



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

दवितीय 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 :-

अपील (काइल संख्या) 部

to cong Appeal | File No. 30404 V2/4/EA2/GDM/2016

मृत आदेश सं /

09/AC/2016

रिताक /

30.03.2016

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

# KCH-EXCUS-000-APP-057-2017-18

आदेश का दिनांक/ Date of Order:

30.10.2017

जारी करने की तारीखा।

31.10.2017

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

अपर आयुक्तः संयुक्तः आयुक्तः/ उपायुक्तः/ सहायकः आयुक्तः, केन्द्रीय उत्पादः शुक्तः/ सेवाकरः, राजकोटः / जासनकरः / मांधीधामः द्वारः उपरन्निवितः जारी मूल आदेश से सृजितः /

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

अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name & Address of the Appellant & Respondent :-E M/s. Sanghi Industries Ltd., Cement Division (Clinker Unit), Sanghipurem, Taluka-Abdasa, Kutch,

इस आदेश(अपील) में व्यक्तित कोई व्यक्ति तिस्तितिश्चित तरीके में उपयुक्त पायिकारी / प्रायिकरण के समक्ष अपील दायर कर सकता है।/ Any person aggreed by this Order-in-Appeal may file an appeal to the appropriate authority in the following way:

- तीमा शुरूक ,केन्द्रीय इत्पाद शुरूक एवं संशाका अपीतीय स्थायाधिकरण के प्रति अपीत, केन्द्रीय उत्पाद शुरूक अधिनियम ,1944 की धारा 35B के अंतर्गत एवं चित्त अधिनियम, 1994 की धारा 86 के अंतर्गत जिम्लिखित जगह की जा सकती है V Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the (A) Finance Act, 1994 an appeal lies to:-
- वर्गीकरण मृत्यांकल से सम्बन्धित सभी मामले सीमा शृतक, केन्द्रीय उत्पादन शृतक एवं सेवाकर अभीतीय न्यामाधिकरण की विशेष गीठ, वेस्ट ब्लॉक ल 2. आर. के. पुरम, लड़े 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. (i)
- उपरोजन परिच्छेट 1(a) में बताए गए अपीनों के जानावा शेष सभी अपीने तीमा शुरूक, मैदीय उत्पाद शुरूक एवं सेवाकर अफीरीय स्थायाधिकरण (सिस्टेट) की परिचम क्षेत्रीय पीठिका, दिवितीय तम, बहुमाली भवन असावी अहमदाबाद- ३८००१६ को की जानी पाहिए ।/ To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>rd</sup> Floor, Bhaumab Bhawan, dità Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above
- अपोतीय न्यायाधिकरण के समक्ष अपीत परतृत करने के लिए केन्द्रीय उत्पाद शृतक (अपीत) नियमायती, 2001, के नियम 6 के अनुनंत निर्धारित किए हमें पथत EA-3 को चार प्रतिमों में दुने किया जाना चाहिए। इनमें से कम हो कम एक पति के साथ, जहां उत्पाद शृतक की माँग ,ब्याज की माँग और लगाया गया जुनोना, रूपए 5 लाख या उससे कम, 5 लाख रूपए सा 50 लाख रूपए तक अध्या 50 लाख रूपए से अधिक है तो इनका: 1,000/- रूपये, 5,000/- रूपये अपवा 10,000/- रूपये का विधारित जमा शृतक की प्रति संलग्न करें। विधारित शृतक का मुनतान, संबंधित अपीतीय त्यायाधिकरण की शाखा के सहायक रिजन्दार के नाम से किसी भी सावैदितक क्षेत्र के बैंक दृष्णा जारी रेखांकित बैंक हाफ्ट द्वारा किया जाना धाहिए। सर्वाधित अपीतीय न्यायाधिकरण की शाखा कियत है। स्थान आदेश (रटे ऑडेर) के लिए अविदाह-पत्र के साथ 500/- रूपए का निर्धारित शुक्क 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 noministed 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/-.

