



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 / 2<sup>nd</sup> 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 /<br>Appeal / File No.<br>V2/67,68,69/GDM/2016 | मूल आदेश सं /<br>O.I.O. No.<br>10,11,12/DC/2016 | दिनांक /<br>Date<br>28.09.2016 |
|---|-------------------------------------------------------------------|-------------------------------------------------|--------------------------------|

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

**KCH-EXCUS-000-APP-156-TO-158-2017-18**

|                                    |                   |                                        |                   |
|------------------------------------|-------------------|----------------------------------------|-------------------|
| आदेश का दिनांक /<br>Date of Order: | <b>31.01.2018</b> | जारी करने की तारीख /<br>Date of issue: | <b>01.02.2018</b> |
|------------------------------------|-------------------|----------------------------------------|-------------------|

Passed by **Shri Lalit Prasad, Commissioner, Central Goods and Service Tax & Central Excise, Rajkot**

अधिसूचना संख्या २६/२०१७-के.उ.शु. (एन.टी.) दिनांक १७.१०.२०१७ के साथ पढ़े बोर्ड ऑफिस आदेश सं. ०५/२०१७-एस.टी. दिनांक १६.११.२०१७ के अनुसरण में, श्री ललित प्रसाद, आयुक्त, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क, राजकोट को वित्त अधिनियम १९९४ की धारा ८५, केन्द्रीय उत्पाद शुल्क अधिनियम १९४४ की धारा ३५ के अंतर्गत दर्ज की गई अपीलों के सन्दर्भ में आदेश पारित करने के उद्देश्य से अपील प्राधिकारी के रूप में नियुक्त किया गया है।

In pursuance to Board's Notification No. 26/2017-C.Ex.(NT) dated 17.10.2017 read with Board's Order No. 05/2017-ST dated 16.11.2017, Shri Lalit Prasad, Commissioner, Central Goods and Service Tax & Central Excise, Rajkot has been appointed as Appellate Authority for the purpose of passing orders in respect of appeals filed under Section 35 of Central Excise Act, 1944 and Section 85 of the Finance Act, 1994.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित: /  
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham :

घ **अपीलकर्ता & प्रतिवादी का नाम एवं पता / Name & Address of the Appellants & Respondent :-**  
**M/s Sanghi Industries Limited, Cement Division (Grinding Unit), Sanghipuram, Motiber, Taluka : Abdasa, Kutchch**

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

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

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

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असारवा अहमदाबाद- ३८००१६ को की जानी चाहिए।/  
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

- (iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी 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 demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

- (B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी 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) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियों संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। /

The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है

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

- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा।

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 याचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B 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 प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। /  
In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse
- (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /  
In case of rebate of duty of excise on goods exported to any country or territory outside India of an 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 इयूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (न. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि 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 प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। /  
The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.
- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।  
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए।  
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपरोक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को 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, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट लगा होना चाहिए। /  
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-1 in terms of the Court Fee Act, 1975, as amended.
- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की 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.



**:: ORDER-IN-APPEAL ::**

Being aggrieved with the following tabulated Order-in-Original (hereinafter referred to as **"the impugned order"**) passed by the Assistant Commissioner of Central Excise, Bhuj (Kutch) (hereinafter referred to as **"the Lower Adjudicating Authority"**), **M/s. Sanghi Industries Limited, Cement Division (Grinding Unit)**, Sanghipuram, Motiber, Taluka: Abdasa, Dist: Kutch (hereinafter referred to as **"the appellants"**) have filed following appeals:

| Order-in- Original |          | Period |         | CENVAT credit disallowed | Penalty imposed | Appeal Number |
|--------------------|----------|--------|---------|--------------------------|-----------------|---------------|
| Number             | Dated    | from   | to      |                          |                 |               |
| 10/DC/2016         | 28.09.16 | 6/2009 | 12/2009 | 1,57,830/-               | 1,57,830/-      | 67/GDM/2016   |
| 11/DC/2016         | 28.09.16 | 4/2010 | 6/2010  | 1,71,740/-               | 1,71,740/-      | 68/GDM/2016   |
| 12/DC/2016         | 28.09.16 | 7/2010 | 9/2010  | 4,15,311/-               | 4,15,311/-      | 69/GDM/2016   |

