



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

द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,
राजकोट / Rajkot - 360 001

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सत्यमेव जयते

रजिस्टर्ड डाक ए.डी. द्वारा :-

DIN-20221264SX00007277D5

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश नं / OIO No.	दिनांक / Date
	V2/20/RAJ/2022	48/Demand/2021-22	17-12-2021

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

RAJ-EXCUS-000-APP-380-2022

आदेश का दिनांक / Date of Order:	30.11.2022	जारी करने की तारीख / Date of issue:	06.12.2022
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श्री शिव प्रताप सिंह, आयुक्त (अपील्स), राजकोट द्वारा पारित /

Passed by Shri Shiv Pratap Singh, Commissioner (Appeals), Rajkot.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं 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/ST / GST, Rajkot / Jamnagar / Gandhidham :

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

**M/s. Astron Paper & Board Mill, Survey No. 52/1-2, 53/1-2, Village-Sukhpur,
Ta- Halvad, Dist- Surendranagar**

इस आदेश (अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दाखल 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 मामलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के. पुरम, नई दिल्ली, को की जानी चाहिए।/
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

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

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये 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 रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्वयं आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये का निर्धारित शुल्क जमा करना होगा।/
The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/-, Rs.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये 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 रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्वयं आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये का निर्धारित शुल्क जमा करना होगा।/
The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.



- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमावली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जमाना विवादित है, या जमाना, जब केवल जमाना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपये से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
- धारा 11 डी के अंतर्गत रकम
 - सेनवेट जमा की ली गई गलत राशि
 - सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं- 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थान अर्ज़ी एवं अपील को लागू नहीं होगे। / 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 :
- amount determined under Section 11 D;
 - amount of erroneous Cenvat Credit taken;
 - 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 कोपनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपूरतक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। / A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:
- यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। / In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse
 - 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 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.
 - 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.
 - सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो छूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आवेदन जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं- 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाचिधि 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 provision 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.
 - उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। / The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-in-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.
 - 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, उपर्युक्त बंग से किया जाना चाहिए। इस तथ्य के होते हुए भी की लिखा पट्टी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगी होना चाहिए।
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.
- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों की सम्मिलित करने वाले नियमों की और भी ध्यान आकर्षित किया जाता है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.
- (G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, 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



अपील आदेश /ORDER-IN-APPEAL

M/s. Astron Paper & Board Mill Ltd., Survey NO.52/1-2, 53/1-2, Village – Sukhpur, Ta.- Halvad, Dist.- Surendranagar, Gujarat (hereinafter referred to as the appellant) has filed appeal No.20/RAJ/2022 against Order-in-Original No. 48/Demand/2021-22 dated 17.12.2021 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Central Excise & CGST, Division, Morbi-I, (hereinafter referred to as 'adjudicating authority').

2. Briefly stated the facts of the case are that during the course of audit of the records maintained by the appellant for the period from 2011-12 and 2012-13, the officers took objection to availment of wrong Cenvat credit of capital goods worth Rs.26,43,260/- on TMT Bars/ Channels/ Beam, S.S. Plates/ S.S. Pipes etc. as capital goods on the grounds that these items are not falling under the definition of capital goods. The appellant reversed the Cenvat credit of Rs.26,43,260/- under protest. A show cause notice was issued on 18.01.2016 for vacating the protest and for confirming the reversal of Cenvat credit. The adjudicating authority confirmed the demand vide Order-in-original No.15/Demand/2016-17 dated 25.01.2017. The appellant filed an appeal with Commissioner (Appeals) Central Excise, Rajkot who rejected appeal vide Order-In-Appeal No. BHV-EXCUS-000-APP-123-2017-18 dated 31.01.2018. The appellant filed Appeal before Hon'ble CESTAT and the Tribunal vide Final Order No. A/11831/ 2018 dated 20.08.2018 remanded the case to the adjudicating authority. Thereafter the adjudicating authority passed the impugned order on 17.12.2021 under which he confirmed the demand of Rs.26,43,260/- under Rule14 of the Cenvat Credit Rules, 2004 read with Section 11A of Central Excise Act, 1944 and imposed equal penalty under Rule 15(2) of the Cenvat Credit Rules, 004 read with Section 11AC of the Central Excise Act, 1944 and interest at appropriate rate on the Section 11AA of Central Excise Act, 1944.