अपीतीय न्यायाधिकरण के जगह अपीज, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत संवाकर नियमवाती, 1994, के नियम 9(1) के तहत निर्धारित प्रपट S.T.-5 में पार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपीज की नभी हो, उसकी प्रति स्थ्य में संवरन करें (उनमें में एक प्रति प्रमाणित होती धाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की माँग, उसके की और समाया गया तुर्गाना, रुपए 5 लाख था उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अपना 50 लाख रुपए है अधिक है तो अमशः 1,000- रुपये, 5,000-रुपये अथवा 10,000- रुपये का निर्धारित जमा शुरुक की प्रति संसरन करें। निर्धारित शुरुक का भुगतान, संबंधित अपीतीय न्यायाधिकरण की शाखा के सहायक रिजेटटर के नाम में किसी भी सार्वजितक क्षेत्र के बैंक द्वारा आरी रेखाकित कैंक दूपर द्वारा किया जाना धाहिए। संबंधित द्वारट का भुगतान, वैक की उस साखा में होना धाहिए जहां संबंधित अपीतीय न्यायाधिकरण की शाखा रियत है। रुपयन आदेश (रहे ऑडर) के लिए आवेदम-पत्र के साध 500/- रुपए का निर्धारित शुरुक जमा करना होगा। (B)

The appeal under sub-section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filled 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/-

- (i)किता अधिनियम, 1994 की धारा 88 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अधील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपंत 5.1 -7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपीय), केन्द्रीय उत्पाद शुल्क दवारा पारित आदेश की प्रतियों अंतरत करें (उनमें से एक प्रति प्रमाणित होनी पाहिए) और आयुक्त दवारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुक्का सेवाकर, को अपीतीय न्यामाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संगरत 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.
- सीमा शुरूक, केम्द्रीय उत्पाद शुरूक एवं सेवाकर अपीलीय प्राधिकरण (संप्रदेश) के पति अपीली के मामले में वेपद्रीय उत्पाद शुरूक अधिनियम 1944 की धारा 35एक के अंतर्गत सेवाकर को भी लागू की नई है, इस आर्थ्य के पति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुरूक/सेवा कर मांग के 10 पतिशत (10%), जब मांग एवं जुमांना विवादित है, या जुमांना, जब केवल जुमांना विवादित है, का मुगतान किया आए, वशते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेशित देय शक्ति इस करोड़ रूपए से अधिक न हो। (ii)

केन्द्रीय उत्पाद कुल्क एवं सेवाकर के असमेत "मांग किए गए कुल्क" में सिम्न शामित है धारा 11 डी के असमेत रक्तम

सेनवेट जमा की सी गई गलत शशि (ii)

सेनवेट जमा नियमायती के नियम 6 के अंतर्गत देख रकस (iii)

- बचरों यह कि इस पारा के प्रावधान विस्तीय (सं. 2) अधिनियम 2014 के आरंश से पूर्व किसी अधीतीय प्राधिकारी के समक्ष विचाराधील स्थमन अजी एवं अपील को लामू नहीं होने।/

For an appeal to be filed before the CESTAT, under Section 3SF 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 be 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

amount determined under Section 11 D;

amount of erroneous Cervat Credit taken; 645

amount payable under Rule 6 of the Cenvat Credit Rules (iii)

- 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.

भारत सरकार को पुनरीक्षण आवेदन : (C)

Revision application to Government of India: इस आदेश की पुनरीक्षण वाधिका निस्तातिकित मामतो में, केंद्रीय उत्पाद शुरूक अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर विकेश, मारत वास्तार, पुनरीक्षण आवेदन ईकाई, विता मंशकप, राजस्व विमास, धीवी मंजिल, जीवन दीप मदन, संसद मार्ग, मई दिस्ती-110001, को किया जाना पाहिए।

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-358 ibid:

- यदि मात के किसी नुकसान के लामने में, जहां नुकसान किसी मात को किसी कारखाने से अंडार गृह के पारशासन के दौराज या किसी अन्य कारखाने या किसी पढ़ अंडार गृह से दूसरे अंडार गृह से दौराज, किसी कारखाने या किसी अंडार गृह में मात के जुकसान के दौराज, किसी कारखाने या किसी अंडार गृह में मात के नुकसान के बासारे मैं।/ 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 (i) warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a
- भारत के बाहर किसी राष्ट्र या क्षेत्र की निर्मात कर रहे जान के विनिर्माण जे प्रमुक्त कच्चे जान पर भरी गई केन्द्रीय उत्पाद शुक्त के छुट (विबेट) के जानने में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्मात की गयी है। / (ii) 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.
- यदि उत्पाद शुल्क का भूमतान किए किना भारत के बाहर, मेथान या भूगान को मान नियाँत किया गया है। / In case of goods exported outside india export to Nepal or Bhutan, without payment of duty. (iii)
- मुनिविचत उत्पाद के उत्पादन युक्त के भुगतान के लिए जो इयुटी केडीट इस अधिनियम एवं इसके विकिन्न प्रावधानों के तहत मान्य की नई है और ऐसे आदेश जो आयुक्त (अपीस) के द्वारा वित्त अधिनियम (न. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर था बाद में पारित किए गए हैं।/ (iv) 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.
- उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपीन) नियमावती, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट हैं, इस आदेश के संप्रेषण के 3 मान के अंतर्गत की जानी चाहिए । उपरोक्त आवेदन के साथ मूल आदेश व अपीन आदेश की दो प्रतियां संतरन की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत तिथोरित शुल्क की अदायगी के साध्य के तौर पर 16-6 की प्रति (v) संसरत 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.
- पुनिक्षण आवेदन के साथ निम्नविधित निर्धारित शुरूक की अदावणी की जानी चाहिए। जैसे संवरन रक्तम एक लाड रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया। जाए और चंदि संवरन रक्तम एक लाड रुपये से उचादा 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. (vi)
- विदे इस आदेश में कई मूल आदेश कर समावेश है तो पत्येक मूल आदेश के लिए शुल्क का मूलताल, उपयुक्त इंग से किया लाला पाहिये। इस तथ्य के होते हुए भी की शिक्षा पढ़ी कार्य में क्या लिए पपाहियति अपीलीय लयायिकरण को एक अपील या किहीय सरकार को एक अधिदल किया लाता 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 Triburual or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 take fee of Rs. 100/- for each. (D)
- बधासंशोधित न्यायालय शुन्क अधिनियम, 1975, के अनुस्थी-। के अनुसार मूल आदेश एवं स्थमन आदेश की चलि पर निर्धारित 6.50 रुपये का न्यायालय शुन्क टिकिट लोग होना पाहिए। / 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. (E)
- मीमा शुरुष, केनदीय उत्पाद शुरुष एवं सेवाकर अपीलीय स्थायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अस्य संबन्धित मामानी को सम्मिनित करने वाले लियमों की और भी ध्यान आवर्षित किया जाता है। / (F) 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.
- ५७४ अधीलीय प्राधिकारी को अधील दाखिल करने से शंबंधित स्थापक, विस्तृत और मदीसारम प्रावधानों के लिए, अधीलाधी विमानीय वेदसाइट (G) www.cbec.gov.in 報 名句 即時 著 即時 著 1 /
  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 Commissioner, Central Excise & Service Tax, Kutch (hereinafter referred to as "appellant") has filed the present appeal against Order-in-Original No. 9/Asstt. Commr./2016 dated 30.03.2016 (hereinafter referred to as "impugned order") passed by the Assistant Commissioner, Central Excise Division, Bhuj (hereinafter referred to as "lower adjudicating authority") in the case of M/s. Sanghi Industries Limited (Grinding Unit), P.O. Sanghipuram, Motiber, Tal. Abdasa, Dist.Kutch (hereinafter referred to as "respondent").