**2.1** The facts are that during the scrutiny of ER-1 returns of the appellant for the period from **June, 2009 to December, 2009**, it was noticed by the Jurisdictional Superintendent of Central Excise that the appellant had availed CENVAT credit as inputs in full in respect of following capital goods received by them:

| SNo.            | Month     | Description of item   | CENVAT Credit Availed |      |      |        |
|-----------------|-----------|-----------------------|-----------------------|------|------|--------|
|                 |           |                       | BED                   | E.C  | SHE  | Total  |
| 1               | June - 09 | M.S. Plate 5 mm       | 7972                  | 159  | 80   | 8211   |
| 2               | June - 09 | M.S. Flats 50 X 12 mm | 1944                  | 39   | 19   | 2002   |
| 3               | July - 09 | M.S. Pipe 40 mm       | 3512                  | 70   | 35   | 3617   |
| 4               | July - 09 | M.S. Pipe 150 mm      | 10043                 | 201  | 100  | 10344  |
| 5               | July - 09 | M.S. Pipe 300 mm      | 2150                  | 43   | 22   | 2215   |
| 6               | July - 09 | M. S. Pipe 150 mm     | 11940                 | 239  | 120  | 12299  |
| 7               | Sept - 09 | M.S. Plate 16mm       | 17784                 | 356  | 179  | 18319  |
| 8               | Sept - 09 | M.S. Plate 8mm        | 950                   | 19   | 10   | 979    |
| 9               | Sept - 09 | M.S. Angle 65X65X6    | 5179                  | 104  | 52   | 5335   |
| 10              | Nov - 09  | Chain Pitch - 250 mm  | 9689                  | 194  | 97   | 9980   |
| 11              | Nov - 09  | Steel Plate 5 mm      | 82067                 | 1641 | 821  | 84529  |
| TOTAL-----<br>→ |           |                       | 153230                | 3065 | 1535 | 157830 |

Since, majority of the items being used were for the purpose of civil construction and repairs thereof and hence the same appeared to be not falling under the definition of "input" or "capital goods" given under Rule 2 of the CENVAT Credit Rules, 2004.

**2.2** The above observations culminated into issuance of **Show Cause Notice No. 32/2010 dated 17.06.2010** to the appellant, wherein it was proposed to deny the CENVAT credit and recover the



same along with interest. Further, it was also proposed to impose penalty under Rule 15 of the CENVAT Credit Rules, 2004.

3. Like wise, during the scrutiny of ER-1 returns of the appellant for the period from **April, 2010 to June, 2010**, it was noticed by the Jurisdictional Superintendent of Central Excise that the appellant had availed CENVAT credit as inputs in full in respect of following capital goods received by them:

| Sr. No       | Month    | Description of item      | CENVAT credit availed |         |        |           |
|--------------|----------|--------------------------|-----------------------|---------|--------|-----------|
|              |          |                          | BED                   | EC      | SHE    | Total     |
| 1            | April-10 | M.S. Plate 5 mm          | 7971.70               | 159.44  | 79.72  | 8210.86   |
| 2            | April-10 | Pipe M.S. B-class 40 mm  | 3519.78               | 70.41   | 35.20  | 3625.39   |
| 3            | April-10 | Pipe M.S. B-class 300 mm | 2150.33               | 43.01   | 21.50  | 2214.84   |
| 4            | April-10 | Pipe M.S. B-class 150 mm | 21983.06              | 439.23  | 219.84 | 22642.13  |
| 5            | April-10 | M.S. Pipe 250 NB C-class | 14989.89              | 299.81  | 149.90 | 15439.6   |
| 6            | April-10 | M.S. Plate 16 mm         | 17783.50              | 355.47  | 178.32 | 18317.29  |
| 7            | April-10 | M.S. Plate 8 mm          | 950.40                | 19.01   | 9.51   | 978.92    |
| 8            | April-10 | M.S. Angle 65X65X6       | 5178.50               | 103.50  | 52.00  | 5334      |
| 9            | April-10 | Lloyds Steel Plate 5 mm  | 82067.04              | 1641.35 | 820.67 | 84529.06  |
| 10           | April-10 | M.S. Flats 50X12 mm      | 10143.42              | 202.89  | 101.44 | 10447.75  |
| 11           | May-10   | NIL                      | 0                     | 0       | 0      | 0         |
| 12           | June-10  | NIL                      | 0                     | 0       | 0      | 0         |
| TOTAL:-----> |          |                          | 166737.62             | 3334.12 | 1668.1 | 171739.84 |

Since, majority of the items being used were for the purpose of civil construction and repairs thereof and hence the same appeared to be not falling under the definition of "input" or "capital goods" given under Rule 2 of the CENVAT Credit Rules, 2004. Therefore, **Show Cause Notice No. 97/2010-2011 dated 06.04.2011** was issued to the appellant, wherein it was proposed to deny the CENVAT credit and recover the same along with interest. Further, it was also proposed to impose penalty under Rule 15 of the CENVAT Credit Rules, 2004.

