



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

द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

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सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या Appeal / File No.	मूल आदेश नं / O.I.O. No.	दिनांक / Date
	V2/55/GDM/2016	07/JC/2016	29.07.2016

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

KCH-EXCUS-000-APP-137-2017-18

आदेश का दिनांक / Date of Order:	18.12.2017	जारी करने की तारीख / Date of issue:	20.12.2017
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कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot

ग) उपर आयुक्त/संयुक्त आयुक्त/उपायुक्त/सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, राजकोट / जामनगर / गंधीधाम, द्वारा उपरलिखित जारी मूल आदेश से सुजित।

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

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

**M/s. Sanghi Industries Ltd.(Clinker Unit)Grinding Unit, P.O. Sanghipuram, Motiber,
Tal : Abdasa, Dist : Kutch, Gujarat**

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

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है।

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण शुल्कांकन से सम्बन्धित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, अर. के. पुरम, नई दिल्ली, को की जानी चाहिए।

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (लिस्टेड) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहमाली भवन असावा अहमदाबाद-380016 को की जानी चाहिए।

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

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

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of duty demanded/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

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

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a 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/-.

- (i) विल अर्पितियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमावली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रथम S.T.-7 से की जा सकेगी एवं उसके साथ आवश्यक, केन्द्रीय उत्पाद शुल्क अथवा आदकृत (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (जिसमें से एक प्रति प्रमाणित होनी चाहिए) और आदकृत द्वारा सहायक आदकृत अथवा उत्पादक, केन्द्रीय उत्पाद शुल्क सेवाका, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेल्वेट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एक के अंतर्गत, जो की विलीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करने समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत उल्ला कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत 'मांग किए गए शुल्क' में निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेल्वेट जमा की गयी गलत राशि
(iii) सेल्वेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्त यह कि इस धारा के प्राधान्य विलीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के द्वारा विचारार्थन प्रथम अर्पित एवं अपील को लागू नहीं 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, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,
Under Central Excise and Service Tax, "Duty Demanded" shall include :
(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.
- (C) भारत सरकार को पुनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षण प्राधिकार निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परन्तक के अंतर्गत अर्पित सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, विल मंत्रालय, राज्य विभाग, चौथी मंजिल, जीवन 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-35E ibid:
(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के पर्यस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। / In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.
(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल या अर्धी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। / In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इच्छुटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो अल्पकृत (अपील) के द्वारा विल अधिनियम (सं. 2), 1998 की धारा 109 के द्वारा निर्यात की गई लागू अथवा समावृत्ति पर या बाद 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 सहाय EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संशोधन के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अद्ययगी के साथ, के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। / The above application shall be made in duplicate in Form No. EA-8 as specified under Rule. 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-in-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.
(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए। / The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
(D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपरोक्त धारा में किया जाना चाहिए। इस तथ्य के होने हुए भी की शिक्षा यही कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण की एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, not withstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
(E) ब्याजसंशोधित न्यायालय शुल्क अधिनियम, 1975 के अनुच्छेद-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। / One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.
(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सर्वे विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को अभिभावित करने वाले नियमों की और भी ध्यान आकर्षित किया जाता है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.
(G) उच्च अपीलीय प्राधिकारी को अपील दायित्व करने में संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलकर्ता 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. Sanghi Industries Ltd. (Clinker Unit), P.O. Sanghipuram, Vill: Motiber, Tal: Abdasa, Dist: Kutch, Gujarat (hereinafter referred to as "the appellant") has filed present appeal against Order-In-Original No. 07/JC/2016 dated 29.07.2016 (hereinafter referred to as "the impugned order"), issued by the Joint Commissioner, Customs and Central Excise, Gandhidham (hereinafter referred to as "the lower adjudicating authority").

2. Briefly stated the facts of the case are that the appellant engaged in manufacture of excisable goods was registered with Central Excise Department. The scrutiny of records of the appellant for the period from April, 2014 to November, 2014 revealed that they had availed cenvat credit of Rs. 20,39,052/- on certain items such as M. S. Angle/M. S. Channel/M. S. Plate etc. (hereinafter referred to as "M. S. Items") by treating the same as "inputs" even if used for civil construction purposes and/or repairs and hence these items did not fall either under the definition of inputs or capital goods in terms of Rule 2 of the Cenvat Credit Rules, 2004 (hereinafter referred to as "the CCR"). Show Cause Notice No. V.25/AR-II/Bhuj/ADC/79/15 dated 29.04.2015 issued was adjudicated by the lower adjudicating authority vide impugned order wherein he ordered for recovery of wrongly availed cenvat credit of Rs. 20,39,052/- under Rule 14 of the CCR read with Section 11A of the Central Excise Act, 1944 along with interest under Rule 14 of the CCR read with Section 11AA of the Central Excise Act, 1944 and imposed penalty of Rs. 20,39,052/- under Rule 15 of the CCR.