3.1 The appellant filed the present appeal wherein they, *inter alia*, contended that the adjudicating authority has erred in not following the direction contained in the Final Order No. A/11831/ 2018 dated 20.08.2018 of Hon'ble Tribunal to depute a field officer for verification of the use of materials and, therefore, the impugned order has suffered the vice of judicial indiscipline. The appellant submitted that verification was carried out by the Range Officer on 17.07.2020 and it was mentioned in their submission dated 18.11.2021 at the time of personal hearing. However, the adjudicating



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rule 2(a)(A)(iii) of Cenvat Credit Rules, 2004. The appellant had used the said goods for repair/fabrication of paper manufacturing machine which are the capital goods installed in their factory and, therefore the said materials qualify as 'capital goods'.

3.6 The appellant submitted that the adjudicating authority concluded that the goods in question were used for construction of factory shed, for foundation and support of the structure of capital goods without any verification of facts. No verification has been done by the department and the factory of the appellant was not visited by the adjudicating authority for factual verification. The conclusion made by the adjudicating authority is merely his assumption and presumption. It is settled law that in a quasi-judicial proceeding there is no place for assumption and presumption. Therefore the impugned order is not sustainable under law.

3.7 The appellant submitted that as per Explanation-2 under rule 2(a) (A) of Cenvat Credit Rules 2004 cement, angles, channels, CTD bards/TMT bars etc used for construction of factory shed, building or laying of foundation or making of structure for support of capital goods are excluded from the definition of capital goods. In other words, if these goods are used for other purposes are eligible for availing of Cenvat credit as capital goods. In the present case the goods in question were used for purpose other than construction of factory shed, building or laying of foundation or making of structure for support of capital goods. The use of each item has been certified by the Chartered Engineer M/s Multi Mentor Engineers & Associates Ltd., Rajkot. Therefore these goods are falling under the definition of capital goods under Cenvat Credit Rules 2004.

3.8 The appellant submitted that the adjudicating authority has erred in not considering the certificate of Chartered Engineer M/s Multi Mentor Engineers & Associates Ltd., Rajkot. The Chartered Engineer has given the certificate after visit of the plant of the appellant unlike the adjudicating authority who passed the order without verifying the facts and without visiting the factory of the appellant.

3.9 The appellant submitted that adjudicating authority has reproduced only part of the certificate which is not permissible under law. It is settled law that a document is required to be considered as a whole as held by Hon'ble Supreme Court in the case of Super Poly Fabrics Ltd v/s CCE, Punjab - 2008 (10) S.T.R. 545 (S.C.). The appellant contended that the Chartered Engineer has given the certificate after visit of the plant and has certified that the plant and machinery are fabricated by us with various



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items purchased. The list of goods purchased and its use has been given in annexure to the certificate. The annexure covers all the goods covered in the show cause notice.

3.10 The appellant further submitted that the adjudicating authority has doubted the certificate given by the Chartered Engineer that he has not explained how he has co-related the large numbers of items purchased by us. The appellant submits that a Chartered Engineer is an expert in the field of machines and plant and he has given the certificate after verification of the plant and machinery after visiting the plant of the appellant. On the other hand the adjudicating authority, without even making any preliminary enquiry of the use of the goods, has concluded that the goods have been used in construction and making support of structure. The appellant submitted that the Certificate issued by the Chartered Engineer covered all the goods used by the appellant and specified the use of each and every item in the show cause notice. When the appellant has proved eligibility of the Cenvat credit of each and every item used by them, denial of Cenvat credit without even making any preliminary enquiry is not sustainable under law.

