[illegible]

O/O THE COMMISSIONER (APPEALS) [illegible]

[illegible]

[illegible]

Tele Fax No. [illegible]

Email: [illegible]

[illegible] :-

[illegible] / Appeal / File No. [illegible]	[illegible] / O.I.O. No. [illegible]	[illegible] / Date [illegible]

[illegible] (Order-In-Appeal No.):

[illegible]

[illegible] / Date of Order:	15.05.2018	[illegible] / Date of issue:	06.06.2018

Passed by Shri [illegible], Commissioner, CGST [illegible]

[illegible]

In pursuance to Board's [illegible] dated [illegible] read with Board's Order No. [illegible] dated [illegible] has been appointed as Appellate Authority for the purpose of passing orders in respect of appeals [illegible] Section [illegible] and Section [illegible] Finance Act, 1994.

[illegible] Arising out of above mentioned OIO issued by [illegible] Commissioner, Central Excise / Service Tax, [illegible]

[illegible] Name & Address of the Appellant & Respondent :-

1. M/s [illegible] P. Ltd, [illegible]

[illegible]

Any person aggrieved by this Order-In-Appeal may file an appeal to the appropriate authority in the following way.

(A) [illegible]

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section [illegible] of [illegible] / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) [illegible]

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) [illegible]

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at [illegible] Ahmedabad [illegible] in case of appeals other than as mentioned in para [illegible] above

[illegible]

[illegible] the Tribunal [illegible] Rs.5000/- [illegible] 50 Lakhs [illegible] bank [illegible] the Tribunal is situated. [illegible]

[illegible]

[illegible] Finance Act, 1994, to the Appellate Tribunal [illegible] Rule 9(1) of the [illegible] 1994 [illegible] Rs. 5 Lakhs or less [illegible] fifty Lakhs rupees [illegible] Application [illegible]

[illegible]

The appeal [illegible] section 86 of the Finance Act, 1994, shall be [illegible] Service Tax Rules, 1994 and [illegible] Chief Central Excise or Commissioner, [illegible] copy of the order [illegible] Deputy Commissioner [illegible] before the Tribunal.

[illegible]

[illegible] Section 35F of the Central Excise Act [illegible] 2014 [illegible] before the Tribunal on payment of 10% of the duty demanded [illegible] penalty [illegible] 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.

(i) केवल सरकार को पुनरीक्षण आवेदन :
Revision application to Government of India :

:: ORDER-IN-APPEAL ::

1.0. **BRIEF FACTS AND GROUNDS OF APPEAL:**

1.1. The subject appeal has been preferred by M/s. Atul Technocast Pvt. Ltd., R. S. No. 25/2, Near Milk Dairy, At Majevadi, Taluka Junagadh, Dist. Junagadh-362011 (hereinafter referred to as "the appellant") against the Order-In-Original No. SUPDT/ADJ/JND/01/2017, dtd.20.01.2017 (hereinafter referred to as "the impugned order") passed by the Superintendent (Adj.), Central Excise Division, Junagadh (hereinafter referred to as "the Adjudicating authority"). The Appellant are engaged in manufacturing of excisable goods viz. Unmachined Castings of Stainless/Carbon Steel falling under CETSH No. 7325.99 of the First Schedule to the Central Excise Tariff Act, 1985 and Cas. Articles of other metals and they are registered with Central Excise vide Registration No. AALCA3577GEM001 as manufacturer. The appellant are also availing facility of availment of Cenvat credit of the duty/tax paid on the inputs/Capital goods/input services used in connection with the manufacture of the final products and utilizing the same towards the payment of Central Excise duty payable by them on clearance of the final product in terms of the Cenvat Credit Rules, 2004 (hereinafter referred to as "the CCR, 2004").