3. Being aggrieved with the impugned order, the appellant preferred the present appeal on the following grounds:

3.1 The impugned order is a non-speaking order and has been passed in violation of principles of equity, fair play and natural justice as the lower adjudicating authority has clearly overlooked the contentions of the appellant and mechanically. For their contention, the appellant has relied upon following case laws:

- (i) Cyril Lasardo (Dead) – 2004 (7) SCC 431
- (ii) Shukla & Brothers – 2010 (254) ELT 6 (SC)

3.2 The lower adjudicating authority has relied upon Explanation 2 of the older definition of 'inputs under Rule 2(k) of the CCR, 2004 as it existed prior to Notification No. 03/2011-CE(NT) dated 01.03.2011 and present period involved is April, 2014 to November, 2014. By the said Notification No. 03/2011-CE(NT) dated 01.03.2011, with

effect from 01.04.2011, scope of goods covered under the term 'input' has been further extended. The definition now covers all goods used in the factory by the manufacturer except those goods specifically excluded or which have no relationship whatsoever with the manufacture of the final products and submitted case laws which were claimed to apply to the case considering change in the definition of 'inputs' under Rule 2(k) of the CCR, 2004.

3.3 The impugned goods have been used for repairing of machinery by way of fabrication of worn out parts of the capital goods installed in the factory which are used in or in relation to manufacture of excisable goods. Thus, all the goods which have been used in the manufacturing process whether directly or indirectly and whether contained in the final product or not are entitled for the credit as long as they are used in the factory of manufacturer subject to exceptions listed in Clause (A) to (F) of Rule 2(k) of the CCR, 2004. In fact, sub-clause (C) of Rule 2(k)(iv) of the CCR, 2004 specifically includes capital goods used as parts or components in the manufacture of final product while specifically excluding mere capital goods from the definition of inputs. Therefore, goods used during the course of such repairs and maintenance would also get covered under the definition of 'inputs'. There can be no generalization to deny credit on the inputs which are un-disputedly procured on payment of duty and which have been used within the factory of production in lieu of the amended Rule 2(k) of the CCR, 2004. The appellant relied on the decisions in the following cases.

- (i) Modi Rubber Limited – 2000 (119) ELT 197 (Tri.-LB)
- (ii) J.K. Cotton Spinning & Weaving Mills Co. Ltd. – 1997 (91) ELT 34 (SC)
- (iii) Panipat Co-operative Sugar Mills Ltd. – 2013 (293) ELT 66 (Tri.-Del.)
- (iv) Kareli Sugar Mills Ltd. – 2013 (296) ELT 59 (Tri.)
- (v) Bajaj Hindustan Limited – 2013 (294) ELT 581 (Tri.)
- (vi) U.P. State Sugar Corporation Ltd. – 2013 (293) ELT 259 (Tri.)
- (vii) Hindustan Zinc Ltd. – 2011 (272) ELT 393 (Tri.)
- (viii) J.K. Sugar Limited – 2011 (270) ELT 225 (Tri.)
- (ix) Ambuja Cement Eastern Limited – 2010 (256) ELT 690 (Chhattisgarh)

3.4 The appellant had contended that they are eligible for cenvat credit availed on M. S. Items used for fabrication of chimneys, which are pollution control equipments and hence specified capital goods under sub-clause (ii) of clause (A) of the definition of 'capital goods' under Rule 2(a) of the CCR, 2004. Thus, the M.S. Items used for fabrication of specified capital goods i.e. chimneys are eligible for cenvat credit as inputs in terms of Explanation 2 to Rule 2(k) of the CCR, 2004. The appellant availed

cenvat credit of Rs. 4,30,287/- (out of total cenvat credit of Rs. 20,39,052/-) on M. S. Items. The appellant place reliance on following decisions:

- (i) Rajasthan Spinning & Weaving Mills Limited - 2010 (255) ELT 481 (SC);
- (ii) Lloyds Metals & Engg. Ltd. - 2014 (309) ELT 0533 and
- (iii) India Cements Limited - 2015 (320) ELT A192 (Mad. HC).

3.5 The appellant submitted that it is settled law that cenvat credit is available on items used in fabrication of ducts used in plant and machinery installed in factory. The appellant has availed cenvat credit of Rs. 1,02,201/- (out of total cenvat credit of Rs. 20,39,052/-) on M. S. Items used in fabrication of ducts. The appellant relied upon following decisions:

- (i) Associated Cement Company Limited - 2011 (267) ELT 55 (Chattisgarh);
- (ii) Madras Cements Ltd. - 2006 (203) ELT 605 (Tri. Bang);
- (iii) Pee Vee Textiles Ltd. - 2007 (217) ELT 194 (Tri. Bom);
- (iv) Vishakhapatnam Steel Plant - 2004 (177) ELT 507 (Tri. Bang).