3.11 The appellant submitted that the adjudicating authority also erred in relying in the decision of Vandana Global Ltd-2010 (253) ELT.440 (Tri. L.B) when there is decision of Hon'ble Supreme Court which has been relied by the appellant. They contended that the case of M/s. Rajasthan Spinning & Weaving Mills Ltd. - 2010 (255) ELT 481 (S.C.) is directly related to the issue and the adjudicating authority, as a quasi-judicial officer, was bound to follow the decision of the Apex Court of India. The appellant relied upon the following decisions.

- (i) M/s. Andhra Sugars Ltd.- 2014 (305) E.L.T. 150 (Tri. - Bang.)
- (ii) M/s. Chemplast Sanmar Ltd.- 2007 (207) ELT 92 (Tri.- Chennai)
- (iii) M/s. Jawahar Mills Ltd.-1999 (108) ELT 47 (Tri.)
- (iv) Jocil Ltd., 2006 (195) ELT 318 (Tri.- Bang.)
- (v) Deccan Sugars Ltd.- 2005 (187)351 (Tri. - Bang)
- (vi) M/s Rajasthan Spinning & Weaving Mills Ltd. - 2010 (255) ELT 481 (S.C)
- (vii) M/s. N. R. Agarwal Industries Ltd. - 2007 (215) ELT 462 (Tri.- Ahmd.)
- (viii) M/s. Sterlite Industries India Ltd. - 2006 (203) ELT 283 (Tri.- Chennai)
- (ix) M/s. City Lubricants (P) Ltd. - 2011 (266) ELT 131 (Tri.- Bang.)
- (x) Kothari Sugars & Chemicals Ltd.-2001(137) ELT. 345 (Tri.-Chennai)
- (xi) M/s. U.P. State Sugar Corporation- 2001(135) ELT 952 (Tri.-Delhi)
- (xii) V/s. Madras Cement Ltd 2006(195)ELT 316 (Tri.- Bang.)
- (xiii) India Glycols Ltd.- 2006 (196) ELT 221 (Tri.- Del.)
- (xiv) K.K. Nag Ltd.- 2003(158) ELT 161 (Tri.- Mumbai)

3.12 The appellant submitted that it is not alleged in the notice that the



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subject goods were used for foundation/support of capital goods. The Cenvat credit on of Iron bars, MS Plates and Channels is denied only when they are used for foundation/ support of capital goods. When there is no such allegation in notice that the subject goods were used for foundation/ support of capital goods the credit cannot be denied. On the contrary, the Certificate from Chartered Engineer would clear any ambiguity in the use of such materials in the factory. The certificate clearly establishes that the subject goods were used as component parts in the fabrication of capital goods in the factory of manufacture and hence the Cenvat credit thereof cannot be denied.

3.13 The appellant further submitted that the materials in question were used for fabrication/ repair of the capital goods installed in the factory. Therefore such materials qualify for credit as 'capital goods' and fall within rule 2(a)(A)(iii) of Cenvat Credit Rules, 2004. The appellant used the said goods for repair and maintenance of machinery which is the capital goods installed in their factory. Therefore the said materials qualify as 'capital goods'.

3.14 Appellant submitted that Honourable Supreme Court has allowed Cenvat credit on M.S angles and sheets used for fabrication of chimney in the case of Rajasthan Spinning & Weaving Mills Ltd (supra), Similarly, in the case of *City Lubricants (P) Ltd -2011(266)ELT.131* Honourable CESTAT has allowed credit on HR Coils/plates, MS Plates, MS Angles, MS Channels, etc. which undisputedly fall under Chapter 72 of the Schedule to the Central Excise Tariff Act, 1985. Again Honourable High Court of Andhra Pradesh in the case of *Rashtriya Ispat Nigam Ltd - 2011(267)ELT.311 (A.P)* also allowed Cenvat credit on steel sheets used in fabrication and repair of capital goods used in the factory.

