

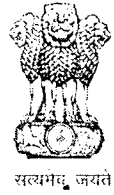


::आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE,

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

राजकोट / Rajkot - 360 001

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



सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील फाइल संख्या Appeal / File No.	मूल आदेश सं / O.I.O. No	दिनांक / Date
	V2/18-20/EA2/GDM/ 2017	07 to 09/JC/2017-18	29/06/2017

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

KCH-EXCUS-000-APP-220-TO-222-2018-19

आदेश का दिनांक / Date of Order:	12.12.2018	जारी करने की तारीख / Date of issue:	14.12.2018
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कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot

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 Appellant & Respondent :-

**M/s. Maha Shakti Coke (A unit of saurashtra Fuels Ltd.) Village:- LakhparTal:
 Mundra Kutch**

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारों / 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 अपीले सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असारवा अहमदाबाद- 380016 को की जानी चाहिए।/
 To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd 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) नियमवाली, 2001 के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार पतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक पति के साथ, जहां उत्पाद शुल्क की मांग, व्याज 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/-.

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 पतियों 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 पति के साथ, जहां सेवाकर की मांग, व्याज 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 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/-

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(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 पत्र S.T.-7 में की जा सकती है एवं इसके साथ आवश्यक केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रामाणिक होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपील न्यायाधिकरण को अर्पण करने के लिए या 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 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 (सेनवेट), के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1994 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश की 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, 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 गई गलत राशि
 - (iii) सेनवेट जमा नियमवाली के नियम 6 के अंतर्गत देय राशि
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपील न्यायाधिकारी के समक्ष विचाराधीन स्थान अर्ज 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 मामले में केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आइटम इकाई, वित्त विभाग, राजस्व विभाग, राष्ट्रीय मजिल, 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 से 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 छूट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की जाती 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 इयूटी अंडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (सं 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 पत्र संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) नियमवाली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संश्लेषण 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, 1994 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। / जहां 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, उपर्युक्त ढंग से किया जाना चाहिए। इस तथ्य के होते हुए भी की लिखा पट्टी कार्य से बचने के लिए यथास्थिति अपील 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, 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 filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I 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-I in terms of the Court Fee Act, 1975, as amended.

(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (सर्वे विधि) नियमवाली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की ओर 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 न्यायाधिकारी को अपील दाखिल करने से संबंधित दस्तावेज, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी 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 ::

The present appeals have been filed by the Assistant Commissioner, CGST Bhachau Division, Gandhidham on behalf of the Commissioner, Central GST & Central Excise Gandhidham (hereinafter referred to as "Appellant") in pursuance of the direction and authorization issued under Section 35E(2) of the Central Excise Act, 1944 against Order-in-Original No. 7 to 9/JC/2017-18 dated 29.6.2017 (*hereinafter referred to as 'impugned order'*) passed by the Joint Commissioner, Central Excise & Service Tax, Gandhidham (*hereinafter referred to as 'lower adjudicating authority'*) in the case of M/s Mahashakti Coke (a unit of Saurashtra Fuels Pvt Ltd), Village-Lakhapar, Taluka-Mundra, District-Kutch (*hereinafter referred to as "Respondent"*).

2. The brief facts of the case are that the Respondent having Registration No. AAACS7271GEM001 was engaged in the manufacture of LAM Coke, Metcoke and Coking Coal falling under Chapter 27 of the Central Excise Tariff Act, 1985 and was availing Cenvat credit under the Cenvat Credit Rules, 2004 (*hereinafter referred to as "CCR, 2004"*). The audit alleged that the Respondent had availed and utilized Cenvat credit of MS Angles, Channels, Round Bars, Plates/Sheets etc which were used for movement of tray of coal inside Kiln and for making structures for support of capital goods as the said items were not covered under the definition of 'capital goods' under Rule 2(a)(A) of CCR,2004 and also not covered under the definition of 'input' under Rule 2(k) of CCR,2004.