4. Further wise, during the scrutiny of ER-1 returns of the appellant for the period from **July, 2010 to September, 2010**, it was noticed by the Jurisdictional Superintendent of Central Excise that the Appellant had availed CENVAT credit as inputs in full in respect of following capital goods received by them:

| Sr.          | Month  | Description if item           | CENVAT Credit availed |       |        |         |
|--------------|--------|-------------------------------|-----------------------|-------|--------|---------|
|              |        |                               | BED                   | EC    | SHE    | Total   |
| 1            | Jul-10 | G.I. Strips                   | 3885.5                | 77.5  | 39     | 4002    |
| 2            | Jul-10 | G.I. Strips                   | 619                   | 12.5  | 6      | 637.5   |
| 3            | Aug-10 | M.S. Flats 50*12 mm           | 1343.5                | 27    | 13.5   | 138     |
| 4            | Aug-10 | M.S. Beam 250 mm              | 5644                  | 113   | 56.5   | 581.5   |
| 5            | Aug-10 | M.S. Beam 350 mm              | 23195.5               | 464   | 232    | 23891.5 |
| 6            | Aug-10 | M.S. Angle 25*25*5            | 250.5                 | 5     | 2.5    | 258     |
| 7            | Aug-10 | M.S. Beam 300 mm              | 4100.5                | 82    | 41     | 4223.5  |
| 8            | Aug-10 | M.S. Chequered Plate 8 mm     | 1807.5                | 36    | 18.5   | 1862    |
| 9            | Aug-10 | M.S. Channel 100*50 mm        | 1882.5                | 37.5  | 19     | 1939    |
| 10           | Aug-10 | M.S. Beam 150 mm              | 3785.5                | 75.5  | 38     | 3899    |
| 11           | Aug-10 | M.S. Channel 75 mm            | 1328.5                | 26.5  | 13.5   | 1368.5  |
| 12           | Aug-10 | M.S. Channel 150 mm           | 14728                 | 294.5 | 147.5  | 15170   |
| 13           | Aug-10 | 200 NB Pipe                   | 5930.5                | 118.5 | 66.5   | 6115.5  |
| 14           | Aug-10 | 200 NB M.S. Pipe              | 1047                  | 20.5  | 10.5   | 1078    |
| 15           | Aug-10 | Pipe MS ERW, 5" IS, 3589, SCH | 2385.5                | 48    | 24     | 2457.5  |
| 16           | Aug-10 | M.S. Plate 8 mm               | 14807                 | 296   | 148    | 15251   |
| 17           | Aug-10 | Pipe MS ERW, 500 NB, 9.5 T    | 9382.5                | 187.5 | 93.5   | 9663.5  |
| 18           | Aug-10 | Pipe MS ERW, 350 NB, 9.5 T    | 945                   | 19    | 9.5    | 973.5   |
| 19           | Aug-10 | M.S. Pipe 10" NB              | 23668                 | 473.5 | 236.5  | 24378   |
| 20           | Aug-10 | M.S. Pipe 1.5" NB             | 4189.5                | 84    | 42     | 4315.5  |
| 21           | Aug-10 | Pipe MS ERW, 400 NB, 9.5 T    | 31121.5               | 622.5 | 311    | 32055   |
| 22           | Aug-10 | Pipe MS ERW, 500 NB, 9.5 T    | 30545                 | 611   | 305.5  | 31461.5 |
| 23           | Aug-10 | Pipe MS ERW, 500 NB, 9.5 T    | 24817.5               | 496.5 | 248    | 25562   |
| 24           | Aug-10 | Pipe MS ERW, 450 NB, 9.5 T    | 33355                 | 667   | 333.5  | 34355.5 |
| 25           | Aug-10 | M.S. Angle 75*75*6 mm         | 16230                 | 325   | 162.5  | 16717.5 |
| 26           | Aug-10 | Pipe MS ERW, 350 NB, 9.5 T    | 26203                 | 524   | 262    | 26989   |
| 27           | Aug-10 | M.S. Angle 65*65*6 mm         | 3332                  | 66    | 33     | 3431    |
| 28           | Aug-10 | Pipe MS ERW, 500 NB, 9.5 T    | 29258                 | 585   | 292.5  | 30135.5 |
| 29           | Aug-10 | M.S. Plate 12 mm              | 19687                 | 393.5 | 197    | 20277.5 |
| 30           | Aug-10 | M.S. Flats 100*6 mm           | 705                   | 14    | 7      | 726     |
| 31           | Aug-10 | M.S. Plate 12 mm              | 14223.5               | 284.5 | 142    | 14650   |
| 32           | Aug-10 | M.S. Plate 16 mm              | 31496                 | 630   | 315    | 32441   |
| 33           | Aug-10 | M.S. Flats 50*6 mm            | 899.5                 | 18    | 9      | 926.5   |
| 34           | Aug-10 | M.S. Flats 150*12 mm          | 2209                  | 44    | 22     | 2275    |
| 35           | Aug-10 | M.S. Beam 125 mm              | 4251                  | 85    | 42.5   | 4378.5  |
| 36           | Sep-10 | Pipe M.S. C-Class 300 mm      | 9950                  | 199   | 99.5   | 10248.5 |
| Total -----> |        |                               | 403208.5              | 8063  | 4039.5 | 415311  |