3.15 Appellant further submitted that the show cause notice was hit by limitation of time under Section 11A of Central Excise Act, 1944 read with rule 14 of Cenvat Credit Rules, 2004. The allegation in the notice for invoking the extended period of time was that the appellant had not declared the details of capital goods in the monthly returns. In this regard it is submitted that neither Central Excise Rules nor Cenvat Credit Rules provide for intimation of the availing Cenvat credit on capital goods. The prescribed format for filing monthly returns viz. ER-1/ER-3 also does not contain any such provision. Therefore the very allegation that the appellant did not declare the availing of credit in the monthly return is fallacious.

3.16 The appellant submitted that Hon'ble Supreme Court of India in



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various instances had held that there should be some positive act on the part of the party to establish suppression or mis-statement. They relied upon the case of *Pahwa Chemicals Pvt. Ltd-2005 (189) ELT.257 (S.C)*, *Escorts Ltd- 2009 (235) E.L.T. 55 (P&H)*.

3.17 The appellant submitted that present case does not attract even a token penalty as it is related to interpretation of the rule. The appellant submitted that Section 11AC is applicable only in the case of evasion of duty by fraud, suppression or willful misstatement etc. In the instant case there are no such ingredients present that attract the provisions of Section 11AC. Therefore no penalty is imposable on the appellant under rule 15 of Cenvat Credit Rules 2004 or under Section 11AC *ibid*.

4.1 Shri M.H. Raval, consultant appeared for personal hearing and submitted a written argument note. He reiterated the contention contained therein and those in the appeal filed by them. He submitted that pipes, channels, etc. used by the appellant are capital goods only and this matter is settled by the Hon'ble Supreme Court in case of *Super Poly Fabrics* and also in case of *Rajasthan Spinning & Weaving Mills Ltd*. In view of the same he requested to set aside the order with consequential relief.

4.2 In the written submission, the appellant repeated the grounds of appeal.

5. I have carefully gone through the facts of the case, the impugned order, grounds of appeal in the appeal memorandum. The present appeal came back after two rounds of litigation. The question to be answered in the present appeal is whether the Cenvat credit availed by the appellant on TMT Bars/ Channels/ Beam, S.S. Plates/ S.S. Pipes etc. as capital goods is legally correct or otherwise.

6. The adjudicating authority has denied the credit on the premises that they are used for the foundation and support of capital goods. He has also observed that the said goods are not eligible as 'inputs' as they are used as making structures for support of capital goods. In this connection, I find that the case was remanded back by the Tribunal vide Final Order No. A/11831/ 2018 dated 20.08.2018 with the following directions:

"2. None appeared on behalf of the appellant. However, on going through the grounds of appeals and record, we find that right from the beginning the appellants stand is that these steel items were not used in supporting structure but is used for fabrication of machine and repair thereof. They have submitted the Chartered Engineer Certificate regarding the use of the impugned goods but both lower authorities have discarded the certificate on the ground that it was not explained in the certificate that how the goods are co-related. The appellant submitted that the Chartered Engineer has issued the certificate after verification of the plant and



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machinery and personal visit of the plant, therefore, the same cannot be doubted. With these counter claim, I am of the view that once the appellant have submitted a Chartered Engineer Certificate regarding the use of these steel materials, it is incumbent on the part of the adjudicating authority to get a verification report from the Field Officers regarding the correctness of the Chartered Engineer Certificate. Only thereafter concluding can be drawn on the basis of the actual use of the material. It is on record that the adjudicating authority has not brought any physical verification done. The eligibility of the Cenvat credit can only be decided after ascertaining the actual use of the goods not merely by nature of the goods, therefore, the matter needs to be re-considered. The adjudicating authority shall depute a Field Officer for verification of the use of the material and correctness of the Chartered Engineer Certificate, only thereafter denovo adjudication should be passed. With these observation I set aside the impugned order and remand the matter to the adjudicating authority for passing a fresh order after considering the above observation."

