



::आयुक्त (अपील-III) का कार्यालय,केंद्रीय उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS-III), CENTRAL EXCISE,
द्वितीय तल, केन्द्रीय उत्पाद शुल्क भवन / 2nd Floor, Central Excise Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,
राजकोट / Rajkot - 360001



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रजिस्टर्ड डाक ए. डी. द्वारा :-

| क | अपील / फाइल संख्या / Appeal / File No | मूल आदेश सं / O.O. No | दिनांक / Date |
|---|--|--------------------------|------------------|
| | V2/202 & 203 /RAJ/2016 | 05/D/AC/2016-17 | 10.06.2016 |
| | | 04/D/AC/2016-17 | |

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

RAJ-EXCUS-000-APP-003 to 004-2017-18

आदेश का दिनांक / 25.04.2017 जारी करने की तारीख / 26.04.2017
Date of Order: Date of issue:

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

गें उपर आयुक्त सयुक्त आयुक्त/उप-आयुक्त/सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, राजकोट / जामनगर / गांधीधाम) द्वारा उपरोक्तित
जारी मूल आदेश से सृजित /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service
Tax, Rajkot / Jamnagar / Gandhidham

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

M/s. Gautam Technocast, Plot No. G-102, Lodhika GIDC., Metoda, Dist : Rajkot,

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके से उपयुक्त अधिकारी / अधिकरण 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.

- सीमा शुल्क केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अन्तर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अन्तर्गत निम्नलिखित जगह की जा सकती है। /
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-
- सर्वोच्च न्यायालय से सम्बन्धित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, ईस्ट 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.
- उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, जे-20, न्यू मेंटल हॉस्पिटल कंपाउंड, मेघानी नगर, अहमदाबाद-380016, को की जानी चाहिए। /
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad 380016, in case of appeals other than as mentioned in para- 1(a) above
- अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अन्तर्गत निर्धारित किए गये प्रपत्र EA-3 को धार प्रतिवों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की श्रेण, ब्रायड की श्रेण 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/- 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 सर्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित शुल्क का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थान 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/-

- अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अन्तर्गत सेवाकर नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में धार प्रतिवों में की जा सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (इनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की श्रेण, ब्रायड की श्रेण 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/- 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 सर्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित शुल्क का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थान आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

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

- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दाने की सड़ी अपील, सेवाकर नियमावली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित धारा S.T.-7 में की जा सकने वाली एक साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अधक आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रति को संलग्न करके (जहाँ से एक प्रति प्रामाणित होनी चाहिए) और अयुक्त द्वारा साहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क सेवाकर, को अपील न्यायाधिकरण को आवेदन दाने करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होती है। / The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (सेस्टैट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एक के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपील न्यायाधिकरण 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, इसकी बात इस धारा के अंतर्गत जहाँ कि जहाँ वाली अपीलित टैक्स टैक्स टैक्स कोटेशन के अंतर्गत 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) सेनवैट जमा की गयी गलत राशि
(iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत टैक्स रकम
- इसकी बात कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के अंतर्गत से पूर्व किसी अपील न्यायाधिकरण के समक्ष विचारणीय स्वाम्य नहीं 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 Central Credit taken,
(iii) amount payable under Rule 6 of the Central 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 धारा परंतु के अंतर्गत अथवा अधिनियम, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन टॉवर भवन, सरदार मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। / A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid:
(i) यदि मांग के किसी नुकसान के मामले में, जहाँ नुकसान किसी माल को किसी कारणवश से भंडार गृह के परामर्श के दौरान या किसी अन्य बराबरी या फिर किसी एक भंडार गृह से दूसरे भंडार गृह परामर्श के दौरान, या किसी भंडार गृह से या भंडारण से माल के परिवहन के दौरान, किसी कारणवश या किसी भंडार गृह से 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 विभिन्न में धुक्का कच्चे माल पर लगी गई केन्द्रीय उत्पाद शुल्क के छूट (रिबैट) 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) मुनिशियल 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 को अयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा प्रिजल की गई तरीक अथवा समकालिक पर या बाद में पारित किया गया है। / Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
(v) उपरोक्त आवेदन की दो प्रतियां धारा संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संघेषण 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 सबब 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 O/O 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 इन से किया जाना चाहिए। इस तथ्य के होते हुए भी की निष्ठा पढ़ी करते से बचने के लिए सहायिकि अपील न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाना है। / In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scripioria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
- (E) सहायिकि न्यायाधिकरण शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्वयं आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायाधिकरण 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 अपील न्यायाधिकरण (सर्वे सिधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्बन्धित 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 अपील न्यायाधिकरण को अपील दायित्व करने से संबंधित स्वयं, विस्तृत और नवीनतम प्रावधानों के लिए, अपील न्यायाधिकरण 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. Gautam Technocast, Plot No. G-101, 102, 103, 110, 111, P-2, 3 & 14, GIDC Metoda, Rajkot (hereinafter referred to as 'the appellant') has filed the present two appeals bearing No. 202/2016 and 203/2016 against the Orders-In-Original No.05/D/AC/2016-17 and No. 04/D/AC/2016-17 both dated 10.06.2016(hereinafter referred to as "the impugned orders") passed by the Assistant Commissioner, Central Excise Division - I, Rajkot (hereinafter referred to as "the lower adjudicating authority").