Since, majority of the items being used were for the purpose of civil construction and repairs thereof and hence the same appeared to be not falling under the definition of "input" or "capital goods" given under Rule 2 of the CENVAT Credit Rules, 2004. Therefore, **Show Cause Notice No. 04/2011-2012 dated 25.07.2011** was issued to the appellant, wherein it was proposed to deny the CENVAT credit and recover the same along with interest. Further, it was also proposed to impose penalty under Rule 15 of the CENVAT Credit Rules, 2004.

5. The Show Cause Notices No. (i) 32/2010 dated 17.06.2010, (ii) 97/2010-2011 dated 06.04.2011 & (iii) 04/2011-2012 dated 25.07.2011, were adjudicated by the Lower Adjudicating Authority vide above impugned orders respectively. However, in the



case of (i) Show Cause Notice No. 32/2010 dated 17.06.2010 & Show Cause Notice No. 97/2010-2011 dated 06.04.2011, it has been noted that physical verification was carried out by the Jurisdictional Superintendent of Central Excise. However, no such verification by the Jurisdictional Superintendent of Central Excise was carried out in the case of Show Cause Notice No. 04/2011-2012 dated 25.07.2011. Thus, Lower Adjudicating Authority concluded that since the goods have been used for repair, maintenance, fabrication and replacement purpose to optimize the life of said equipments of the machines which are embedded to earth therefore they are used for repair and fabrication of "capital goods" and thus they are neither inputs as raw materials for manufacture of final product nor qualify as inputs for manufacture of capital goods. Accordingly, vide his impugned orders the Lower Adjudicating Authority has confirmed the demand of CENVAT credits along with interest and have also impose penalty equal to CENVAT credit.

6. Being aggrieved with the impugned orders, the appellant have filed present appeals on the common grounds that

- (i) they had utilized the said items like the MS Beams/Plates/Angles/Channels/Chequered Plate/MS Flat etc in the works for repair and fabrication of machineries to optimize the life of the said equipment and hence fall under the definition of input of capital goods which are further used in the manufacturing process;
- (ii) as per the definition of "inputs" given under Rule 2(k) of the CENVAT Credit Rules, 2004, used in construction of the foundation of structures which is required for effective functioning of capital goods used for manufacturing also falls within the definition of "inputs";
- (iii) in terms of the CENVAT Credit Rules, 2004, capital goods includes components, spares and accessories of the goods and the only condition to extend the credit is that the same is required to be used in the factory of the manufacturer and this fact is not denied by the department but only alleges that items





used for repair of capital goods does not falls under the definition of capital goods;