- Briefly stated, facts of the case are that, audit revealed that the respondent has wrongly availed cenvat credit of Rs. 53,314/- during the period July, 2016 to February, 2007 on M.S. Pipes/G.I. Pipes falling under Chapter 73 of the first schedule to the Central Excise Tariff Act, 1985 in credit account of capital goods. SCN No. IV/21-16/LAR-1817/07 dated 08.07.2009 was issued to the respondent for recovery of wrongly availed cenvat credit of Rs. 53,314/- along with interest under Rule 14 of Cenvat Credit Rules, 2004 (hereinafter referred to as "CCR, 2004") read with Section 11A/11A of Central Excise Act, 1944 (hereinafter referred to as "Act") and to impose penalty under Rule 15 of CCR, 2004 read with Section 11AC of the Act. The lower adjudicating authority vide impugned order dropped the proceedings initiated vide SCN dated 08.07.2009 on the ground that SCN did not incorporate specific allegations enumerating existence of ingredients mentioned in proviso to Section 11A (1) of the Act.
- Being aggrieved by the impugned order, department preferred the present appeal, interalia, on the grounds that decisions in the case of Shree Ram Steel Rolling Mills reported as 2008 (221) ELT 333 (Bom.), Hindustan Coco Cola Beverages Pvt. Ltd. reported as 2010 (259) ELT 134 (Tri.) and Raymond Ltd. reported as 2008 (230) ELT 381 (Tri.) and relied upon by the lower adjudicating authority are not relevant in the facts and circumstances of the present case; that judgment in the case of Pradyumna Steel Ltd. reported as 1996 (82) ELT 441 (SC) is squarely applicable in the present case; that if the audit was not conducted, the fact of wrong availment of cenvat credit by the respondent would and not have been known to the department, hence, it is clearly evident that the respondent suppressed the fact of wrong availment of cenvat credit; that the respondent had willfully avoided to provide complete details of cenvat credit availment; that the respondent had suppressed the availment of cenvat credit on M.S. Pipes/G.I. Pipes from the department and hence the extended period of limitation was rightly invoked in the SCN.

- 4. Personal hearing in the matter was attended to by Shri Ishan Bhatt, Advocate, who submitted that grounds of appeal are not correct; that no suppression of facts was ever alleged in SCN; that SCN does not say anywhere what had not been submitted by the respondent; that they were required to file ER-1 Returns and they have filed ER-1 Returns; that they were not required to file details of invoices on which credit is taken; that department never asked any information before audit and whatever information was asked for during audit was all submitted; that SCN is based on audit objection only; that suppression of facts cannot be alleged now as it has not been alleged in SCN; that they would submit written P.H. submissions within 2 weeks. No one appeared from the department despite P.H. notices issued to them.
- 4.1 The respondent, in their written submission stated that even if the submission of the department in their appeal regarding invocation of extended period of limitation is accepted, there can be no denial of cenvat credit in the present case as the goods in question are specifically covered by the definition of capital goods under Rule 2(a)(A) of CCR, 2004 during the relevant period. Clause (vi) of Rule 2(a)(A) specifically includes "tubes and pipes and fittings thereof" under the definition of capital goods. The SCN dated 08.07.2009 does not dispute the fact that the pipes were used within the factory of the respondent. The only allegation in the SCN is that the respondent has availed cenvat credit on 'unspecified' capital goods. However, the allegation of SCN is completely incorrect inasmuch as pipes were specifically covered in the definition of capital goods during the material time.
- 4.2 The lower adjudicating authority has rightly dropped demand on the ground that entire demand is beyond normal period of limitation and the SCN does not incorporate any specific allegation enumerating the existence of ingredients mentioned in proviso to Section 11A(1) of the Act.
- 4.3 The department has relied upon case law of the Hon'ble Supreme Court in the case of Pradyumna Steel Ltd. 1996 (82) ELT 441 (SC) where the Hon'ble Supreme Court has held that "Mere mention of wrong provision of law when power exercised is available though under a different provision is by itself not sufficient to invalidate the exercise of that power." The reliance placed on the said judgment is completely misplaced. In the present SCN, it is not a case of quoting wrong provision of law but a case of not alleging ingredients which are required to be established to invoke extended period of limitation. This distinction was clearly explained by the Hon'ble High Court of Madras in the case of Super Spinning Mills Ltd. 2015 (324) ELT 552 (Mad.).
- 4.4 The SCN is the foundation of the demand. Allegations which are not present in the SCN cannot be urged against the assessee at a later stage. The appellant relied

on the decisions in the case of Ballarpur Industries Ltd. – 2007 (215) ELT 489 (SC) and Reliance Ports & Terminals Ltd. – 2016 (334) ELT 630 (Guj.) in support of their contention.

