

### :: आयुक्त (अपील्स) का कार्यालय, बस्तु एवं सेवा करऔर केन्द्रीय उत्पाद शुल्क:: O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE;

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

Tele Fax No. 0281 - 2477952/2441142Email: commrappl3-cexamd@nic.in



राजकोट / Rajkot – 360 001

रजिस्टर्डडाकए.डी. द्वारा :-

DIN-20230164SX000000AE29

अपील / फाइलसंस्था/ Appeal /File No.

मुलवादेशसं / ÕΙΟ No.

दिनांक/ Date

V2/44/RAJ/2022

07/D/AC/2021-22

10-01-2022

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

## RAJ-EXCUS-000-APP-404-2022

आदेश का दिनांक /

27.12.2022

जारी करने की तारीख /

03.01.2023

Date of Order:

Date of issue:

**श्री शिव प्रताप सिंह,** आयुक्त (अपील्स), राजकोट द्वारा पारित /

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

अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/वस्त् एवंसेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरिलखित जारी मूल आदेश से मुजित: / Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST, Rajkot / Jamnagar / Gandhidham :

अपीलकर्ताक्षप्रतिवादी का नाम एवं पता /Name & Address of the Appellant & Respondent :-

M/s. Shreejikrupa Project Limited, 206-Krishana Complex, Rajnagar Chaowk, Nana Mava Main Road, Rajkot.

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

सीमा शुल्क , केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यावाधिकरण के प्रति अपील,केन्द्रीय उत्पाद शुल्क अधिनियम , 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखि+त जगह की जा सकती है।/ (A)

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:-

वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर॰ के॰ पुरेम, नई दिल्ली, को की जानी चाहिए।/ (i) .

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

उपरोक्त परिच्छेद 1(a) में बताए गए अपीनों के अलावा शेष सभी अपीलें सीमा शुल्क,केंद्रीय उत्पाद शुल्क एवं मेवाकर अपीक्षीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावी अहमदाबाद- ३८००१६को की जानी चाहिए ।/ (ii)

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2™ Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के सुमुख अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुरूक (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्न EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से क्षेप एक प्रति के माय, जहां उत्पाद शुरूक की मान, अधाज की मान और लगाया प्राप्ता अपीला, रुपए 5 लाख या उससे कम 5 लाख रुपए या 50 लाख रुपए तक अपवा 50 लाख रुपए से अधिक हैं तो क्षमण: 1,000/- रुपये के 5,000/- रुपये का निर्धारित जमा शुरूक की प्रति संलग्न करें। निर्धारित शुरूक का मुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वीजनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक द्वारा किया जाना चाहिए। संबंधित इपर का मुगतान, बैंक की उस शाखा में द्वाना चाहिए जहां संबंधित जपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुरूक 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 the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-

अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र 8.T.-5में चार प्रतियों में की जा सकेगी एवं उसके साथ प्राप्त के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में मंत्रा करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की माँग और नगाया गया जुर्माना, कपए 5 लाख गा उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अधवा 50 लाख रुपए से अधिक है तो कमण; 1,000/- रुपये, 5,000/- रुपये अधवा 10,000/- रुपये का निर्धारित जमा शुंल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के महायक रिजन्दिर के नाम से किसी भी सार्वजितक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक द्वारट होगा जाति है। स्थिगन आदेश (स्टे ऑईर) के लिए आवेदन-पत्र के माथ 500/- रुपए का निर्धारित गुल्क जमा करना होगा 1/ (B)

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 is interest demanded by penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax is interest demanded by penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax is interest demanded by penalty levied is more than fifty Lakhs, Rs.10,000/- where the amount of service tax is interest demanded by penalty levied is more than fifty Lakhs, Interest 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/-

STOTE P

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- बित्त अधिनियम, 1994की 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 सहत निधारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीव उत्पाद शुक्त द्वारा पारित आदेश की प्रतियों संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुक्त/ 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. (i)
- (ii)

Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

तीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अविनियम 1944 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क एवं सेवाकर के अंतर्गत (10%), जब मांग एवं अर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का अपील करते समय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है

(i) धारा 11 डी के अंतर्गत रकम

(ii) सेनवेट जमा कि ती गई पलत राशि

(iii) सेनवेट जमा कि ती गई पलत राशि

(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देव रकम

- बशर्त यह कि इस धारा के प्रावधान विवीद्य (सं॰ 2) अधिलियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समझ विचाराधीन स्थान अर्जी 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:

(ii) amount determined under Section 11 D;
(iii) 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.

मारत सरकार कोपुनरीक्षण अवेदन :
Revision application to Government of India:
इस आदंश की पुनरीक्षण आवेदन :
स्रिप्त अवेदन के अंदर्गतअवर सचिव,
भारत सरकार, पुनरीक्षण आवेदन ईकाई,वित्त मंत्रालय, राजस्य 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 Delini-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: (C)

यदि माल के किसी नुकसान के मामले में, अहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पार्यमन के दौरान या किसी अन्य कारखाने या किसी किसी एक भंडार गृह से दूसरे भंडार गृह पार्यमन के दौरान, या किसी मंडार गृह में या मंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मानले 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 (i)

भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के बिनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मायले 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 on excisable material used in the manufacture of the goods which are exported to any country or territory outside India. (ii)

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. (iii)

सुनिश्चित उत्पाद के उत्पादन शुल्क के भगतान के लिए जो ड्यूटी केडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जी अयुक्त (अपीन) के द्वारा नित्त अधिनियम (न॰ 2),1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए हैं।/ Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998. (iv)

उपरोक्त आवेदन की वो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमायली,2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त अवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतिया संख्य की जानी चाहिए। साथ हो केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संख्य की जानी कालिए। 4 (v) 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 (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 माध निम्निलिखित निर्धारित शुस्क की अदायगी की जानी चाहिए। जहाँ मंतग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 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. (vi)

यदि इस अदेश में कई मूल आहेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भगतान, उपर्यक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से क्या के लिए प्यास्थिति अपीलीय नयाधिकरण को एक अपील या केदीय सरकार को एक आवेदन किया जाता है। / In case, it the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwith standing 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. (D)

यथासंशोधित न्यायालय सुल्क अधिनियम, 1975, के अनुसूची-! के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। / One copy of application or O.1.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. (E)

सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमाबली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की और भी ध्यान अकवित 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. (F)

उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, बिस्तृत और नबीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को वेख 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 (G)



# अपील आदेश /ORDER-IN-APPEAL

M/s Shreejikrupa Project Limited, 206-Krishna Complex, Rajnagar Chowk, Nana Mava Main Road, Rajkot-360 001 (hereinafter referred to as appellant) has filed appeal No.V2/44/RAJ/2022 'against Order-in-Original No. 07/D/AC/2021-22 dated 10.01.2022 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Central GST Division, Rajkot-I (hereinafter referred to as 'adjudicating authority'):-

