundation and supporting structure. The lower adjudicating authority has also relied upon case-laws of M/s. Nava Bharat Ferro Alloys Ltd.; M/s. Vandana

[Handwritten signature]

Global Ltd.; M/s. Quality Steel Tubes P. Ltd. and M/s. D.S.M. Sugar for confirming demand.

6.1 I find that the appellant has submitted photographs of plant and machineries where the inputs under consideration have been used. The appellant has demonstrated through their detailed write-up as discussed in Para 4.1 and 4.2 and photographs that the structural items have been used in fabrication of parts of **Bag Filter Flash Dryer**, which falls under Heading 8421 1991 of Central Excise Tariff; **Boiler ESP Structure** essential for controlling air pollution; **Melter Elevator** falling under Heading No. 84283200 of Central Excise Tariff; parts of **Bunker** falling under Heading No. 84029090 of Central Excise Tariff; parts of **Hot Air Duct** holding frame falling under Heading No. 8414 90 90 of Central Excise Tariff; **Cable Re-routing line** for Cable lying falling under Heading No. 85381010 of Central Excise Tariff; parts of **Hot Air Duct** falling under Chapter Sub-Heading No. 84199090 of the Central Excise Tariff; parts of **Hot Air Duct Hopper** falling under Heading No. 84199090 of the Central Excise Tariff; parts of **Flash Dryer Internal Ducting** falling under Heading No. 84199090 of Central Excise Tariff; parts of **Roller Compactor Platform** falling under Heading No. 84314990 and 8430 6900 of the Central Excise Tariff; parts of **Storage Tank** falling under Heading No. 7309 & 7310 of Central Excise Tariff; parts of **Raking System** in Spray Dryer Plant which is necessary for storage of finished products taken out from Spray Dryer; **Machinery Additional Support** and **Chequered Plate Platform** situated at Flash Dryer Warehouse made out of M.S. Plate where the Finished Products received from silo to pre-hopper and Automatic Packing Machine and hence, Cenvat credit is allowable in light of the definition of capital goods under Rule 2(a)(A) of the Rules.

6.2 Emphasizing uses of these items in the fabrication of parts of capital goods, their uses in the manufacturing process and photographs of disputed items the appellant submitted that all machineries fabricated within their factory premises were installed / erected / commissioned and are being used to manufacture their final products. The appellant also submitted that in case of requirement of upgradation of technology, the above machineries could be dismantled. The appellant also submitted stage wise uses of above machineries and photographs as detailed in Para 4.1 and 4.2 and emphasized that these machineries are necessary to carry out the processes to manufacture their finished product "Precipitate Silica".

6.3 The appellant has also submitted technical write-up indicating use of the part of the machineries which have been used for manufacture of the excisable

final products, whereas the lower adjudicating authority has made his findings in a very general manner, without going into item-wise usage of the disputed inputs.

6.4 It is, thus, seen from the above details that the appellant has submitted overwhelming supporting evidences and stage wise processes as to where disputed inputs have been used in fabrication of the machineries to substantiate their claim of Cenvat credit. These detailed submissions establish that the disputed inputs have actually been used to fabricate parts and components of various machineries, which have been used to manufacture their final products and hence they are entitled to avail Cenvat credit on these items. I rely on the following decisions of the Hon'ble CESTAT and Hon'ble High Courts in the cases as under :

- (i) M/s. P. D. Industries Pvt. Ltd. reported as 2017(347)ELT487(Tri-Del)