1.2. During the scrutiny of the periodical returns filed by the appellant for the month of January, 2015 onwards, it was noticed that in addition to manufacture of the excisable goods, as mentioned above, and clearance thereof on appropriate Central Excise duty, the appellant had also engaged themselves in production of the excisable goods, as mentioned above, and clearance thereof without payment of duty in terms of Notification No. 83/94-CE, dtd. 11.04.1994. The Notification No. 83/94-CE, dtd.11.04.1994 grants exemption to the specified goods, if manufactured on job work basis, subject to the condition that the supplier of the raw materials or semi finished goods gives an undertaking described in the said Notification. Although the goods being processed at the premises of the appellant were falling under the specified goods for the purpose of said Notification No. 83/94-CE, dtd. 11.04.1994 and that the appellant had filed an intimation dtd.21.01.2015 with the jurisdictional Assistant Commissioner of Central Excise, Junagadh to carry out the job work along with the undertaking given by the Principal manufacturer viz. M/s. Jee Enterprise, Shop No. 12, Ground Floor, Gokul Estate, Sanatpur, Junagadh-362037; however, the appellant received only scrap from the supplier for conversion to Unmachined Castings. In this context, the Range Superintendent asked the appellant vide letter dtd.16.06.2015 to provide the various details and documents, including the details of documentation and manner in which the transaction was recorded in excise/business records during January, 2015 to April, 2015.

1.3. The appellant vide their letter dtd.29.06.2015 provided their reply clarifying that they started to manufacture goods on job work basis from February, 2015 onwards and clarified that there was no formal written agreement made with the Principal manufacturer. However, a consent letter dtd.16.01.2015 given by them was already

submitted to the department, that they had maintained records in the form of register and challans details of the material received and returned to the Principal manufacturer and job-work register.

1.4. The appellant filed further clarification vide letter dtd 25.08.2016 that in addition to the inputs supplied by the Principal manufacturer some inputs were also used by them from the stock lying with them and on such inputs they had already availed Cenvat credit; that for the inputs utilized as such after such identification, they had reversed the Cenvat credit in debits from time to time as per the CCR, 2004; that in the absence of specific column provided in the return, they had declared such amount of reversal of Cenvat credit in the column 'Credit utilized when inputs/goods are removed as such' (Sr. No. ... of 'Details of Cenvat credit taken and utilized' of the ER-1 return; that the debit entries reflected as such for the ER-1 returns since January, 2016 to May, 2016 were actually shown the amount of reversal of Cenvat credit involved in the manufacture of the exempted goods manufactured by them on job work basis and it actually did not pertain to the inputs removed as such.

1.5. In response to the above, the Range Superintendent issued a letter dtd [illegible] asking the appellants to clarify how the appellant had complied with the provisions of Rule 6 of the CCR, 2004, for the transactions the appellant had made during January, 2015 to June, 2015 and asked the appellant to provide the details of reversal/payment of the amount along with the amount of appropriate interest and penalty.

1.6. Finding that no intimation was filed by the appellant in terms of Rule 6(3A)(a) of the CCR, 2004 and no separate accounts maintained in respect of the inputs and input services which were used for manufacturing of dutiable goods as well as the exempted goods and no payment was made as per the formula provided in the 6(3A) of the CCR, 2004, hence it was alleged vide SCN dtd 12.01.2016 that the appellant were liable to pay an amount of Rs.[illegible] (with effect from 01.03.2015) which was worked out to be Rs.[illegible] and the same was required to be recovered from the appellant in terms of Rule 14 of the CCR, 2004 read with Section 11AA of the CEA, 1944. The contravention of the said provisions of Rule 6(3)[illegible] of the CCR, 2004 on the part of the appellant, made them liable for penalty in terms of Rule 15 (1) of the CCR, 2004. The amount of Rs.1,61,473/- already paid by the appellant were required to be appropriated against the amount recoverable from the appellant.

1.7. In reply to the SCN dtd.12.01.2016 the appellant represented before the adjudicating authority that they had decided not to contest the SCN considering the smallness of the amount involved vis-a-vis cost of contesting the same and had accordingly made payment of Rs.[illegible], which covered the amount of Rs.[illegible] and interest of Rs.[illegible]. It was further submitted by the appellant that in terms of Rule 15(1) of the CCR, 2004, no penalty to be imposed on them and thereby requested to close the proceedings initiated under the SCN dtd.15.04.2016. In regard to the change

The adjudicating authority. personal hearing was conducted on 21.12.2015 before the Superintendent of C.Ex (Adj), Junagadh Division, Junagadh, during which Shri [illegible] Rakhiya, Director of the appellant appeared and stated that the amount demanded in the SCN was all ready already paid by them with interest, hence requested to take lenient view with regard to the penalty proposal.