7. I find that while passing the order the adjudicating authority has called for report from Range Superintendent who reported that more than seven years have been passed after receipt of the goods in the factory and hence it was quite difficult to verify correctness of Chartered Engineer' certificate and to ascertain actual use of the said goods/material in question piece to piece whether the said goods were used in repairing of capital goods or fabrication of plant & machinery. When the Range Superintendent deputed for the purpose of ascertaining the actual use of the goods in question was unable to do so, the finding of adjudicating authority that the goods were used for making structures appears to be ludicrous and without any basis. When the department is unable to prove the use other than that mentioned in the Chartered Engineer's certificate, the adjudicating authority was bound to accept the certificate of a Chartered Engineer who is expert in the field. Therefore, the impugned order, discarding the Chartered Engineer's Certificate without any credible evidence and to prove otherwise, is not sustainable.

8. Now coming to decide whether the items on which Cenvat credit availed are eligible under Cenvat Credit Rules, 2004, I find that 'Capital Goods' as defined in rule 2(a) of Cenvat Credit Rules, 2004 reads as under:

"(a) "capital goods" means :-

(A) the following goods, namely :-

- (i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804 and wagons of sub-heading 860692 of the First Schedule to the Excise Tariff Act;
- (ii) pollution control equipment;
- (iii) components, spares and accessories of the goods specified at (i) and (ii);
- (iv) moulds and dies, jigs and fixtures;
- (v) refractories and refractory materials;
- (vi) tubes and pipes and fittings thereof;
- (vii) storage tank, [and]
- (viii) motor vehicles other than those falling under tariff headings 8702, 8703, 8704, 8711 and their chassis [but including dumpers and tippers



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used -

- (1) in the factory of the manufacturer of the final products, or
 (1A) outside the factory of the manufacturer of the final products for generation of electricity or for pumping of water for captive use within the factory; or
 (2) for providing output service;
 (B) motor vehicle designed for transportation of goods including their chassis registered in the name of the service provider, when used for -
 (i) providing an output service of renting of such motor vehicle; or
 (ii) transportation of inputs and capital goods used for providing an output service; or
 (iii) providing an output service of courier agency;
 (C) motor vehicle designed to carry passengers including their chassis, registered in the name of the provider of service, when used for providing output service of -
 (i) transportation of passengers; or
 (ii) renting of such motor vehicle; or
 (iii) imparting motor driving skills;
 (D) components, spares and accessories of motor vehicles which are capital goods for the assessee;”

Definition of ‘input’ as defined under rule 2(k) of Cenvat Credit Rules, 2004 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 the 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.

Explanation. - For the purpose of this clause, “free warranty” means a warranty provided by the manufacturer, the value of which is included in the price of the final product and is not charged separately from the customer;”

9.1 The appellant submitted that ‘capital goods’ not only covers the goods specifically covering particular heading mentioned in the definition, but also spares, accessories and components falling under any heading. They also contended that items viz. SS sheets, M.S. Beam, Coils, Plates, Bars, Channels, were used in the paper manufacturing machines which are the capital goods installed in the factory of the appellant and the Paper



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manufacturing machines cannot function without these component parts. The appellant also produced a certificate of Chartered Engineer to this effect. I have gone through the certificate of Chartered Engineer and find that he had visited the plant and certified as under:

"We hereby certify that the stated plant and machineries are self fabricated and fabricated by use of various capital goods/items purchased as described vide Annexure. We certify that at time of site visit, the stated plant & machineries were observed in installed & working condition"

9.2 I also find that in the Annexure to the certificate, the Chartered Engineer has given the description of part/component and items used in manufacture of part/component. As per his report the items were used for fabricating Boiler, chimney, coal handling system, cooling tower pipes, dryer Framing Section, EOT crane, Pulp Mill, Pulp Machine, etc. Therefore, the use of each item in manufacture of capital goods used for manufacture of final products cannot be doubted.