“Revenue is in appeal against the impugned order dated 15-4-2010 passed by C.C.E. (Appeals), Raipur. The brief facts of the case are that the respondent herein is engaged in the manufacture of sponge iron, falling under Chapter 72 of the Central Excise Tariff Act, 1985. The respondent avails Cenvat credit of Central Excise duty paid on inputs and capital goods, used in or in relation to manufacture of final products within the factory. During the period April, 2004 to March, 2008 and May, 2008 to October, 2008, the respondent had taken credits amounting to Rs. 37,83,963/- and Rs. 67,387/- respectively on MS angle, channel, joist, HR coil, chequered plates and flat, etc. considering the same as inputs. Taking of Cenvat credit was also denied by the Central Excise Department on the ground that the disputed items are neither covered under the definition of capital goods or inputs. The show cause notices issued in this regard culminated in the adjudication order dated 5-2-2010, wherein the Cenvat credit of the above mentioned amounts were disallowed and ordered for recovery along with interest. Further, equal amount of penalties were imposed on the respondent. In appeal, the ld. Commissioner (Appeals) vide the impugned order has allowed the appeal of the respondent holding that the availment of Cenvat credit on the disputed goods is legal and proper, as the said goods are conforming to the definition of input and capital goods contained in the Cenvat scheme. Feeling aggrieved with the impugned order, Revenue is in appeal before this Tribunal.

3. Heard Shri R.K. Mishra, ld. Departmental Representative appearing for Revenue and Shri M.P. Singh, ld. advocate appearing for the respondent and perused the records.

4. I find that upon consideration of the issue and the facts involved in this case, the ld. Commissioner (Appeals) has held that the disputed goods shall be considered as input/capital goods for the purpose of availment of Cenvat credit. The relevant paragraph in the impugned order is extracted herein below :-

“It is a fact on record that appellant a holder of Central Excise Registration is a manufacturer of Sponge Iron and has availed credit on various items such as MS Angle, Channel, Joist, HR Coil, Chequered Plates, and Flat, etc. used as structural items and used in erection and

installation of various machines and equipments essential for their manufacturing activities. The impugned goods are used in the erection or installation of Stock Storage Tank, Conveyor Systems, Finished Goods Storage Tank and in Supporting structures of various Capital Goods such as Kiln, Cooler, ABC (Rotary Kiln) Coal ground Hopper, Crusher and Screening Machinery, etc. which were ultimately used for carrying the manufacturing activities of the appellant. It is also fact known and accepted that structural items such as Angles, Channels, plates, etc. are always required to make machines junctions smooth and without their help it is very difficult for any machines to run smoothly giving the desired production or result and thus these items are always linked with machinery used in the production of final products. Once it is established that these items are essential for production, smooth running, greater efficiency and better result becoming an essential supplement to plant and machinery for use of manufacturing activities and thus an integral part of process with which the primary machines are engaged. I do not find any reason to deny the benefit of Cenvat on these items and hold there is no impediment for the goods in question qualifying as inputs/capital goods for Cenvat credit."

5. The issue, regarding eligibility of Cenvat credit on the disputed goods, has already been settled by this Tribunal in various cases. In the case of *CCE & CE v. APP Mills Ltd.* [2013 (291) E.L.T. 585 (Tri.-Bang.)], this Tribunal has held that MS angles, plates and rounds used for fabricating structural support to plant and machinery used for manufacturing of excisable goods, are integral part of machinery and hence covered under the definition of capital goods. Further, the Tribunal in the case of *Shriram Hi-tech Steel & Power Ltd. v. CCE, Raipur* [2014 (310) E.L.T. 163 (Tri.-Del.)] has held that MS rounds, MS sheets and CR coils used for making of various machines shall be eligible for Cenvat benefit. In the case of *CCE, Raipur v. Hi-Tech Power & Steel Ltd.* [2015 (315) E.L.T. 428 (Tri.-Del.)], the Tribunal has held that the steel items used in fabrication of coal ground hopper, iron ore ground hopper, coal crusher house, conveyer system, stock house, after burning chamber, kiln collar transformer house, etc. are eligible for Cenvat benefit under the head input definition in Rule 2(k) of Cenvat Credit Rules, 2004.

6. The disputed goods during the material point of time were not covered under the exclusion clause contained in the definition of input. Since the disputed goods are used for erection/fabrication of capital goods only in the plant, the same have the nexus with the manufacture of final product in the factory of the respondent. The definition of input is broad enough to take within its ambit, the goods which are used for or in relation to manufacture of final product either directly or indirectly.