3.8. The adjudicating authority had later on passed OIO No. Supdt./Adj/[illegible]/2017, dtd 23.01.2017 for confirming the demand of Rs.[illegible]/- under Rule 6 & 14 of the CCR, 2004 read with Section 11A (10) of the CEA, 1944 and confirmation of interest payable thereon under Rule 14 of the CCR, 2004 read with Section 11AA of the CEA, 1944. It was also ordered to appropriate the amount of Rs. 6,97,223/- and Rs. [illegible] already paid by the appellant towards the confirmed amount and the interest thereon. Penalty of Rs.1,00,000/- was also imposed on the appellant under Rule 15 of the CCR, 2004.

4.1 Being aggrieved by the OIO dtd.23.01.2017, the appellant has filed present appeal mainly with the grounds as follow:

(a) The appellant had already reversed the Cenvat credit of Rs.1,30,[illegible]/- involved in the inputs used in the goods manufactured on job work basis and informed the Range Superintendent accordingly vide letter dtd 25.06.2015. But the Range Superintendent was not satisfied with the said letter dtd.25.06.2015 and wrote another letter dtd 01.12.2015 asking us to comply with his decision to pay an amount @[illegible]% of the value of the goods manufactured on job work basis. Before they could file their clarification to the letter dtd.01.12.2015, they were served with the SCN dtd.13.01.2016. To save themselves from the duty and vicarious interest and penalty liability, they made payment of differential amount with interest and informed accordingly vide their letter dtd 01.02.2016.

(b) The appellant had correctly availed Cenvat credit at the time of receipt of such inputs, but subsequently on account of utility of using goods to be manufactured on job work, they had reversed/paid back the Cenvat credit on the quantity of inputs used in the goods manufactured on job-work, which amounts to non availing of Cenvat credit on the said quantity. Hence, invoking the provisions of Rule 6 of the CCR, 2004 was misplaced and for this reason the confirmation of the amount of Rs.6,97,223/- is ex facie illegal. In this regard, they relied upon the Supreme Court decision in the case of M/s. Chandrapur Magnet Wires (P) Ltd. [1996 (12) TMI 72 / 996 (81) ELT 3 (SC)] and subsequent orders of High Courts and CESTAT following the said judgment, pronounced in the cases of M/s. Maiva Sahakari Shakkar Karkhana Ltd. [2017(1) TMI 1127 CESTAT New Delhi], M/s. Mahindra and

Mahindra Ltd. [2016 (8) TMI 496- CESTAT New Delhi] and M/s. Mahindra and Mahindra Ltd. [2015(9) TMI 38- CESTAT New Delhi]

(d) Failure to file intimation for choosing option to pay proportionate amount under Rule 6(3A) of the CCR, 2004 is only a procedural requirement. Admittedly, no intimation was given by the appellant, but merely because of not intimating, the appellant does not lose the choice to avail option of reversing the proportionate credit, hence the department's contention that the appellant has no other option but to accept and comply with Rule 6(3)(i) of the CCR, 2004 and to make payment of 6%/7% of the value of the exempted goods/value of exempted services is not convincing and not acceptable. The Rule did not lay down any such restriction. The procedure and conditions laid in Rule 6(3A) is intended to make Rule 6(3) workable and not to take away the option available to the appellant. Hence, mere failure to intimate, it can not be said that the Rule 6(3)(i) would automatically come into application. The appellant placed reliance on the case law pronounced by the Supreme Court in the case of M/s. Precot Meridian Ltd. [2015 (11) TMI 244-Supreme Court/2016 (332) E.L.T. 238 (SC)], which was further fortified in the following cases:

M/s. Franco Italian Co. Pvt. Ltd. [2008(2) TMI 108 CESTAT, Court No. II, New Delhi].

M/s. Rana Mineral Water Pvt. Ltd. [2004 (7) TMI 93- High Court of Judicature at Allahabad]

M/s. Aster Pvt. Ltd. [2016(5) TMI 336-CESTAT],

M/s. Aurobindo Pharma Ltd. [2017 (2) TMI 759 — CESTAT Hyderabad]

M/s. Cranes & Structural Engineers [2016(8) TMI 387-CESTAT, Bangalore]

M/s. Dalmia Bharat Sugar and Industries Ltd. [2017 (1) TMI 231 CESTAT, New Delhi]

M/s. Mahindra and Mahindra Ltd. [2016(8) TMI 496 —CESTAT New Delhi]