10. I find that in a catena of judicial decisions it has been held that items utilised for fabrication of machinery used for manufacture of final product, as certified by Chartered Engineers, are covered by Rule 2(k) of Cenvat Credit Rules, 2004. In the case of *Metrochem Industries Ltd-2013 (292) E.L.T. 578 (Tri. - Ahmd.)*, Hon'ble Tribunal held as under:

*"4. The ld. Counsel appearing on behalf of the appellant submits that the impugned order categorically records that the MS Plates which were procured by appellant on which credit was availed, was utilized by the appellant for fabrication of goods like Ducts, HAF. Chamber to Cyclone Ducting, New Incinerator Chimney, 30 KL Vacuum Trap, Chloro Tank, Ducts for Chimney etc. It is his submission that these items are required for manufacturing final products, i.e. chemicals. He would submit that the appellant had produced certificate issued by Krishna Engineers, Government approved valuer in respect of use of HR, MS etc. and draws attention to the certificate Annexed at page 96.2, 117 of the Appeal Memo. He would submit that the issue in this case is now settled by judgment of the Hon'ble Supreme Court in the case of *Rajasthan Spinning & Weaving Mills Ltd. [2010 (255) E.L.T. 481 (S.C.)]* and judgment of the Hon'ble High Court of Rajasthan in the case of *Hindustan Zinc Ltd. [2007 (214) E.L.T. 510 (Raj.)]* and upheld by the Apex Court *[2007 (214) E.L.T. 115 (S.C.)]*, the decision of the Hon'ble High Court of Karnataka in the case of *SLR Steels Ltd. [2012 (280) E.L.T. 176 (Kar.)]* and decision of the Principal Bench of the Tribunal in the case of *L.H. Sugar Factories Ltd. [2010 (251) E.L.T. 135 (Tri.-Del.)]*.*

*3. The ld. Additional Commissioner (AR) on the other hand would submit that the appellant in this case has not been able to justify his claim that the items manufactured from steel plates were used in the factory of production. He relied upon the judgment of the Larger Bench of the Tribunal in the case of *Vandana Global [2010 (253) E.L.T. 440 (Tri.-LB)]*. He would submit that the lower authorities have recorded that these plates are used for repair and maintenance. As these plates are used for repair and maintenance, credit on duty paid is ineligible as per the judgment of the Hon'ble High Court of Andhra Pradesh in the case of *Sree Rayalaseema Hi-strength Hypo Ltd. [2012 (278) E.L.T. 167 (A.P.)]*.*



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4. I have considered the submissions made by both the sides at length. The appellant is aggrieved by the order of the First Appellate Authority for denial of Cenvat credit on MS Plates, HR Sheets etc. on the ground that these items fall under Chapter-72 and are not capital goods. I find that the certificate issued by the Chartered Engineers produced at page 94 & 117, clearly indicates that the MS plates, HR Sheets etc. are utilized for fabrication of various parts of ducts for Chimney at their HAG plant. The Chartered Engineer's certificate also indicates that the material is used for fabrication of new Chloro Tank etc.

5. As against such an evidence, I find that the appellate authority has sought to justify his order of rejection of credit only on the ground that the Jurisdictional Assistant Commissioner has filed a report that the assessee had no record to justify their claim. I do not agree to such findings recorded by the First Appellate Authority. In my view Rule 2(k) of the Cenvat Credit Rules, 2004 will come to the rescue of the appellant in this case. I also find that in the facts and circumstances of this case, the decisions cited by the Id. Counsel would be directly applicable and it is to be held that the appellant herein is eligible to avail cenvat credit of the duty paid on the items i.e. MS plates and HR sheets, which according to Chartered Engineer's certificate are mostly used for fabrication of machinery.