2.1 Show Cause Notice No. V.25/AR-1/Bhuj/Commr/155/2015-16 dated 29.2.2016 was issued to the Respondent alleging that Cenvat credit of Rs. 51,21,305/- have been wrongly availed and utilized during the period April, 2012 to December, 2015 and should be recovered from them under Rule 14 of CCR,2004 read with Section 11A(1) of the Central Excise Act, 1944 (*hereinafter referred to as "Act"*) along with interest under Rule 14 and proposing imposition of penalty under Rule 15 of CCR,2004.

2.2 Show Cause Notice No. FAR/F-898/2013-14 dated 3.2.2017 was also issued to the Respondent calling them to show cause as to why Cenvat credit of Rs. 3,29,049/- appeared to have been wrongly availed and

utilized during the period from January, 2016 to June, 2016 should not be recovered from them under Rule 14 of CCR,2004 read with Section 11A(1) of the Act along with interest under Rule 14 and proposing imposition of penalty under Rule 15 of CCR,2004.

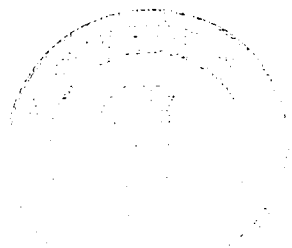
2.3 Show Cause Notice No. FAR/F-898/2013-14 dated 13.2.2017 was also issued alleging that Cenvat credit of Rs. 3,14,569/- have been wrongly availed and utilized by the Respondent during the period from July, 2016 to December, 2016 and should be recovered from them under Rule 14 of CCR,2004 read with Section 11A(1) of the Act along with interest under Rule 14 and proposing imposition of penalty under Rule 15 of CCR,2004.

2.4 The above three Show Cause Notices were adjudicated vide the impugned order which held that MS Angles, Channels, Round Bars, Plates/Sheets etc were used for making trays, hoppers, pushers, doors etc in the Oven used for manufacturing of Low Ash Met Coke; that due to heating at high temperature, trays, hoppers, pushers, doors etc got destroyed/melted and required to be changed for continuing manufacturing process; use of disputed items have nexus with manufacture of final product and were essential for smooth manufacturing operations and without replacement of trays, hoppers, pushers doors etc, manufacturing activity was not commercially feasible; that the Respondent was eligible to avail Cenvat credit of MS Angles, Channels, Round Bars, Plates/Sheets etc under the provisions of CCR,2004. The lower adjudicating authority dropped the proceedings initiated vide three mentioned Show Cause Notices.

3. The impugned order was reviewed by the Appellant and appeals filed on various grounds, *inter alia*, as below :-

(i) For dropping the demand, the adjudicating authority has relied upon the case laws of Panipat Co-operative Sugar Mills Ltd-2013(393)ELT 66 and Matrix Laboratories Ltd-2016(339) ELT 122, however, the said case laws are not squarely applicable to the facts of the case.

(ii) The adjudicating authority has ignored the Board's Instructions F.No. 267/11/2010-CX dated 8.7.2010 issued after CESTAT's order passed in the case of Vandana Global Ltd-2010(253) ELT 440 wherein it has been



clarified that inputs which are used for repairs and maintenance of capital goods are not admissible for availing Cenvat credit. As per defence of the assessee, they have used MS Angles, Channels, Round Bars, Plate/Sheets etc for replacing/making Oven doors, Screening nets/plates, Hoopers, Pushers etc which got melted at high degree temperature and therefore, required replacement. Thus, it is apparent that MS Angles, Channels, Round Bars, Plate/Sheets etc are nothing but inputs, which were used for repairs and maintenance of the capital goods and hence the benefit of Cenvat credit is not admissible on these items and relied upon case law of Vikram Cement-2009(242) ELT 545 in support.