7. In view of the above, I do not find any infirmity in the impugned order passed by Id. Commissioner (Appeals). Thus, the appeal filed by Revenue is dismissed."

[Emphasis supplied]

(ii) **M/s. Saguna Metals P Ltd. reported as 2016(339)ELT 119(Tri-Hyd)**

"4. I have heard the rival submissions and perused the appeal papers. The main ground for denying the credit as seen discussed in the impugned order is that the appellants failed to furnish sufficient documentary evidence that the impugned items were used in fabrication of capital goods/accessories/ parts/components. A Chartered Engineer's Certificate though produced before both the authorities has not been considered at all. The said expert has given details regarding the manner and use of the impugned items. Further, the fact of purchase of these items and their receipt in factory is not disputed. Revenue does not have a case that such purchased items

were diverted by the appellant in any manner. On such score, I am able to safely infer basing on the certificate issued by the Chartered Engineer and photographs that the impugned items were used for fabrication of capital goods/components/parts/accessories.

5. The issue whether MS items used for fabrication of capital goods/components/parts/accessories are eligible for credit is no longer res Integra. The decisions cited by the appellant stated supra have categorically held that credit is admissible. Facts of the present case being similar, applying the ratio laid therein, I find that the disallowance of credit is unjustified.

6. In the result, the impugned order is set aside, and the appeal is allowed with consequential reliefs, if any.

[Emphasis supplied]

(iii) Godavari Power & Ispat reported as 2016 (388) ELT730(Tr-Del)

"Cenvat credit - Inputs - Capital goods - MS Beams, Angles, Channels, Flats, Plates and Rounds - Usage of said items in different types of fabrications and manufacture established in view of certificate from Chartered Engineer - Rejection of this certificate on account of mismatch of quantities used and usable, not justified as quantity would depend upon nature and size of each machine - Credit available - Rules 2(a) and 2(k) of Cenvat Credit Rules, 2004. [para 5]

5. *Specific reference has been made by the Revenue regarding certain reference nos. not tallying with that of originally examined by the original adjudicating authority. Without going into the correctness of such claim and the implication of such assertion, it is an admitted fact that the usage of various items even in different types of fabrication and manufacture has not been questioned with any amount of corroboration by the Revenue to controvert the submissions made by the respondent before the lower authorities. The original authority as well as in the grounds of appeal, observation has been made regarding the Chartered Engineer's Certificate being not quantitatively validated. Though it is not clear as to the nature of such validation, it would appear that the quantity of steel items used in a particular item of structure/equipment is alleged to have been higher or lower, considering the nature and size of the machine.*

6. *Regarding the impugned order having been passed in violation of Rule 5 of the Appeal Rules, I find that the grounds of appeal is rather vague, without mentioning, which are all additional evidences, which will be barred under the said rule. Certain discrepancies between the drawings/chart as presented before the original authority which were also produced before the Appellate Authority were mentioned as the reason for alleging the said violation of Rule 5. The Commissioner (Appeals) is well within his right to seek clarification to explain any evidences submitted before him, before appreciating the said evidence for a finding. Seeking additional information or clarification on evidences on record to facilitate the proper finding cannot be apparently barred by the abovementioned rule. There is also no allegation that the new set of evidences have been submitted by the respondent which came into existence after the said case was decided by the original authority. I find no substantial ground in the appeal by the Revenue when there is no challenge on merit. A perusal of the impugned order to examine the merit reveals that the factual usage of various items have been examined by the Commissioner (Appeals) and he was guided by various decided cases including the application of "user test" as laid down by the Hon'ble Supreme Court in Rajasthan Spinning and Weaving Mills Ltd. - 2010 (255) E.L.T. 481 (S.C.) and in Jawahar Mills - 2001 (132) E.L.T. 3 (S.C.). The eligibility of the credit has been decided by the lower authority on such merits.*