M/s. Sanghvi Steel & Industries Pvt. Ltd. [2016(3) TMI 304-CESTAT, Mumbai]

M/s. Star Coolers & Condensers (P) Ltd. [2017(2) TMI 192-CESTAT, Mumbai]

M/s. Tilaknagar Industries Ltd. [2016(12) TMI 1279 CESTAT, Mumbai]

(d) The adjudicating authority relied on the decision in the case of M/s. Nirmala Financial (India) Ltd. [2008(144) ELT 321 (Bom)], but the law position involved in the said case is not applicable in the present case, as the said judgment is of the period when the retrospective amendment to Rule 6(3) by the Finance Act, 2010 was not made. The present case is related to the period subsequent to the amendment in Rule 6(3). Therefore, in the context of the amended provision, the appellant was at liberty to reverse the proportionate Cenvat credit attributable to the quantum of inputs and input services and by foregoing this credit, the appellant had complied with the obligation casted under Rule 6.

(e) It is settled legal position that in the case of conflict of legal decision on the same law point, the decision which is favourable to the assessee shall be preferred and applied. Accordingly, even though the case law relied upon by the adjudicating authority is not applicable to the present case of the appellant, various other case laws are in favour of the appellant and hence the ratio of the said decisions should be applied to the present case on hand.

(f) The interest is consequential liability and when the demand of making payment @6%/7% is not sustainable, question of levy of interest under Rule 14 of the CCR, 2004 read with section 11AA of the Act does not arise.

(g) When the demand is not sustainable, question of imposing penalty does not arise. The appellant was under bonafide belief. Hence, the adjudicating authority should have refrained from imposition of penalty, but imposed excessive penalty of Rs.1,00,000/-, which is not commensurate with the facts of the present case. There is no finding to justify huge penalty but mechanically proceeded to confirm the penalty. Therefore, the action on the part of the adjudicating authority is being arbitrary, excessive and non judicious, deserves to be set aside.

10. The Central Board of Excise and Customs had vide Notification No. 48/2017-CEx (NT), dated 16.10.2017 read with Board's Order No. 05/2017-ST, dated 16.11.2017 has appointed the undersigned as appellate authority under Section 35 of the Central Excise Act, 1944 for the purpose of passing orders in the present appeal.

11. Accordingly, the appellant were granted opportunity of hearing on 21.02.2018, 12.03.2018 and 21.03.2018. None of these opportunities was availed by the

Appellant, although in Form EA-1 of Appeal, the Appellant desired to be heard in person. The Appellant had also avoided acknowledging or responding to the notices issued to them for personal hearing vide letters dtd 11.01.2018, 15.02.2018 and 14.03.2018. In this case now I am constrained to proceed ahead with the appeal in the context of Proviso to Section 35(1A) of the CEA, 1944, as no adjournment can be granted more than three times during hearing of the appeal. I, therefore, proceed to decide the appeal.

1.12. Copy of the appeal memo was provided to the Superintendent (AE), Central Excise Division, Junagadh vide letter dtd.[illegible].2017 and it was also informed about the hearing schedule, but nothing has been received from them.

2.0 <u>FINDINGS:</u>

2.1 I have carefully gone through the appeal papers placed before me and the submissions made by the Appellant during the proceedings, which took place before me. I find that the Appellant has already made payment of entire duty and interest which has already been ordered for appropriation in the impugned OIO; hence I find that there is substantial compliance to Section 35F of the Central Excise Act, 1944. Accordingly, I proceed to decide this appeal.