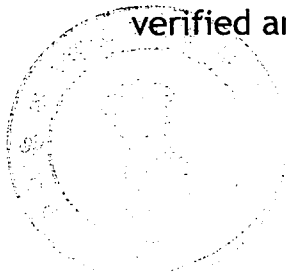
(iii) The assessee has failed to substantiate their claim with documentary evidences and also failed to show as to how the cost of such goods was capitalized by them in their financial reports.

(iv) The disputed goods fall under Chapter 72 of the Central Excise Tariff Act, 1985 and therefore not covered by the definition of 'capital goods' under Rule 2(a)(A)(i) of CCR,2004.

3.1 Personal Hearing fixed on 11.10.2018, 23.10.2018, 2.11.2018 and 26.11.2018, however, no one appeared on behalf of the Appellant on any date. Shri Abhishek Darak, CA, appeared on behalf of the Respondent stating that MS Angles, Channels, Round Bars, Plates/Sheets etc. have been used for replacing oven doors, hoppers, pushers, screening nets etc. as parts of capital goods of Ovens where Coke is manufactured and not for repairs and maintenance of capital goods; that these goods have not been used as foundation to support capital goods nor for civil construction; that at high temperature, the said parts of capital goods get consumed; that CBEC Circular dated 8.7.2010 was related to earlier definition of capital goods/inputs and hence, not applicable in this case; that the appeals may be dismissed in view of the above stated facts.

3.2 The respondent filed written submissions vide letter dated 26.11.2018 on various grounds, *inter alia*, as below :-

(i) The verification report of Range Superintendent was rightly relied upon by the adjudicating authority. The Range Superintendent had verified and stated that as per books of account, the goods covered in SCN



were not used for laying of foundation for support of capital goods nor for building civil structure.

(ii) MS Angles, Channels, Round Bars, Plates/Sheets etc were used to replace Oven doors, Screening nets/plates, hoopers, pushers etc., which are integral part of the Oven where Coke is manufactured. Coal is converted to Low Ash Met coke at very high temperature and the trays, pushers, doors etc in the Oven got melted after use and required replacements. The disputed items were directly used in the manufacturing process of LAM Coke, without which the production was not possible at all.

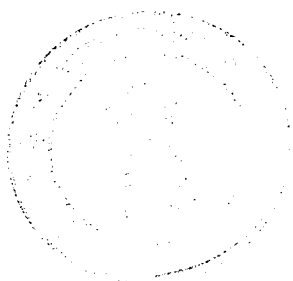
(iii) Their final product become dutiable w.e.f 1.3.2011 and they have not undertaken any civil structure activity nor carried out any foundation for support of the capital goods i.e. Oven, Screening machine after 1.3.2011. Their factory is operated since long and all structural work was completed before introduction of Central Excise duty on LAM Coke. Hence, the allegations that the goods were used for laying of foundation or used for building civil structure or used for support of capital goods are baseless.

(iv) Considering the use of disputed items, the same should be treated as 'input' under Rule 2(k) of CCR, 2004 as these items are directly used for manufacturing of excisable goods and hence they are eligible to avail Cenvat credit on them.

(v) The Appellant Department has erred in placing reliance on the CBEC Circular No. 267/11/2010-Cx dated 8.7.2010 as it became irrelevant after substitution of new definition of 'input' and issuance of Circular No. 943/4/2011 dated 29.4.2011.

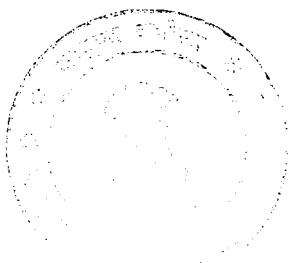
Findings:

4. I have carefully gone through the facts of the case, the impugned order, submission made by the Appellant in the Appeal Memorandum as well as oral and written submission made by the Respondent during personal hearing. The issue to be decided is whether the Respondent has correctly availed Cenvat credit of duty paid on MS Angles, Channels, Round Bars, Plates/Sheets etc or not.