3.6 The adjudicating authority after erroneously concluding that the goods are used for repair and maintenance of capital goods and hence cenvat credit not available placing reliance on Board's Circular No. 267/11/2010-CX dated 08.07.2010. CBEC Circular dated 08.07.2010 relied upon by the adjudicating authority is not binding upon the appellant. They have placed relied on the following judgments.

- (i) Avenue Impex – 2014 (306) ELT 69 (Mad.)
- (ii) Ingersoll Rand (India) Ltd. – 2014 (300) ELT 347 (Guj.)
- (iii) Bata India Ltd. – 2013 (297) ELT A149 (Cal.)
- (iv) Minwool Rock Fibres Ltd. – 2012 (278) ELT 581 (SC)

3.7 With effect from 01.04.2011, scope of goods covered under the term 'input' has been further expanded. It now covers all goods used in the factory by the manufacturer except those goods specifically excluded or which have no relationship whatsoever with the manufacture of final product. The case law relied upon by the appellant and pertaining to period prior to 01.04.2011 would apply with even greater force considering change in the definition of 'inputs' under Rule 2(k) of the CCR, 2004.

3.8 The reliance placed by the adjudicating authority on decisions in the case of Vikram Cement Private Limited – 2009 (242) ELT 545 (Tri.-Del.) and Maruti Suzuki – 2009 (240) ELT 641 (SC), are not applicable to the present case inasmuch as the same refer to the restrictive meaning of the words "in or in relation to" used in the older

definition of 'inputs' prior to 01.04.2011. Since the definition of 'inputs' was further widened by deleting the words "in or in relation to", the reliance placed by the adjudicating authority on these two case laws is unsustainable.

3.9 There were divergent views on the issue of eligibility of credit on impugned goods used in the repair and maintenance of plant and machinery. Therefore, the question of imposing penalty does not arise in the facts and circumstances of the case. The appellant relied decisions in the case of L.H. Sugar Factories Limited – 2010 (257) ELT 224 and D.S.M. Sugar Mills Limited – 2010 (256) ELT 682. It is a well settled principle of law that where there is no demand of duty, penalty cannot be imposed as held in the case of Coolade Beverages Ltd. – 2004 (172) ELT 451 (All-HC). It is also settled law that the imposition of penalty is not sustainable when the issue is of interpretation of law. The appellant relied the decisions in the following cases.

- (i) Swaroop Chemicals (P) Ltd. – 2006 (204) ELT 492 (T)
- (ii) Haldia Petrochemicals Ltd. – 2006 (197) ELT 97 (T)
- (iii) Telco Ltd. – 2006 (196) ELT 308 (T)
- (iv) Siyaram Silk Mills Ltd. – 2006 (195) ELT 284 (T)
- (v) Sikar Ex-Servicemen Welfare Co-op Society Ltd. – 2006 (4) STR 213 (T)
- (vi) Hindustan Steel Ltd. – 1978 (2) ELT J159 (SC)

3.10 Since no duty is payable, the question of paying interest does not arise.

4. Personal hearing in the matter was attended by Shri Ishan Bhatt, Advocate, who reiterated the grounds of appeal; he also submitted Chartered Engineer's Certificate dated 02.11.2017 and Letter dated 15.11.2017 of the Assistant Commissioner, CGST Division, Bhuj wherein it has been certified that MS Plates, MS Angles, MS Channels of different thickness have been used in repairs and maintenance of machineries and capital goods in their factory; that CESTAT, Ahmedabad in their own case of prior period for the same unit vide order dated 28.08.2017 has passed order in their favour setting aside OIA RJT-ExCus-000-APP-51-53-14-15 dated 13.05.2014 passed by the then Commissioner(Appeals), Rajkot; that detailed case laws are submitted along with written PH submission and this appeal may accordingly be decided.

Findings:

5. I have carefully gone through the facts of the case, impugned order, appeal memorandum and 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 denying cenvat credit of duty paid on M. S. Items used for repair and maintenance of capital goods is correct or not.

6. The lower adjudicating authority held that M.S. Items used by the appellant for repair and maintenance of plant and machinery and not for fabrication/manufacture of new capital goods, which neither qualified as inputs nor qualified as capital goods within the meaning of inputs/capital goods provided under Rule 2(k)(Explanation-2)/Rule 2(a) of CCR, 2004, by narrating Explanation-2 to Rule 2(k) of the CCR, 2004 i.e. definition of 'input' as it was prevailed prior to 01.04.2011. However, the period under dispute is from April, 2014 to November, 2014. I would like to reproduce the definition of 'input' as provided under Rule 2(k) of CCR, 2004 and as applicable during period of dispute i.e. from April, 2014 to November, 2014, which reads as under:

Rule 2(k) "input" means –

- (i) *all goods used in the factory by the manufacturer of the final product; or*
- (ii)
- (iii)
- (iv)

but excludes –

- (A)
- (B) *any goods used for –*
 - (a) *construction or execution of works contract of a building or a civil structure or a part thereof; or*
 - (b) *laying of foundation or making of structures for support of capital goods,*
-
- (C)
- (D)
- (E)
- (F)

(Emphasis supplied)

7. It could be seen from the definition of 'input' substituted vide Notification No. 3/2011-CE(NT) dated 01.03.2011 made effective from 01.04.2011, that the definition has been widened so as to cover all goods used in the factory by the manufacturer of the final product for availment of cenvat credit but excludes goods used for construction of a civil structure or a part thereof or used for laying of foundation or making of

structures for support of capital goods. In the instant case, the appellant has submitted a copy of letter F. No. VI/CGST/Bhuj/Sanghi/2017-18 dated 15.11.2017 of the jurisdictional Assistant Commissioner, confirming that joint verification has been conducted by the Range Officer with a representative of the appellant to the effect that these items had been used for repair and maintenance of capital goods/Plant & Machinery. The appellant has also submitted a Certificate No. MS/469/2017 dated 02.11.2017 of Shri Mukesh M. Shah, Chartered Engineer, Ahmedabad certifying that the said M. S. Items utilized for fabrication, repairing and replacement of plant and machinery namely Boiler, Bunker, Coal Feeder, Coal Handling Plant, Coal Mill, Raw Mill, RMH, Coal Mill Bag Filter, Cooler ESP, Cooling Tower, Kiln, Cooler and Pre-Heater, Raw Mill Bag House, Raw Mill Chimney, Raw Mill Out-let Duct, CHP Coal Lignite Handling. Accordingly, I hold that the appellant has sufficiently proved that the impugned goods were used for repairs and maintenance of capital goods. It is settled legal position that goods used for repair/maintenance of capital goods are entitled for cenvat credit as without said capital goods/machinery, the appellant cannot manufacture final products. I find that in various decisions which were pronounced in context of substituted definition of 'input' vide Notification No. 3/2011-CE(NT) dated 01.03.2011 w.e.f. 01.04.2011, the Hon'ble CESTAT has allowed cenvat credit of input used in repair and maintenance of capital goods. I find that Hon'ble CESTAT, New Delhi in the case of J.K. Cement Works reported as 2017 (345) ELT 301 (Tri. – Del.) has held as under:-

"5. I find that the Original authority in the adjudication order dated 26-12-2005 has held that the disputed goods were used for maintenance/repair of capital goods. Since these goods have been used for maintenance of capital goods installed in the factory, the same can be termed as use in or in relation to manufacture of the final product. As such, in terms of the broad definition of input, the disputed goods shall merit consideration as input for the purpose of taking Cenvat credit."

(Emphasis supplied)

7.1 The Hon'ble CESTAT, Allahabad in the case of Ganga Kishan Sahakari Chini Mills Limited reported as 2016 (335) ELT 99 (Tri. – All.) has held as under:

"6. Having considered the rival contentions I find that, save and except the inputs which have been used in civil work and which was not disputed and reverse entry was passed during the course of investigation. The other goods have been utilised in the repair and maintenance of capital goods which are further used in the production of the excisable finished products. In view of the fact that no final product can be manufactured without the repair and maintenance and upkeep of the capital goods, the inputs required for the upkeep and maintenance are eligible inputs for Cenvat credit. In this view of the matter,

the appeal is allowed and the impugned order is set aside. The appellant will be entitled to consequential relief in accordance with law."


(Emphasis supplied)

7.2 In view of above, I to hold that the appellant is entitled for avilment of cenvat credit on M.S. items as 'inputs' as these have been used in the repair/maintenance of capital goods. The lower adjudicating authority has denied entire cenvat credit of goods without verifying the usage of disputed goods in terms of CCR, 2004. Hence, I find that impugned order passed by the lower adjudicating authority is not correct, legal & proper and hence I have no option but to set aside the impugned order.

8. In view of above factual position, I set aside the impugned order and allow the appeal filed by the appellant.

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

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


(कुमार संतोष)
आयुक्त (अपील्स)

By Regd. Post AD

To,

M/s. Sanghi Industries Limited (Clinker Unit), P. O. Sanghipuram, Motiber, Taluka – Abdasa, District - Kutch	मे. सांघी इंडस्ट्रीज़ लिमिटेड (क्लिकर यूनिट), पी. ओ. सांघीपुरम, मोटीबेर, तालुका – अबडासा, डिस्ट्रिक्ट – कच्छ
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Copy for information and necessary action to:

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad for kind information please.
- 2) The Commissioner, GST & Central Excise Commissionerate, Gandhidham.
- 3) The Assistant Commissioner, GST & Central Excise Division, Bhuj.
- 4) Guard File.