#### FINDINGS: -

- 5. I have carefully gone through the facts of the case, impugned order, appeal memorandum and written as well as oral submissions made by the appellant. The issue to be decided is whether in the facts and circumstances of the present case, the impugned order passed by the lower adjudicating authority dropping proceedings initiated vide SCN dated 08.07.2009 is correct or not.
- I find that the lower adjudicating authority has clearly held that the SCN did 6. not incorporate specific allegations enumerating existence of ingredients mentioned in proviso to Section 11A (1) of the Act. The department relied on judgment in the case of Pradyumna Steel Ltd. reported as 1996 (82) ELT 441 (SC) and contended that extended period of limitation was rightly invoked in the SCN. The respondent contended that it is not a case of quoting wrong provision of law but a case of not alleging ingredients which are required to be established to invoke extended period of limitation, hence the said decision is not applicable to the present case. I find force in the arguments made by the respondent. I find that period of availment of disputed cenvat credit is July, 2006 to February, 2007 for which demand notice was issued on 08.07.2009. I find that in catena of decisions, it has been held that the extended period of 5 years as provided under proviso to Section 11A(1) of the Act is not available to the Department without bringing out details of suppression of facts or willful mis-statement or misdeclaration with intent to evade payment of Central Excise duty. I further find that in the case of Pradyumna Steel Ltd. reported as 1996 (82) ELT 441 (SC), the facts before the Hon'ble Supreme Court was that wrong provision was mentioned/quoted in the SCN, however in the present case the SCN did not indicate ingredients of suppression of facts or willful mis-statement or misdeclaration with intent to evade payment of Central Excise duty. Hence, it is not a case of wrong quoting of provisions and therefore ratio of the said judgment relied upon by the department is not relevant at all to the facts and circumstances of present case. Hence, I find that department has not alleged suppression of facts etc. but demanded duty of extended period and therefore the SCN suffers from legal infirmity and the lower adjudicating authority has correctly arrib dropped the demand.
- 7. I find that the respondent has contended that M.S. Pipes/G.I. Pipes are specifically covered by clause (vi) of Rule 2(a)(A) under the definition of capital goods. I would like to reproduce the relevant part of definition of capital goods as provided under Rule 2(a) of CCR, 2004, prevailing at the material time, which reads as under:

## Rule 2(a) "capital goods" means -

- (A) the following goods, namely: -
  - (i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90 of the First Schedule to the Excise Tariff Act;
  - (ii) .....
  - (111)
  - (iv) .....
  - (v) ....
  - (vi) Tubes and pipes and fittings thereof; and
  - (vii) .....

(Emphasis supplied)

- In view of the above wordings, I find that tubes and pipes and fittings thereof are capital goods as per Rule 2(a)(A)(vi) of CCR, 2004 and hence cenvat credit availed on M.S. Pipes/G.I. Pipes cannot be denied to the respondent.
- In view of above legal and factual position, I uphold the impugned order and reject the appeal filed by the department.
- ९.१. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
- 9.1. The appeal filed by the appellant stands disposed off in above terms.

(कुमार संतोष) आयुक्त (अपील्स)

## By Regd. Post AD

To,

Motiber, Tal. Abdasa,	रंपीपुरम, गेटिबर, तालुका - अबडासा, डेस्टिक्ट - कच्छ
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## Copy to:

- The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
- The Commissioner, GST & Central Excise Commissionerate, Gandhidham.
- 3) The Assistant Commissioner, GST & Central Excise Division, Bhuj Kutch.
- 4) Guard File.