285

7. *Considering the above discussion and analysis, I find no merit in the present appeal by the Revenue. Accordingly, the same is dismissed.* "

[Emphasis supplied]

(iv) Nidhi Pipes Ltd. reported as 2016 (343) ELT1014(Tri-Chen)

"Cenvat credit - Capital goods - Full credit taken instead of 50% - Since admissibility of credit, otherwise is in order prescribed period has also passed, credit admissible - However, appellant directed to pay interest for intervening period - Rule 3 of Cenvat Credit Rules, 2004. [para 5]

*Cenvat credit - Capital goods - MS joints, angles, channels - Since said goods used in manufacture of **Acid Tank**, a capital goods, credit available - Rule 2(a) of Cenvat Credit Rules, 2004. [para 5]*

2. *The facts of the case in brief are that during the period of 2006-2008, the appellant availed Cenvat credit of education cess paid and shown in the invoices and also availed Cenvat credit to the extent of 100% on capital goods. The appellant has also availed Cenvat credit on steel items like joints/angles/channels as capital goods. On being pointed out by the audit conducted in June, 2009, wherein discrepancies were brought to the notice of the appellant, the appellant reversed the amount of Cenvat credit in dispute along with interest. Later on, a show cause notice was issued to the appellant on 3-9-2009 for appropriation of the amount already paid along with interest and to impose equal amount of penalty under provisions of Rule 15 of the Cenvat Credit Rules read with Section 11AC of the Act. The matter was adjudicated, the amount already paid along with interest was appropriated and a penalty equivalent to the duty was also imposed. Aggrieved from the said order, the appellant is before me.*

3. *The Id. counsel for the appellant submits that the appellant has taken Cenvat credit of education cess shown in the invoices. Otherwise, the appellant is entitled to take Cenvat credit of the duty mentioned in the invoices therefore, the Cenvat credit taken on education cess cannot be denied. He further submits that on capital goods, although the appellant has reversed Cenvat credit along with interest but in subsequent year, they are entitled to take Cenvat credit on the capital goods. Therefore, Cenvat credit on capital goods cannot be denied. It is also submitted that the Cenvat credit availed by the appellant on joints/angles/channels were used in manufacture of parts of capital goods assemblies like acid tank. Therefore, they are entitled to avail Cenvat credit. He further submits that in alternate, the demand on account of denial of Cenvat credit has been confirmed by invoking the extended period of limitation as show cause notice has been issued on 3-9-2009 therefore, prayed that impugned order be set aside.*

On the other hand, Id. AR submits that the appellant is not disputing their liability for reversal of Cenvat credit availed by them along with interest. But the appellant has only contested the imposition of penalty on them.

4.

5. *Further, I find that the appellant has taken Cenvat credit on the higher education cess of duty paid by them, therefore, I hold that appellant is entitled to take Cenvat credit on account of the education cess paid by them. I also hold that on capital goods, the appellant is entitled to take Cenvat credit 50% of the first year and remaining in the next year. Therefore, they are entitled to take Cenvat credit to the tune of 100% of the capital goods is at the most, the appellant is required to pay interest for intervening period. Further, I find that the appellant has availed Cenvat credit on joints/angles/channels as capital goods manufactured and used in acid tank therefore, they are entitled to avail Cenvat credit as per Rule 2(a) of the Cenvat Credit Rules, 2004. In the circumstances, I hold that appellant has correctly taken the Cenvat credit, therefore, no demand is sustainable against the appellant. Consequently, whatever amount paid by the appellant is required to be refunded to the appellant. As duty is not required to be paid by the appellant, the question of imposing penalty does not arise.*

Amber

6. With these observations, the impugned order is set aside and the appeal is allowed with consequential relief, if any. "

[Emphasis supplied]

(v) Yash Paper Ltd. reported as 2017 (349) ELT 662 (Tri-All)

"Cenvat credit - Inputs - Channels, Beams, Angles used in strengthening Storage Tank for storage of Caustic Lye in caustic recovery plant of paper factory, admissible for credit - Rule 2(k) of Cenvat Credit Rules, 2004. [para 5]