2.2 Prima facie, I notice that the Appellant had opted not to contest the SCN, so far it was pertaining to the demand of amount recoverable from the appellant in terms of Rule 6(3)(i) of the CCR, 2004, which is evident from the submission before the adjudicating authority made vide letter dtd 01.02.2018 and also the submission limited to against the imposition of penalty proposed in the SCN issued to them. While making submission dtd.01.02.2018, the appellant have provided a copy of Challan dtd.24.01.2018 and Cenvat credit register entry dtd.24.01.2018 towards the amount with interest demanded from them in the SCN and which have been appropriated in the OIO passed by the adjudicating authority. The Appellant had requested to close the proceedings in the context of the payment of amount with interest made by them well within the 30 days period prescribed from the date of receipt of SCN by them. Thus, there were no contentions or arguments made by the Appellant before the adjudicating authority to challenge the validity of demand itself in the context of availability of option with them under sub-rule 3 of Rule 6 of the CCR, 2004 and citing case law in support of the same. However, such grounds are being raised by the Appellant before me for the first time, which is required to be restricted by me in terms of the provisions of Rule 5(1) of the Central Excise (Appeals) Rules, 2001, which restricts submission of additional evidence, whether oral or documentary, other than the evidence produced by them during the course of the proceedings before the adjudicating authority. However, I notice that the Appellant had opted not to contest the SCN considering the smallness of the amount involved vis-a-vis the cost of contesting the same and for that reason only they had not challenged the allegations levelled in the SCN. This itself is enough to make this case of fitting exception as provided in Rule 5(1) of the Central Excise (Appeals) Rules, 2001 and to allow the Appellant to present their case and arguments at this stage

and for this reason in terms of Rule 6(2) ibid. I allow the Appellants to produce such submission in this respect at this stage, which they did not avail during the adjudication proceedings.

2.3 On last examination of the appeal, I find that the points for determination in the present appeal in terms of Section 35A (4) of the Central Excise Act, 1944, are the following:

(a) Whether the compliance made by the Appellant by way of reversal of Cenvat credit of Rs.1,014/- involved in the inputs used in goods manufactured on job-work is sufficient in terms of Rule 6(3)(i) of the CCR, 2004?

(b) Was there any deviation as alleged in Para 1 of the SCN regarding the amount reversed in respect of the quantity of inputs used in the manufacture of goods on job work and cleared under exemption under Notification No. 83/94-CE dtd.11.04.1994, which is not in accordance with the formulae given in Rule 6(3A)(c) and Rule 6(3)(ii) of the CCR, 2004?

(c) Whether in the facts and circumstances of the case, the Appellant were left with no option but to make payment @6%/7% of the value of the exempted goods manufactured by them/exempted services rendered by them in terms of Rule 6(3)(i) of the CCR, 2004?

(d) What should be the amount of demand to be confirmed? Under which provisions of the law such demand may be confirmed? Is there any case for levy of interest under Section 11AA of the Act on such confirmed demand? Is there any case for imposing penalty on the Appellant under Rule 15 of the CCR, 2004 and what should be the quantum of such penalty?

(e) What should be the order which is just and proper, in the context of the grounds of appeal and merits of the case before me?

2.4 Taking the points (a), (b) and (c) together, from the facts and circumstances of the case of the appellant, it can not be said that the appellant were unaware about the provisions of Notification No. 83/94-CE, while clearing the goods manufactured by them on job work basis without payment of duty. It is evident that the appellant had filed intimation dtd.21.01.2015 with their consent letter dtd.19.01.2015 to avail the benefit of Notification No. 83/94-CE. It is also an admitted fact that the appellant were availing the benefits of Cenvat credit on the inputs used in manufacturing of the excisable goods in terms of the provisions of the CCR, 2004. It is not in dispute that the appellant had cleared the goods from their factory after availing exemption contained in Notification No. 83/94-CE in respect of the goods manufactured by them on job work basis. It is also evident that the appellant had maintained date wise records/challans under which the materials were received by them from the Principal manufacturer. The appellant had maintained the records in the form of register and challans pertaining to material received and

records of the finished manufactured and the job work register. The appellant has also reversed at the end of each month of January, 2015 to June, 2016, the proportionate Cenvat credit amounting to Rs. 1,01,476/- involved in the manufacture of the excisable goods manufactured on job work basis. Although they had shown the same in the ER-1 returns as credit utilised when input goods are removed as such (as) only because there was no separate column pertaining to reversal in terms of Rule 6 of the CCR, 2004 provided in the prescribed format of the ER-1 returns. All these facts are apparently admitted by the appellant in their periodical returns for the months of January, 2015 to June, 2016 also, where the appellants had declared the goods cleared by them on payment of duty as well as the goods on which exemption was availed by them under Notification No. 8/03-CE. Looking to all these facts, the appellant cannot be in a position to argue with the plea of ignorance of law and statutory provisions, and it is also not palpable as to what prevented the appellant from filing required intimation to exercise their option in terms of Rule 6(3A)(a) of the CCR, 2004. There is apparent failure on the part of the appellant to file the required intimation for the period from January, 2015 to March, 2015 for the FY 2014-15 and April, 2015 to June, 2016 for FY 2015-16, although they have debited the proportionate credit availed by them on the inputs used in manufacture of the excisable goods on job work basis.