2. Briefly stated facts of the case is that during the course of audit, it was noticed that the appellant during March-2014, had wrongly availed cenvat credit on M.S. Angles/M.S. Channels, etc. by treating the same as capital goods and have also availed cenvat credit of service tax during Sept-2013 to March-2014 on Architectural Consultancy, Structural Consulting of Civil Engineer and Works Contract service for water proofing in RCC wall for construction of their new plant. Since the said goods and services are out of the purview of the definition of "capital goods" and "input services" respectively, SCNs dated 25.01.2016 were issued to the appellant which was adjudicated by the authority vide impugned orders, wherein he confirmed the recovery of wrongly availed cenvat credit alongwith interest and had imposed equivalent.

3. Aggrieved by the impugned orders, the appellant has preferred appeals on the following grounds:-

(i) As can be seen from para 2 of the SCN that the appellant had availed the credit of duty paid on the material used in preparation of Hopper and Bucket Elavator which are nothing but the capital goods manufactured and used in or in relation to manufacture of the said goods which are ultimately used in or in relation to manufacture of final product which are chargeable to duty. The appellant before manufacture of such final product has also amended its registration and has also clarified the captive consumption of such product in its return for the month of April-2014.

(ii) The said credit is proposed to be denied on the ground that the appellant has availed such credit in their capital goods account, which is apparently a mistake on the part of the clerk concerned. Admittedly, the said credit is of the material used in or in relation to manufacture of final product i.e. Hopper & Bucket Elavator and was required to be shown in raw material credit account, but merely because, by mistake the same is shown in capital goods account does not lead to the conclusion that such credit is not available.



(iii) The adjudicating authority has erred in confirming the demand on the ground that the appellant has not produced any evidence to prove that no new plant is constructed. In fact, it was the burden of the department to prove that the appellant has constructed new plant and hence credit availed on the respective services is not available.

(iv) The adjudicating authority has ignored the fact that the appellant has admittedly amended its registration certificate much prior to the audit of statutory record and the clearance indicated in the return is also supported by respective entries in Daily Stock Register and the clearance thereof is also verified by the audit party and nobody has ever objected such clearance and hence credit availed was clearly allowable.

(v) The adjudicating authority has not considered the fact that the audit party while preparing FAR has also clarified that the appellant has put up one sand plant and admittedly the parts cleared are part of such plant and hence the allegation contained cannot be sustained. Further the sand plant could at the most be treated as modernization of plant and hence the credit as claimed can very well be treated as 'input service' and is eligible for credit.

(vi) The adjudicating authority has ignored the fact that in submission dated 22.03.2016 a specific request was made to produce necessary evidence to prove that the appellant has put up new plant and to allow further time to file written submission. The reliance placed by the adjudicating authority on the decision of Hon'ble CESTAT in the case of Vandana Global Limited as also the clarification of the Hon'ble CBEC is misplaced and does not support the observation of the adjudicating authority.

(vii) The adjudicating authority has also erred in imposing the penalty on the ground as mentioned in the order as also on the ground as mentioned hereinabove. The observation of the adjudicating authority that the appellant has not contended against proposal to impose penalty is also bad in law in as much as the appellant had requested to allow further time to file submission after necessary clarification.

(viii) The adjudicating authority has also erred in confirming interest on the ground as mentioned hereinabove. The ground raised for setting aside the order under consideration may be treated as part of the ground for setting aside the interest.

4. The personal hearing in the matter was held on 21.03.2017 which was attended by Shri Paresh Sheth, Advocate on behalf of the appellant. He reiterated the grounds of appeal and submitted that services and inputs used for modernization of



plant and process. He further stated that the registration got amended and department informed about new product will be produced.

5. I have carefully gone through the facts of the case, the impugned orders, memorandums of appeal, and the submissions made by the appellant. The issue to be decided in the present appeals is whether the cenvat credit of inputs & input services claimed to have been used for manufacture of capital goods and/or modernization of plant and process, is entitled to the appellant, or otherwise. The appellant has submitted copy of Form A-1 i.e. application for central excise registration, copy of ER-1 return for the month of April-2014, abstract of Cenvat credit account in respect of disputed goods and services and copy of related invoices with regard to goods and services on which cenvat credit has been availed.