5. I find that the proceedings were initiated against the Respondent on allegation of wrong availment of Cenvat credit on MS Angles, Channels, Round Bars, Plates/Sheets etc which were used for making trays, hoppers, pushers, doors etc in the Oven used for manufacture of Low Ash Met Coke. The lower adjudicating authority examined the manufacturing process of LAM Coke as well as verification report of the Range Superintendent and found that due to heating at high temperature, trays, hoppers, pushers, doors etc got destroyed/melted and required to be changed for continuing manufacturing process and that use of disputed items have nexus with manufacture of final product and were essential for smooth manufacturing operation and without replacement of trays, hoppers, pushers doors etc., manufacturing activity was not commercially feasible. The lower adjudicating authority held that the Respondent was eligible to avail Cenvat credit of MS Angles, Channels, Round Bars, Plates/Sheets etc under the provisions of CCR,2004. The Appellant has contested the impugned order on the grounds that the adjudicating authority ignored the Board's Instructions F.No. 267/11/2010-CX dated 8.7.2010 issued on the basis of CESTAT's order passed in the case of Vandana Global Ltd-2010 (253) ELT 440 wherein it has been clarified that inputs which are used for repair and maintenance of capital goods are not admissible for availing Cenvat credit and that the disputed goods fall under Chapter 72 of the Central Excise Tariff Act, 1985 and therefore not covered by the definition of 'capital goods' under Rule 2(a)(A)(i) of CCR,2004. On the other hand, the Respondent has submitted that MS Angles, Channels, Round Bars, Plates/Sheets etc were used in replacing/making of Oven doors, Screening nets/plates, hoppers, pushers etc. which got melted due to high temperature and that the disputed items were directly used in the manufacturing process of LAM Coke without which the production was not possible and hence the disputed goods should be treated as 'input' under Rule 2(k) of CCR, 2004.

5.1 I find that the definition of 'input' under Rule 2(k) of CCR, 2004 during the material time, reads as under:



“(k) ‘input’ means –

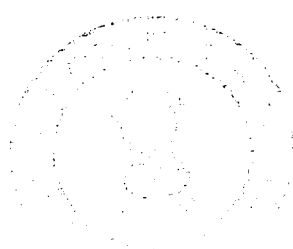
- (i) all goods used in the factory by the manufacturer of the final product; or
- (ii) any goods including accessories, cleared along with the final product, the value of which is included in the value of final product and goods used for providing free warranty for final products; or
- (iii) all goods used for generation of electricity or steam or pumping of water for captive use; or
- (iv) all goods used for providing any output service, or;
- (v) all capital goods which have a value upto ten thousand rupees per piece

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,-
 - (i) used as parts or components in the manufacture of a final product; or
 - (ii) the value of such capital goods is upto ten thousand rupees per piece;
- (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.”

[Handwritten signature]

5.2 I find that input means ‘*all goods used in the factory by the manufacturer of the final product*’ and there is no dispute that the goods in question have been used in the factory by the Respondent. It is on record that MS Angles, Channels, Round Bars, Plates/Sheets etc. were used by the Respondent for replacing/making Oven doors, Screening nets/plates, hoopers, pushers etc. located within the factory. So, criteria prescribed at clause(i) above is satisfied in the present case. I further find that use of MS Angles, Channels, Round Bars, Plates/Sheets etc is vital for smooth functioning of the factory inasmuch the said items were used for replacing Oven doors, Screening nets/plates, hoopers, pushers, which got melted at high temperature during manufacturing of LAM Coke and without use of these items, manufacture of final products was not possible. Therefore, these items are required to be treated as inputs used in relation to manufacture of the final products. MS Angles, Channels,



Round Bars, Plates/Sheets etc. are not covered in any of the exclusion clauses stated above. Reliance is placed on the case law of Bajaj Hindustan Ltd reported at 2014 (313) E.L.T. 563 (Tri. - Del.), wherein it has been held that even the activity of repair and maintenance has to be treated as having nexus with manufacture and items used for repair maintenance would be eligible for Cenvat credit. Relevant portion of the Order is reproduced herein under:

“6. Therefore, for determining the eligibility of an item for Cenvat credit, what is relevant is as to whether the activity in which that item is required has nexus with manufacture or in other words without that item the manufacturing, though theoretically possible, is not commercially feasible. Repair and maintenance, in my view is an activity without which though manufacturing activity may be theoretically possible, the same would not be commercially feasible. The question as to whether repair and maintenance is an activity distinct and separate from manufacture has nothing to do with the question as to whether repair and maintenance has nexus with manufacture. Looked at from criteria prescribed by the Apex court in the case of *J.K. Cotton Spinning and Weaving Mills Co. Ltd. v. Sales Tax Officer, Kanpur* (supra), the activity of repair and maintenance has to be treated as having nexus with manufacture and hence any item used for repair and maintenance would be eligible for Cenvat credit.

(Emphasis supplied)

5.3 I find that the Board has issued instruction vide Circular No. 943/04/2011-CX dated 29.4.2011 after amendment of Cenvat Credit Rules, 2004 vide Notification No. 13/2011-CE(NT) dated 31.3.2011. It has been clarified by the Board that credit of all goods used in the factory is allowed except goods having absolutely no relationship with the manufacture of the final products. It is further clarified that the goods such as furniture and stationery used in an office within the factory are goods used in the factory and are used in relation to the manufacturing business and hence, the credit of same is allowed. I find that if furniture and stationery are to be considered as eligible inputs, if used in the office within the factory, then MS Angles, Channels, Round Bars, Plates/Sheets etc. which were used for replacing Oven doors, Screening nets/plates, hoopers, pushers etc. of Oven within the factory, have to be considered as used in relation to manufacture of final product and to be allowed as input.

6. I have examined CBEC Circular No. 267/11/2010-CX dated 8.7.2010 relied upon by the Appellant. I find that the said Instructions were issued after issuance of CESTAT's order in the case of Vandana Global Ltd-

2010(253) ELT 440 considering definition of 'input' as it existed prior to 1.4.2011 whereas period involved in the present case is from April, 2012 to December, 2016. It is pertinent to mention that there is no caveat in the amended definition of 'input' with effect from 1.4.2011 that the inputs should be used directly only. The Respondent has fulfilled the criteria mentioned at clause(i) of Rule 2(k) *ibid* and their case is also not covered by any of the exclusion clauses. I rely on an order passed by the Hon'ble CESTAT, Hyderabad in the case of India Cement Ltd reported at 2016 (341) E.L.T. 422 (Tri. - Hyd.), wherein it has been held that,

"6. It is noticed that the period of dispute in this case is April 2011 to January 2012. This being so, the definition of 'input' in the Cenvat Credit Rules, 2004 as amended w.e.f. 1-3-2011, the relevant portion of which is reproduced below, will only be applicable for adjudging the issue at hand.

"(k) 'input' means -

- (i) All goods used in the factory by the manufacturer of the final product; or
- (ii) Any goods including accessories, cleared along with the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products; or

Whereas, the definition prior to 1-3-2011, mandated, *inter alia*, that the goods should be "used in or in relation to the manufacture of final products ..."

7. It is therefore, evident that the definition of 'input' post 1-3-2011, is more expansive, broadbanded and includes 'all goods used in the factory, there being no caveat, that such goods should only be 'used in or in relation to manufacture of final products.

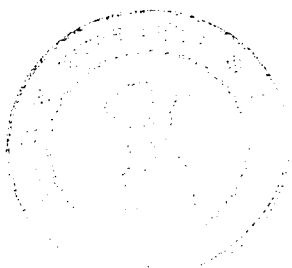
8. This being the case, I am of the considered opinion that for the impugned period of this appeal, there is no legal impediment for the appellant to avail credit on welding electrodes and gases used in repair, maintenance of capital goods.

9. The case law of Hon'ble Court of Andhra Pradesh relied upon by the learned AR is admittedly for the period before the aforesaid amendment, thus the ratio thereof cannot be made applicable to this case."