6. In view of the foregoing, in the facts and circumstances of this case, I find that the impugned order is unsustainable and accordingly the impugned order is set aside and the appeal is allowed."

11. In the present case also, I observe, the adjudicating authority has denied the credit taking shelter in the decision of *Vandana Global -2010 (253) E.L.T. 440 (Tri.-LB)*. However, the Tribunal in the above mentioned case has allowed Cenvat credit based on the certificate of Chartered Engineer. When the appellant produced a certificate of Chartered Engineer to the effect that the duty paid goods were used in fabrication of machinery, I am of the considered view that the substantial benefit of Cenvat credit cannot be denied to the appellant.

12.1 In the case of *India Cements Ltd-2014 (310) E.L.T. 636 (Mad.) and 2015 (321) E.L.T. 209 (Mad.)* Hon'ble Madras High Court held that structural steel items viz., M.S. Plates, Angles, Channels and HR Sheets, used for civil construction activity/erection of various machineries such as Electrostatic Precipitator for raw mill project, additional fly ash handling system, MMD crusher, etc. for Dry Process Cement Manufacturing were capital goods eligible for credit in terms of Rule 2(a)(A)(ii) of Cenvat Credit Rules, 2004.

12.2 In the case of *Mangalam Cements Ltd-2018 (360) E.L.T. 737 (Tri.-LB)* Larger Bench of Tribunal held as under:

"8. Applying the user test of 'capital goods' as enunciated by the Hon'ble Supreme Court in the case of *Rajasthan Spinning & Weaving Mills (supra)*, the Hon'ble Madras High Court in the case of *India Cements Ltd.*, reported in *2012 (285) E.L.T. 341 (Mad.)*, *2014 (305) E.L.T. 558 (Mad.)*, *2014 (310) E.L.T. 636 (Mad.)* and *2015 (321) E.L.T. 209 (Mad.)* has extended the Modvat benefit on Cement and steel items.



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considering the same as 'capital goods' under Rule 57Q of the erstwhile Central Excise Rules, 1944. Since, said rule is *pari materia* with the present Rule 2(a) of the CCR, 2004, the disputed goods, in the present case, should be considered as 'capital goods' for the purpose of the Cenvat benefit.

9. On perusal of definition of 'input' extracted above, it would reveal that all the goods (excepting light diesel oil/high speed diesel oil and motor spirit) are considered to fall under such definition, when 'used in or in relation to manufacture of final products', whether directly or indirectly, and whether contained in the final product or not. The only condition required to be fulfilled is that the goods must be used within the factory of production. Further, Explanation 2 appended to such definition clause provides that 'input' includes goods, which are used in the manufacture of capital goods for further use in the factory of the manufacturer. On a conjoined reading of the definition of input and Explanation 2 appended thereto, it makes the position clear that inputs are not only goods, which are used in the manufacture of final products, but also those which are 'used in or in relation to' the manufacture of the final product. The relationship between those goods and the final product could be either direct or indirect and may include or may not include their presence in the final products. Goods used in the manufacture of capital goods, which are installed for manufacture of the capital goods should also be considered for availment of Cenvat credit. In the case in hand, the cement and steel bars used to erect foundations for installing different machines in the power plant should also merit consideration as 'input' for the purpose of cenvat benefit. Analyzing and interpreting scope of the definitions of 'input' and 'capital goods', the Hon'ble Madras High Court in the case of *M/s. Thiru Arooran Sugars & Ors. (Civil Misc. Appeal Nos. 3814/2011 and 2695 and 2696/2012)* has held that steel and cement used for laying of foundation for erection of capital goods should be eligible for the cenvat benefit under the present set of rules. The relevant paragraph in the said order is extracted herein below :-

"44. In the facts of this case, we have to conclude that MS structural, which support the plant and machinery, which are, in turn, used in the manufacture of sugar and molasses are an integral part of such plant and machinery. The assessee has clearly demonstrated that structurals as well as foundations, which are erected by using steel and cement are integral part of the capital goods (i.e., plant and machinery), as they hold in position the plant and machinery, which manufactures the final product. Therefore, in our opinion, whether the "user test" is applied, or the test that they are the integral part of the capital goods is applied, the assessee, in these cases, should get the benefit of Cenvat credit, as they fall within the scope and ambit of both Rules 2(a)(A) and 2(k) of the 2004 Rules."