- (iv) department's allegation that the items are generally used for civil construction work cannot be upheld in the absence of adducing evidence in order to deny substantial benefit of CENVAT credit under the CENVAT Credit Rules, 2004;
- (v) their plant has innumerable machinery which requires periodical maintenance in order to maximize the life of the machinery and to use it at optimum efficiency for the production of excisable goods and therefore items which are used for the structural foundation of machineries are eligible input for the CENVAT credit and the allegation of the department that the said items are generally used for civil construction work cannot be made applicable uniformly in all cases;
- (vi) that the contention of the department that the items are neither input nor capital goods itself proves that the department is not sure how to treat the said items under the CENVAT credit scheme and, whether the items are input or capital goods, the department is bent upon denying the credit, on the assumption that the said items are generally used for civil work. Thus, the notice issued on assumption/presumption cannot be sustained and the notice requires to be vacated on this ground alone;
- (vii) that above items are inputs for capital goods used for construction of foundation of the machineries which is required for effective functioning, without which the machines cannot function properly and therefore they became part of the machinery itself once used in the cement producing machinery since the definition of capital goods specifically includes components, and accessories thereof vide Sl. No.(iii) of Rule 2 of Cenvat Credit Rules, 2004 and only condition imposed to be eligible for the credit of duty paid on the said items is that the same are used in the factory of the manufacturer. Therefore, the said structure becomes part of the respective machinery which is further used for manufacture of excisable goods;





- (viii) the appellant submitted that in Chapter 5 – CENVAT Credit in C.B.E.C 's Excise manual of supplementary instructions 2005, it is clarified that the components, spares and accessories may fall under any chapter but they should be component spares or accessories of capital goods. In view of the said clarification the aforesaid items such as TMT bars/ CTD bars which falls under chapter 72 and are used as component and spares of capital goods for its smooth working cannot be held not eligible for the CENVAT and place reliance on the case law of **Ispat Industries Ltd - 2006 (195) ELT 164 (Tri)**, **Hindustan Zinc Ltd - 2007 (214) E.L.T. 510 (Raj)**, **Bhushan Steel & Strips Ltd - 2008 (223) ELT 517 (Tri. - Mumbai)**, **Rashtriya Ispat Nigam Ltd - 2011 (267) ELT 311 (AP)**, **CCE vs APP Mills Ltd - 2011 - TIOL-1378-CESTAT-BANG**
- (ix) that in an identical matter in the show cause notice bearing No. V.25/4-23/Sanghi/06 dated 19.7.2006 was issued to their group company M/s. Sanghi Industries Ltd, covering similar items for the period Oct.2005 to March 2006 issued on identical ground has been set aside by the Hon'ble Commissioner (Appeal) Rajkot vide OIA.No.202/2008/ COMMR(A)/RAJ dated 14.7.2008 and the same was accepted by the department;
- (x) that the explanation 2 to the Rule (k) of the Cenvat Credit Rules, 2004, was inserted by No. 16/2009 - CX (NT), dated 7-7-2009, and was effective only from 7-7-2009 however they have taken credit on the said items in the month of July to September-2009, when this explanation was not there and this explanation is not given retrospective effect, and therefore, the same will not apply for the period prior to 7-7-2009;
- (xi) that the decision of the Larger Bench in the case of **Vandana Global Ltd.** is per incuriam and not reliable as inasmuch as the decision taken by the Tribunal is contrary to the intention of the legislature and well settled legal position in this regard. The Larger Bench of the Hon'ble Tribunal in the case of Vandana Global is ex-facie erroneous and contrary to facts on record as evident from the order of the Tribunal and the clarification issued by the Board and placed reliance on the case law of

**Grasim Cement reported - 2008 (223) ELT 583 (Raj),  
Pioneer Agro Extracts Ltd. - 2008 (230) ELT 597 (P&H) ,  
Hindustan Zinc Ltd - 2007 (214) ELT 510 (Raj); Ispat  
Industries Ltd- 2006 (195) ELT 164 (T), India Cements Ltd -  
- 2011-TIOL-558-HC-MAD-CX**

7. The Central Board of Excise and Customs vide Notification No. 26/2017-Central Excise (N.T.) dated 17.10.2017 read with Order No. 05/2017-Service Tax dated 16.11.2017, has appointed undersigned as appellate authority, under Section 35 of the Central Excise Act, 1944, for the purpose of passing orders in these appeals.

8. Accordingly, a personal hearing in the matter was held on 17-01-2018. Shri R. Subramanya, Advocate of M/s. Subramanya Law Company, Ahmedabad appeared on behalf of the appellants for personal hearing and reiterated the written submissions made by them in appeal memorandum. Further, he submitted the copies of (i) Order No. A/12083-12085/2017 dated 28-08-2017, (ii) Order No. A/12941-12949/2017 dated 09-10-2017 and (iii) Order No. A/12086-12088/2017 dated 28-08-2017 passed by Tribunal in their own case.