In the above context, while looking to the plea from the appellant that the allegation of not filing intimation under Rule 6(3A)(a) of the CCR, 2004 is altogether different from the implication of not exercising option. From the facts, when the appellant had debited at the end of each month the Cenvat credit proportionate to the inputs attributable to the manufacture of the exempted goods, it tantamount to exercise of their option. From the flow of the events, it appears that the appellant has no intention to exercise option other than the option available to them under Rule 6(3) of the CCR, 2004. Of course, to give effect to that option they were required to intimate in writing to the jurisdictional Superintendent of Central Excise, which they have apparently and admittedly failed.

At the same time, I notice that it is one of the allegation in the SCN that the amount of Rs. 1,01,476/- reversed by the appellant in respect of the inputs used in the manufacture of the goods on job work basis and cleared under exemption in terms of Notification No. [illegible] dated [illegible], is not in accordance with the formulae given in Rule 6(3A)(b) and Rule 6(3A)(c) of the CCR, 2004. However, no specific statistics or tentative amounts have been calculated and provided either in the SCN or in the OIO and at the same time, it has not been attempted to explain by the appellant in their appeal before me.

Further, on the above [illegible], on the issue of allowing Condonation/Waiver for the procedural lapse of not intimating the department, the appellant has provided many case laws in their favour, but most of those cases are pronounced by the CESTAT. Against all this case laws, I find that a Central Excise Appeal No. [illegible], which has been filed by the department in Bombay High Court against the CESTAT Order in the case of M/s

Mercedes Benz (I) Pvt. Ltd. [2015 (39) STR 481] in quashing the Order dtd. 03.09.2012. The Bombay High Court has already admitted the same and framed the following substantial questions of law for due determination in terms of Section 35G of the CEA, 1944:

(a) Whether a mandatory test of pasts of the provider of taxable service (hereinafter referred to as "the assessee") – nothing but a maintain separate records in terms of Rule 6(4) of the CCR, 2004 is rendered to exercise option for payment of amount in terms of Rule 6(3)(i) of the CCR, 2004 and in order to exercise the same meaning to the jurisdictional Superintendent of Central Excise as prescribed under Rule 6(3A) of the CCR, 2004 at the beginning of the financial year or whether it can be exercised at any time of the financial year, at the sweet will of the assessee.

(b) Whether the procedures and conditions prescribed under Sub-rule (2A) of Rule 6 of CCR, 2004 are mandatory in nature.

(c) Whether an assessee, who fails to exercise option under Rule 6(3)(i) of CCR, 2004 is liable to pay an amount equal to 6% of the value of the exempted goods/services as prescribed under clause (i) of Explanation (c) of Rule 6 ibid."

[illegible] owing to the subjective nature of the issue as regards to the mandatory nature of time of intimation for exercising the option by the assessee under the provisions of Rule 6(3)(i) of the CCR, 2004 which is equally applicable in the context of the case of the appellant on hand at this stage I am disposed to refrain myself from providing any final view in the case of the appellant assessee. Therefore, I am of the opinion that it would be inappropriate at this stage to decide the points (a), (b) or (c) at this stage when the Hon'ble Supreme Court in Civil Appeal No. 6230-6231 of 2016 has not been reached and moreover these points (a), (b) and (c) can be decided only after the final view of the Higher judicial authorities in the above case of M/s. Mercedes Benz (I) Pvt. Ltd. is received. Hence for considering the imposition and application of the quantum of the amount, which is required to be reversed in terms of the formula provided in Rule 6(3A)(b) and Rule 6(3A)(c) of the CCR, 2004, the matter requires to be remanded back to the adjudicating authority concerned to consider the entire issue for calculation purpose as well as for limitation applicability in the present case in view of Rule 6 of the CCR, 2004.

2.5. However, in the event, when the matter is being remanded back, I feel that the final view on this point can also be possible only after the final order of Bombay High Court in Central Excise Appeal No. 1132/2013 is received and the same is examined in the context of the facts of the present case of the appellant. Therefore, it is in the best interest of justice to remand back the entire matter to the adjudicating authority in respect of the entire matter at issue in the context of the facts of the present case of the

appellant and after providing due consideration to the final order anticipated from Bombay High Court in Central Excise Appeal No. 122/2016.