6. As regard to the cenvat credit availed on goods viz. M.S. Angels/M.S. Channels, etc. by treating the same as capital goods, I observe that the adjudicating authority has disallowed the cenvat credit by holding that the said goods did not fall within the purview of capital goods in terms of the definition of Capital goods under Rule 2(a) of the Cenvat Credit Rules, 2004 (hereinafter referred to as 'the CCR, 2004) and also cannot be treated as inputs used for manufacture of capital goods as the appellant has never specifically marked the usage of the said items with documentary evidence. The adjudicating authority relied on the decision in the case of Vandana Global Ltd. – 2010 (253) ELT 440 (Tri.-LB) and CBEC Circular No. 267/11/2010-CX.8 dated 08.07.2010 in this regard. On the other hand, the appellant has argued that the credit of duty paid on the material used in preparation of Hopper and Bucket Elevator which is nothing but the capital goods used for their new sand plant. Accordingly, I observe that the appellant has made strong argument to consider the disputed M.S. items as "input". I observe that the definition of "input" as provided under Rule 2(k) has been amended with effect from 01.04.2011 vide Notification No. 3/2011-CE (NT) dated 01.03.2011, which reads as under:-

"input" means

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

but excludes -

- (A) light diesel oil, high speed diesel oil or motor spirit commonly known as petrol;



(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,

except for the provision of service portion in the execution of a works contract or construction service as listed under clause (b) of section 66E of the Act.]

(C) capital goods except when used as parts or components in the manufacture of a final product;

(D) motor vehicles;

(E) any goods, such as food items, goods used in a guesthouse, residential colony, club or a recreation facility and clinical establishment, when such goods are used primarily for personal use or consumption of any employee; and

(F) any goods which have no relationship whatsoever with the manufacture of a final product.

From the above amended definition of "inputs", it could be revealed that "input" means all goods used in the factory by the manufacturer of the final product except goods mentioned at Sr.No. (A) to (F) mentioned in the exclusion clause. From the facts of the case and arguments and evidences produced by the appellant, it is forthcoming that the disputed items have been used in the manufacture of capital goods i.e. Hopper & Bucket Elavator for their new sand plant which have further been used for manufacture of dutiable final product. Further, the said goods were not falling under any of the exclusion clauses as mentioned in the definition of "inputs". The appellant has also declared production and captive consumption of the capital goods viz. Hooper & Bucket Elavator in their ER-1 return which has not been disputed. Therefore, it is evidently clear that the disputed M.S. items used for manufacture of capital goods i.e. Hopper & Bucket Elavator and therefore the same can be considered as 'inputs' for availment of cenvat credit within the purview of 'inputs' and therefore the appellant is entitled for cenvat credit on the same. Needless to state that, when the credit is held to be admissible, the provisions relating to recovery of interest and imposition of penalty would not be attracted.

7. As regard to availment of cenvat credit on Architectural Consultancy, Structural Consulting of Civil Engineer and Works Contract service for water proofing in RCC wall is concerned, the appellant argued that the services have been availed in connection with the modernisation of their plant and process. However, I observe that the appellant has availed the said services in connection with construction of civil structure which have been specifically excluded from the purview of "input services" vide exclusion clause (A) to the definition of input service under Rule 2(l) of the CCR, 2004. Thus, I am of the considered view that the cenvat credit rules clearly debar the



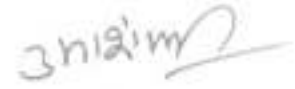
said services as "input service" for the purpose of taking Cenvat credit. Accordingly, I find no substance in the arguments made by the appellant. Therefore, I find that the appellant is not entitled for cenvat credit of service tax paid on the said services and credit so availed should be recovered from them alongwith interest under Rule 14 of the CCR, 2004 readwith Section 11A(4)/11AA of the Central Excise Act, 1944.

8. As regard to penalty, I find that the appellant has not disclosed the availment of credit on these disputed services and thereby suppressed the material fact with the department and therefore the appellant is also liable for penalty under Rule 15(2) of the CCR, 2004 readwith Section 11AC of the Central Excise Act, 1944.

9. In light of the above discussion and findings, I partially allow the appeal of the appellant to the extent of allowing cenvat credit on M.S. Items used in the manufacture of capital goods and modify the impugned order accordingly.

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

10. The appeals filed by the appellant stand disposed off in above terms.



(उमा शंकर)

आयुक्त (अपील्स - III)

By Speed post

To,
M/s. Gautam Technocast,
Plot No. G-101, 102, 103, 110, 111,
P-2, 3 & 14, GIDC Metoda, Rajkot

Copy to:

- 1) The Chief Commissioner, Central Excise, Ahmedabad.
- 2) The Principal Commissioner, Central Excise, Rajkot.
- 3) The Assistant Commissioner, Central Excise Division-I, Rajkot.
- 4) The Superintendent, Central Excise, AR – IV, Rajkot.
- 5) PA to Commissioner (Appeals-III), Central Excise, Ahmedabad.
- 6) Guard File.