**Discussion and findings:**

9. I have carefully gone through the entire case records and the submission made by the Ld. Advocate during the personal hearing. I find that appellant have debited (i) Rs. 11,837/- vide Entry dated 19.10.2016, (ii) Rs. 31,148/- vide Entry dated 19.10.2016 and (iii) Rs. 12,881/- vide Entry dated 19.10.2016 for Appeal No: 67/GDM/2016, 68/GDM/2016 and 69/GDM/2017 respectively being 7.5 % of the demand of CENVAT confirmed vide impugned orders. Thus, I find that there is substantial compliance to Section 35F of the Central Excise Act, 1944. Accordingly, I proceed to decide these 3 appeals.

10. I find that issue to be decided is to determine the exact use of the goods on which CENVAT has been availed by the Noticee. I find that in the identical case of the appellant's another unit the **Tribunal vide its Order No: A/12083-12085/2017 dated 28-08-2017 and Order No: A/12086-12088/2017 dated 28.08.2017** have



clearly held that CENVAT credit on MS Angles, MS Plates, MS Pipes, etc. used in repair and maintenance of capital goods installed in factory is admissible in view of the decision in the case of **Kisan Sahkari Chini Mills Limited - 2013 (292) ELT 394 (Tri. Del)**, **Jindal Stainless Limited - 2016 (343) ELT 527 (Tri. Bang)** and **Sarjoo Sahakari Chini Mills Limited - 2009 (248) ELT 559 (Tri. Delhi)**. The same ratio of judgments has been followed in the **Order No. A/12941-12949/2017 dated 09-10-2017 in the case of appellants and others.**

11. In view of the above settled position of law, the question is what is exact quantum of inputs which have been used for repairing and maintenance of machinery and the quantity which have not been used for repairing and maintenance of machinery. I find from the impugned orders that there is no factual report thereof. I also find that appellant vide their letter dated 20.01.2018 have requested that a joint verification be carried out to ascertain the facts in this regard.

12. Therefore, to meet the ends of justice, the exact report with respect to the quantum of goods used in repairing of machines and used in civil structure work is not available so as to enable me to dispense justice, therefore, in light of the decision in the case of **Singh Alloys (P) Limited - 2012 (284) ELT 97 (Tri. Del)** the case needs to be remanded back to Lower Adjudicating Authority to carry out joint verification with the appellants and based on the outcome thereof the matter would be adjudicated, after observing the principles of natural justice.

13. I also rely upon the case law of **Honda Seil Power Products Limited - 2013 (287) ELT 353 (Tri. Del)** wherein a similar view has been paraphrased as regard inherent power of the appellate authority to remit back the matters under the provisions of Section 35A(3) of the Central Excise Act, 1944. Further, Hon'ble High Court of Gujarat in Tax Appeal No: 276 of 2014, in the case of **Associated Hotels Limited** has held that even after amendment in Section 35A(3) *ibid* after 10.05.2011, Commissioner of Central Excise would retain the powers of remand.





14. Accordingly, appeals disposed by way of remand with a direction to carry out joint verification regarding the use of the goods in the factory and thereafter the matter would be adjudicated afresh after following principles of natural justice.

F. N. V.2/18/GDM/2017  
Place: Rajkot.


Dated: 31.01.2018

  
**(LALIT PRASAD)**

COMMISSIONER, CGST & CEX, RAJKOT/  
COMMISSIONER (APPEALS-III),  
CGST & CEX, RAJKOT

**By Speed Post**

To,  
**M/s. Sanghi Industries Limited,**  
**Cement Division (Grinding Unit),**  
Sanghipuram,  
Motiber,  
Taluka: Abdasa,  
Dist: Kutch - 370 655

  
સરકારી,  
જાર. પત્ર. 7/18  
અમદાવાદ (ગુજરાત)

**Copy to:**

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
- 2) The Commissioner, GST & Central Excise, Kutch.
- 3) The Commissioner, GST & Central Excise, Rajkot.
- 4) The Assistant Commissioner, GST & Central Excise, Division: Bhuj.
- 5) Appeal File No: V.2/69/GDM/2016
- 6) Appeal File No: V.2/70/GDM/2016
- 7) Guard File.