16. In the background of the above discussion, dealing with point (a), I order for setting aside the impugned OIO and allow the appeal filed by the appellant by way of remanding the matter back to the adjudicating authority to quantify the amount which is required to be reversed in terms of the formula provided in Rule 6(3A)(b) and Rule 6(3A)(c) of the CCR, 2004 and then to pass a reasoned and speaking order taking into consideration the final quantification, as above, in the context of the application thereof with reference to the anticipated order of Bombay High Court on the Central Excise Appeal No. 122/2016 in the case of M/s. Mercedes Benz (I) Pvt. Ltd. When the entire matter is being remanded back, the adjudicating authority is also at the liberty to decide the issue of imposition of penalty on the appellant in the context of the above and in terms of Rule 15 of the CCR, 2004. Needless to add here that the in the process of the remand, the adjudicating authority should grant fair and reasonable opportunities to the appellant to submit their written submission and also of being heard personally if the appellant intends for the same. The Appellant are also directed to provide within two weeks from the date of receipt of this order by them, the details and statements duly supported by verifiable evidences to quantify the amount of Cenvat credit reversal in the context of formula provided in Rule 6(3A)(b) and Rule 6(3A)(c) of the CCR, 2004, as one of the alternatives prior to arriving at the final quantum of the amount to be reversed in the overall consideration of the matter.

17. In above terms, I dispose the appeal.

(P. A. Vasave)
Commissioner (Appeals)/
Commissioner
CGST & Central Excise
Kutch (Gandhidham)

F. No. V2/46/SVR/2017 Date: 18.05.2018

By R.P.A.D.

To,
M/s. Atul Technocast Pvt. Ltd.,
R. S. No. 232, Near ...,
At Meyvadi,
Taluka Junagadh
Dist. Junagadh-362011.

Copy to:
M/s. Jain Mehta & Associates LLP
4th, Malhar Complex
Near Andhra Bank, Panjrapole Cross Road, Ellisbridge,
Ahmedabad-380006
Email: [illegible]

Copy to:

1. The Chief Commissioner, CGST & C. Ex., Ahmedabad Zone, Ahmedabad.
2. The Commissioner, CGST & C. Ex., Bhavnagar
3. The Additional Commissioner, CGST & C. Ex. (System), Bhavnagar
4. Assistant Commissioner, CGST, Junagadh Division, Junagadh
5. Guard file.

[illegible]
OFFICE OF THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE, RAJKOT
[illegible]
[illegible]
[illegible] Rajkot [illegible]
[illegible]

F. No. [illegible] Date: [illegible]

CORRIGENDUM

Corrigendum to Order-in-Appeal No. [illegible] dated [illegible]/04/2018 passed by the Commissioner (Appeals), GST & Central Excise, Rajkot.

In the aforesaid order in Appeal at Para No. [illegible] at Page No. [illegible] the Table

Sr. No.	Show Cause Notice No.	SCN date	Amount Rs.	Period involved
1.	V/15-37/Demand-Madhu Silica/2009-10	31.03.2010	[illegible]	April-09 to Nov-09
2.	AR-I/Cent.../[illegible] Madhu GTA/2010-11	[illegible]	[illegible]	[illegible] to Mar-10

is substituted and read as:

Sr. No.	Show Cause Notice No.	SCN date	Amount Rs.	Period involved
1.	V/15-37/Demand-Madhu Silica/2009-10	31.03.2010	[illegible]	April-09 to Nov-09
2.	AR-I/Cent.../SCN-Madhu GTA/2010-11	[illegible].2010	[illegible]	[illegible] to Mar-10

सत्यापित
[illegible]
[illegible] (अपील्स)

[illegible]
आयुक्त (अपील्स)

By Regd. Post AD
To
M/s. Madhu Silica Pvt. Ltd.
DU-II, Plot No. [illegible]
[illegible]
GIDC, Chitra,
Bhavnagar.

Copy for information and necessary action to:

1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad for his kind information.
2) The Commissioner, GST & Central Excise, Bhavnagar.
3) The Assistant Commissioner, GST & Central Excise, [illegible] Division, Bhavnagar.
4) Guard File.