4. Heard the ld. DR who has supported the impugned Order-in-Appeal.

5. Having considered the rival contentions and on perusal of records it is very clear that through Installation Certificate the items used on which Cenvat credit was taken were used for increasing the strength of **Storage Tanks**. Therefore, I hold that they were used in relation to the manufacture of capital goods and therefore as per definition of inputs and capital goods they were eligible for Cenvat credit. Therefore, I hold that the appellant were entitled for Cenvat credit of Rs. 1,05,130/-. I, therefore, allow the appeal and set aside the impugned Order-in-Appeal. The appellant shall be entitled for relief, as per law."

[Emphasis supplied]

6.5 The order of the Hon'ble CESTAT in M/s. SSK Ispat and Power Ltd. reported as 2015 (326) ELT 620 (T-Del) distinguishes decision of the Larger Bench of CESTAT in the case of M/s. Vandana Global Ltd. referred to in the impugned order. The relevant portion of the order is reproduced as under :-

"2. The contention of the ld. AR is that as these rails are fixed to the earth and EOT cranes are being run over them. Therefore, these are the structures which are embedded to earth. In these circumstances, the respondent not entitled to take Cenvat credit. In support to his contention he relied on the decision in the case of Nelvetha Cast Steels (P) Ltd. v. CCE, Madurai - 2013 (294) E.L.T. 127 (Tri.-Chennai) to say that the support will not automatically become the part of crane.

4. Matter is taken up for consideration and I have perused the impugned order wherein ld. Commissioner (A) has examined the issue on the basis of certificate issued by the Chartered Engineer saying that these rails were used for EOT cranes and they are essential components of EOT cranes. The ld. Commissioner has observed as under :
5.4 In the Appellant's case they have manufactured parts EOT Crane & Cooling Bed by impugned structural items. I also find that, the impugned structural items i.e. Rails are not supporting structures of Plant & Machinery or for laying foundation and hence the findings of the adjudicating authority that, these are not goods being embedded to the earth are in the nature of immovable goods and are not goods or excisable goods in terms of CBEC Circular No. 58/1/2002-CX, dated 15-1-2002 is not proper. From the Cenvat credit details I find that, they have availed Cenvat credit on account of structural steel items used for manufacture of components of EOT Crane and Rolling Bed for Rolling Mill Unit and accordingly, they are entitled for Cenvat credit amount to Rs. 18,20,321/- availed on structural steel items i.e. Rails. Thus, denying of Cenvat credit on those items which are used for manufacture of parts and components of their final product is not justified being the said items falls within the purview of Capital goods as defined under Rule 2(a) of

Cenvat Credit Rules, 2004 and the inputs used for manufacture of the said items are 'input' in terms of Explanation 2 to Rule 2(k) of Cenvat Credit Rules, 2004.

5.5(i) In support of my findings, I have gone through the case of Madras Cements Ltd. v. CCE reported in 2010 (176) ECR 0087 (SC), in which the Hon'ble Supreme Court while dismissing the appeal filed by the Appellants held that, in order to avail Modvat/Cenvat credit, an assessee has to satisfy the Assessing authorities that the Capital Goods in the form of components, spares and accessories had been utilized during the process of manufacture of the finished goods. In the instant case the Appellant have submitted evidences regarding manufacture of capital goods items with its function and thus such capital goods manufactured have been used in their factory. On account of such evidences and in the light of the aforesaid decision of the Hon'ble Supreme Court, I reach at a conclusion that Cenvat credit would be admissible on the impugned items as 'inputs' & capital goods discussed supra. Held accordingly.