- 2. The facts of the case in brief are that during the course of audit, it was noticed that the appellant had availed Cenvat credit of Rs.13,76,129/- on scaffolding which is not covered under definition of 'capital goods' under rule 2(a) of Cenvat Credit Rules, 2004. It was also noticed that the appellant had wrongly availed Cenvat credit of Rs.34,16,683/- by excess carry forward of Cenvat credit. Therefore, a show cause notice dated 13.07.2020 was issued demanding Cenvat credit of Rs.47,92,812/-. The adjudicating authority, by the impugned order, disallowed Cenvat credit of Rs.47,92,812/- and imposed penalty of Rs.47,92,812/- under rule 15(3) of Cenvat Credit Rules, 2004 read with Section 78 of Finance Act, 1994.
- .3. The appellant filed appeal against the impugned order in which they, interalia, submitted that the demand of service tax is time-barred. They submitted that show cause notice was issued in pursuance to the audit of the records of the appellant. They contended that all documents were submitted for audit on 27.02.2019 and based on these documents only, various show cause notices including the present show cause notice were issued. The appellant relied upon the cases Fabricators-2020-TIOL-134-CESTAT-MUM and Manufacturing Industries Pvt. Ltd-2019-TIOL-1385-CESTAT-KOL. The appellant submitted that it is a settled law that when a show cause notice has been issued invoking extended period for demand, second/subsequent show cause notice cannot be issued invoking extended period. The appellant also drawn attention to Circular No.1053/2/2017-CX dated 10.03.2017 and submitted that instructions issued by the department are binding to the departmental officers. They relied upon a catena of decisions in this regard.
- 3.1 The appellant submitted that there is no excess availment of Cenvat credit of Rs.34,16,683/-. They contended that the amount of Rs.53,70,153/- shown as opening balance of Cenvat Credit in the centralized ST-3 return for subsequent period i.e. April 2016 to September 2016 filed at Rajkot jurisdictional office was a clerical error. The appellant submitted that though Rs.53,70,153/- was shown as the opening balance, in fact an amount of Rs.19,53,740/- was taken and all attracture payments of service tax were done taking into account the eligible any attracted to Rs.19,53,740/- only. They contended this fact tallied with the

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audited balance sheet also.

- 3.2 The appellant submitted that no penalty is imposable under rule 15 of Cenvat Credit Rules, 2004 and Section 78 of the Finance Act, 1994. The appellant contended that adjudicating authority has not specifically mentioned the sub-rules of rule 15 of Cenvat Credit Rules, 2004 while imposing penalty. They relied upon the case laws of A.T.M. International LTd-2007 (208) ELT.288 (Tri), Shree Precoated Steel-2006 (203) ELT.506 (Tri), Abdul Samad Bara-1995 (79) ELT.510 (Tri) and Oldfjell Tankers-1999 (112) ELT.439 (Tri). Appellant submitted that to impose penalty under Section 78 of the Act, existence of suppression etc is basically required to be proved which is completely absent in the present case.
- 4. Shri R.C. Prasad, consultant appeared for personal hearing on 30.11.2022 and handed over written submissions in case of four appeals separately. He reiterated the same and the submissions made in the appeal. He submitted that the show cause notices were issued in four cases on the basis of common audit. It is well settled that once all facts became known to the department, suppression cannot be alleged for a subsequent show cause notice and extended period cannot be invoked in these cases. He cited various judgments in this regard and the departmental instructions on this point. Apart from this on merits also the balance of convenience is in their favour as may be seen from the submissions made by them in the grounds of appeal and the written submissions handed over at the time of personal hearing. Therefore, he requested to set aside the impugned orders and to allow the appeals. In the written submissions, the appellant has reiterated the submissions already made in the grounds of appeal.
- 5. I have carefully gone through the facts of the case, the impugned order, the appeal memoranda and written as well as oral submissions made by the Appellants. The issues to be decided in the appeal are (i) whether the appellant is entitled to avail Cenvat credit on 'scaffoldings' as capital goods, (ii) whether the appellant has correctly carried forward the Cenvat credit balance in their account and (iii) whether the demand is time barred.
- The contention of the appellant regarding the limitation was that show 6. cause notice was issued in pursuance to the audit of the records of the appellant and various show cause notices, including the present show cause notice, were issued. The appellant submitted that it is a settled law that when a show cause demand, period invoking extended issued been notice has second/subsequent show cause notice cannot be issued invoking extended period. In this regard it is observed that total six show cause notices were issued on the basis of a single audit report No.Audit/Circle-I/Group-6A/581/2019-20 dated 28.11.2019 covering the period October 2013 to June 2017. The show

cause notices were issued separately covering different points of the audit report and were issued on different dates. Thus it is evident that, the show cause notices, though separately issued, were covering the period of audit October 2013 to June 2017 and hence cannot be said to have been issued for subsequent period. The case laws relied upon by the appellant are related to issue of show cause notice on the same issue for subsequent periods. Therefore, the case law of Nizam Sugar Factory-2006 (197) ELT.465 (SC) and other case laws cited by the appellant is not applicable in the present case. In view of the above, I do not find any infirmity in the findings of the adjudicating authority at paragraph 12 of the impugned order.