10. In view of above analysis, we are of the considered opinion that the eligibility to duty credit of the disputed goods cannot be denied. Such eligibility either as 'capital goods' (accessories) or as 'inputs' has been examined and upheld by various decisions of the Hon'ble Apex Court and the Hon'ble High Courts as above. Accordingly, we answer the reference in favour of the appellant. The appeal file is returned to the referral Bench for a decision on merit."

12.3 In the case of **M/s. Parabolic Drugs Ltd., -2016(342) E.L.T. 140** Hon'ble Tribunal held as under:

"8. In the instant case the appellant have submitted the details of description of the impugned goods and their use in the plant and also submitted complete photographs, showing their actual use in Technical Structures like Cefixime, Sterile, New Solvent Recovery, new pipe rack, Utility block for sterile/cefixime Axetil Amorphous. There is no dispute regarding their actual use in the factory premises of the appellant in Technical Structures of Machines/Machinery. Therefore, following the ratio of the above said case laws and also that of *M/s. Kishan Co-operative Sugar Factory [2012 (212) ELT 541]* referred to by the adjudicating authority in the



(Signature)

impugned order, it is found that Cenvat credit on the impugned goods, i.e. MS Pipes, MS channels, MS Angles, girders, bars, structures, MS plates/ shapes in admissible to the appellant as capital goods. Since there is no dispute regarding their actual use in the factory premises of the appellant in technical structures of machines/machinery by the appellant, there is no justification in denying the credit of the same only on the ground that the impugned goods actually present in each of the individual machine/machinery was not quantified by the appellant. It is further noticed that the appellants had submitted detailed charts under their letter dated 20.11.2007 to the adjudicating authority showing the details regarding the use of impugned capital goods in the machines/machinery bearing an endorsement that "all used in" cefixime, sterile, new solvent, recovery, new pipe rack, utility block for sterile/cefixime, axetil, amorphous. "This endorsement shows that all the impugned capital goods were used in the stated machines/machinery. The demand of Cenvat credit could not be confirmed simply for the reason that the appellants did not specify the quantity of the impugned goods actually present in each of the said machines/machinery. The only requirement for the goods to be capital goods is that those are used in the machines/machinery. This test is satisfied. Therefore, the appellants are entitled to the Cenvat credit of the impugned capital goods."

13. In view of the above settled position of law, I hold that the appellant has correctly availed Cenvat credit and accordingly I set aside the impugned order and allow the appeal with consequential relief, if any.

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

14. The appeal filed by the Appellant is disposed off as above

सत्यापित / Attested

Joseph

Superintendent
Central GST (Appeals)
Rajkot

By R.P.A.D.

Shiv Pratap Singh
20/11/2022

(शिव प्रताप सिंह/ SHIV PRATAP SINGH)
आयुक्त (अपील)/Commissioner (Appeals)

सेवा में, मे० अस्ट्रोन पेपर & बोर्ड मिल लिमिटेड सर्वे No1 52/1-2, 53/1-2, विल्लेज-सुखपुर, ता. हलवाड़ जिल्ला - सुरेन्द्रनगर	To M/s Astron Paper & Board Mill Ltd., Survey No.52/1-2, 53/1-2, Village - Sukhpur, Ta.- Halvad, Dist.- Surendranagar, Gujarat
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प्रतिलिपि:-

- 1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) प्रधान आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट को आवश्यक कार्यवाही हेतु।
- 3) ऊप आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, रमंडल मोरबी-1 को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फाइल।