5.5(ii) Further I got support from Hon'ble High Court of Chhattisgarh in the case of Union of India v. ACC Ltd. reported in 2011 (267) E.L.T. 55 (Chhattisgarh) held that, Cenvat/Modvat - Capital goods - Credit on wear plate, HRSS plate, MS plate, angles and channels - allowed credit on steel plates and MS channels used in fabrication of chimney for diesel generating set - Credit allowed for connecting/fitting fans, casing and ducting in kilns for manufacture of intermediate product 'clinker' - Impugned Tribunal order allowing credit on said items as capital goods sustainable - Rule 2(a) of Cenvat Credit Rules, 2004.

5.7 In the instant case revenue has also failed to bring the evidences on record to show that the Appellant had used such inputs for construction of factory shed, building or laying of foundation or making of structures for support of capital goods. On the other hand the appellant has shown that the said inputs were used in the manufacture of Capital goods, under clause (i) of Rule 2(a) of Cenvat Credit Rules, 2004.

5. I have gone through the observation made by the ld. Commissioner (A) in the impugned order who has relied on the certificate issued by the Chartered Engineer and Revenue has failed to produce any evidence contrary to them.

6. In these circumstances, I do not find any infirmity with the impugned order. Same is upheld. Appeal filed by the Revenue is dismissed."

[Emphasis supplied]

6.6 In view of the above decisions and in view of CBEC Circular No. 267/11/2010-CX8 dated 08.07.2010, the facts of each case will determine availability of Cenvat credit on inputs like MS Angles, Channels, HR Plates etc. and if they are used for fabrication of parts, components and accessories of capital goods, which are further used in the manufacture of final products, then Cenvat credit on those items would be available even after amendment in rule w.e.f. 07.07.2009.

7. I also find that the lower adjudicating authority has discarded Chartered Engineer Certificate dated 16.03.2015 without proper justification. I find that the Chartered Engineer has given categorical certificate after personally visiting the

site of factory that the items (mentioned in the Show Cause Notice) have been used in fabrication of machineries work. The said Certificate is reproduced as under :-



To Whom So Ever It May Concern

Report #: DNV/MSPL/15-03/01	Date :- 16-03-2015
------------------------------------	---------------------------

At The request of **M/S. MADHU SILICA PVT.LTD;** DU-IV at Plot no.147 G.I.D.C. Vatej, Dist. Bhavnagar, I, the undersigned **Mr. Dharmendra Vora,** Chartered Engineer, Valuer-Plant & Machinery, visited the above site on dt. 12th to 14th of March, 2015 with our technical staff to find out the net utilized quantity of H.R. plates, Hot rolled Coils, H.R.Coils, Beams, Angles, Channels, etc. purchased from various suppliers for fabricating various types of equipments and structures.

We have collected & verified the list of 135 Nos.of purchase bills, challans, weighbridge slips, etc. with the aspect of its quality, quantity, usage and actually where it is used in the fabrication work carried out in above plant. i.e shown in the last column of the table (page No.1 to 4 of this report) attached herewith. Which is self explanatory.

Moreover as per my opinion the usage of above items has nexus with manufacturing of best quality and uninterrupted commercial production.

I here by declare that :-
I have personally inspected the plant during Dt 12th to 14th March 2015.
The information furnished above is true & correct to the best of my knowledge and belief.
I have no direct or indirect interest in the above matter.

Your's Sincerely,

Dharmendra Vora
B.E. Mech., F.I.E. Chartered Engineer, F-101462/1
Valuer-Plant & Machinery.



7.1 I find that the lower adjudicating authority has discarded the Certificate of Chartered Engineer without proper and justified reasons. In this regard, I rely upon an order of the Hon'ble CESTAT in the case of M/s. Mangal Sponge & Steel P. Ltd. reported as 2015 (326) E.L.T.696 (Tri. - Del.) wherein it has held as under :-

"5. It is no doubt some of the items have been used by the appellant for fabrication of supporting structure embedded to earth for which the Chartered Engineer who is an expert in the field has already given in his report that appellant has used the quantity of 49.85 MT of these items for supporting structures and on the said quantity appellant has not claimed Cenvat credit. The appellant is able to show by way of Chartered Engineer Chartered that out of the total quantity 150 MT were used by the appellant for fabrication of capital goods. These observations of the Chartered Engineer which have been relied

by the appellant have been discarded by the authorities below without any tangible evidence. Merely saying that all the items were used for supporting structure is not admissible evidence. Therefore, as the appellant has been able to show the usage of the items in question for fabrication of capital goods as directed by this Tribunal in the earlier round of litigation, I have no hesitation to hold that appellant is entitled to take Cenvat credit on this quantity. For the remaining quantity if revenue feels that appellant has taken the credit they may initiate another proceeding against the appellant. But to the quantity upto 150 MT appellant is entitled to take Cenvat credit.