7. Regarding the issue of availing Cenvat credit on 'scaffolding', I find that 'scaffolding' falling under heading 73084000 of Central Excise Tariff Act, 1985 is not covered in the definition of 'capital goods' under rule 2(a) of the Cenvat Credit Rules, 2004 which 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

used -

(1) in the factory of the manufacturer of the final products,; or

(IA) 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;"

- 7.1 The adjudicating authority has also observed that 'tubes and pipes' are classified under heading 7303 to 7306 of Central Excise Tariff Act, 1985. I find that the adjudicating authority has addressed the issue sufficiently at paragraph 14.2 of the impugned order and I do not find any infirmity in the findings of the adjudicating authority.
- 8. Coming to the other issue of wrong availment of Cenvat credit of Rs.34,16,683/- dues to excess carry forward of Cenvat credit balance, I find that forwarding amount of Rs.53,70,153/- instead of Rs.19,53,740/- is not by the appellant himself. Though the appellant claimed that in their

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books the amount taken by them was Rs.19,53,740/- and the said fact tallies with the audited balance sheet, I find that the same argument was made before the adjudicating authority and he has not accepted the same as no documentary evidence was produced before him in support of the said contention. The appellant, I observe, has not produced any documentary evidence in support of their said contention either with the appeal memorandum or at the time of personal hearing. Therefore, the contention raised by the appellant in this regard cannot be accepted and the appeal is liable for rejection.

- 9. As regarding the imposition of penalty is concerned, I find that the appellant has availed Cenvat credit on goods which are not covered under the definition of capital goods' and carried forward balance of Cenvat credit in excess and thus contravened the provisions of Cenvat Credit Rules, 2004. The contravention on their part was unearthed during audit conducted by the department and, thus this is a clear case of suppression of facts with intent to evade payment of tax. Considering the above facts of the case, I hold that the adjudicating authority had correctly invoked extended period of limitation. Since invocation of extended period of limitation on the grounds of suppression of facts is upheld, penalty under Section 78 of the Finance Act, 1994 read with rule 15(3) of Cenvat Credit Rules, 2004 is mandatory, as has been held by the Hon'ble Supreme Court in the case of Rajasthan Spinning & Weaving Mills reported as 2009 (238) E.L.T. 3 (S.C.). The ratio of the said judgment applies to the facts of the present case. I, therefore, uphold penalty imposed under Section 78 of the Finance Act, 1994 read with rule 15(3) of Cenvat Credit Rules, 2004.
- 10. In view of above, I uphold the impugned order and reject the appeal.
- ११. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है ।

11. The appeal filed by the Appellant is disposed off as above.
सत्यापित / Attested

Superintendent Central GST (Appeals)

Raikot

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

### By R.P.A.D.

सेवा में मेस्सेर्स श्रीजीकृपा प्रोजेक्ट लिमिटेड 206, कृष्ण कॉम्प्लेक्स, राजनगर चौक, नाना मावा मईन रोड राजकोट-360 001 To
M/s Shreejikrupa Project Limited, 206Krishna Complex,
Rajnagar Chowk,
Nana Mava Main Road,
Rajkot-360 001

#### प्रतिलिपि:-

मुख्य आयुक्त,वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुक्क, 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) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क मण्डल राजकोट-। को आवश्यक कार्यवाही हेतु।

मार्ड फ़ाइल।