(Emphasis supplied)

7. I also find that CESTAT's order passed in the case of Vandana Global Ltd *supra* has been reversed by the Hon'ble High Court of Chhatisgarh reported as 2018 (16) G.S.T.L. 462 (Chhattisgarh). Thus, reliance placed on the Instruction dated 8.7.2010, which was issued on the basis of CESTAT's Order passed in the case of Vadana Global Ltd is not at all sustainable.

8. I have also examined the case law of Vikram Cement-2009(242) ELT 545 relied upon by the Appellant wherein it has been held that welding electrodes used for repair and maintenance of the machinery are not covered under the definition of 'input' under Cenvat Credit Rules, 2002/

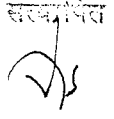


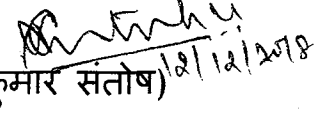
2004 as the said products were not utilized in the process of manufacture of the final product or in relation to the manufacture of the final products. I find that the said order was issued with reference to definition of 'input' as it existed prior to 1.4.2011 and hence not applicable to the facts of this case for the reasons elaborated by me in para *supra*.

9. In view of above, I hold that the Respondent has correctly availed Cenvat credit of MS Angles, Channels, Round Bars, Plates/Sheets etc. I, therefore, uphold the impugned order and reject the Departmental appeals.

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

9.1 The appeals filed by Appellant is disposed off as above.

सत्यभिता,

निदेशक (अपील्स)
अहमदाबाद


(कुमार संतोष) 21/12/2018
आयुक्त(अपील्स)

By R.P.A.D.

To,

1. The Commissioner,
GST & Central Excise,
Gandhidham.
2. M/s Mahashakti Coke
(a unit of Saurashtra Fuels Pvt Ltd),
Village-Lakhapar,
Taluka-Mundra,
District-Kutch.

Copy to:-

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone
Ahmedabad for his kind information please.
- 2) The Asst Commissioner, GST & Central Excise, Bhachau Division,
Gandhidham Commissionerate for necessary action in the matter.
- 3) Guard File.



::आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केंद्रीय 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

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



F. No. V2/474/RAJ/2011

Date: 20.12.2018

CORRIGENDUM

Corrigendum to Order-in-Appeal No.: KCH-EXCUS-000-APP-219-2018-19 dated 18.12.2018 passed by the Commissioner (Appeals), GST & Central Excise, Rajkot in the case of M/s. Ajanta Manufacturing Ltd., Orpat Nagar, 8-A, National Highway, Vill: Vandhiya, Post: Samakhiyali, Near Surajbari Bridge, Tal: Bhachau.

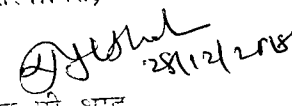
In the aforesaid Order-in-Appeal, in Preamble OIA no. KCH-EXCUS-000-APP-219-2018-19 may be substituted and reads as "OIA No. KCH-EXCUS-000-APP-226-2018-19."

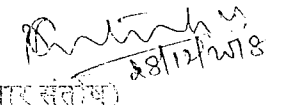


BY REGD POST A.D.

To,
M/s. Ajanta Manufacturing Ltd.,
Orpat Nagar, 8-A, National Highway,
Vill: Vandhiya, Post: Samakhiyali,
Near Surajbari Bridge, Tal: Bhachau.

सत्यापित,


28/12/2018
आर. पी. शाह
अधीक्षक (अपील्स)


28/12/2018
(कुमार संतोष)
आयुक्त (अपील्स)

Copy To:

- 1) The Chief Commissioner, CGST & Central Excise, Ahmedabad zone, Ahmedabad.
- 2) The Commissioner, CGST & Central Excise, Kutch Commissionerate, Gandhidham.
- 3) The Assistant Commissioner, CGST & Central Excise Division- Bhachau, Gandhidham.
- 4) ✓ Guard File.