6. With these terms I dispose of the appeal by setting aside the impugned order."

[Emphasis supplied]

7.2 I also rely upon a judgment of the Hon'ble Bombay High Court in the case of Air Carrying Crop (I) Pvt. Ltd. reported as 2009 (248)ELT175(Bom) wherein it has been held that if certificate of a Chartered Engineer was to be disbelieved, revenue ought to record his statement and/or call him for cross-examination.

"8. The certificate of the Chartered engineer regarding the repairs carried out was produced before the Commissioner. The material on record showed that the roof of the furnace had developed a large hole resulting into a huge heat loss. Though statements of the Directors of the respondent no. 1 and some other persons were recorded, the statement of the Chartered engineer who had certified the repair work was not recorded. If his certificate was to be disbelieved the Revenue could have and ought to have recorded his statement and/or called him for cross-examination."

[Emphasis supplied]

7.3 In light of the above legal position and explanation of the appellant detailing machineries and plant where the disputed inputs have been used by the appellant duly supported by the photographs and detailed technical Write-up, I find that denial of Cenvat credit on the inputs used in the fabrication of machineries, without going into actual usage, is not correct, legal and proper.

7.4 I find that the report submitted vide letter F. No. IV/11-08/Misc. Corres. Recovery/2017-18 dated 18.12.2017 is vague and does not clarify as to why the disputed items cannot be considered to be eligible for avilment of Cenvat credit even when the report says that "...On physical inspection, it is found that the said goods in question are used in different plants of the factory, viz. packing plant, boiler, coal crusher, melter etc....". The appellant has submitted photographs and detailed Write-up clearly establishing that the disputed items have been used in the fabrication of parts and components of various capital goods and repairs and maintenance thereof duly supported by the Chartered

Engineer Certificate and hence, denial of Cenvat credit even then would be not legal and proper at all.

7.5 Regarding the appellant contention on the ground of limitation that they were regularly filing monthly returns and therefore, the demand is time-barred, I find that merely by filing monthly returns, the facts are not declared to the Department. The appellant was required to inform full details (as they have submitted facts during appeal proceedings) when department asked them to submit. Having not done so at assessment stage and even at adjudication stage, I am not inclined to accept the plea of the appellant that the demand in the Show Cause Notice is time barred.

8. In view of the above facts and legal position, I hold that Cenvat credit claimed by the appellant is admissible to them and hence, I have no alternative but to set aside demand confirmed by the impugned order.

9. Since the demand has been set aside, the question of recovery of interest and imposition of penalty do not arise and therefore, interest and penalty imposed under the impugned order are also liable to be set aside.

10. In view of above findings, I set aside the impugned order confirming demand, interest and imposing penalty and allow the appeal.

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

11. The appeal filed by the appellant is disposed off in above terms.

(कुमार संतोष)
आयुक्त (अपील्स)

By R.P.A.D.

To,

M/s. Madhu Silica Pvt. Ltd., DU-IV, Plot No. 147, GIDC Vartej, Bhavnagar – 364 060.	
---	--

Copy for information and necessary action to :-

1. The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad for his kind information.
2. The Commissioner, GST & Central Excise, Bhavnagar Commissionerate, Bhavnagar
3. The Joint Commissioner, GST & Central Excise Division, Bhavnagar.
4. The Assistant Commissioner, GST & Central Excise, Bhavnagar
5. Guard File.