
	केन्द्रीय कर आयुक्त (अपील)		
	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,		
सत्यमेव जयते	वस्तु एवं सेवा कर भवन	GST Building, 7 <sup>th</sup> Floor, Near Polytechnic, Ambavadi, Ahmedabad-380015	
	सातवीं मंजिल, पॉलिटेक्निक के पास		
	आम्बावाडी, अहमदाबाद-380015		
 079-26305065			टेलीफैक्स : 079-26305136

6558796555

क. फाइल संख्या : File No : V2/89/GNR/2018-19 & V2/17/RA/GNR/2018-19

ख. अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-96-97-18-19**

दिनांक Date : **13-09-2018** जारी करने की तारीख Date of Issue: *21/10/2018*

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker** Commissioner (Appeals) Ahmedabad

*C. J. J.*

ग. अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश :  
11/AC/DEM/CGST/17-18 दिनांक : 28-03-2018 से सृजित

Arising out of Order-in-Original: 11/AC/DEM/CGST/17-18, Date: 28-03-2018 Issued by:  
Assistant Commissioner, CGST, Div: Kadi, Gandhinagar Commissionerate,  
Ahmedabad.

घ. अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the **Appellant** & Respondent

**M/s. Ratnamani Metals & Tubes Ltd**

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

**Revision application to Government of India :**

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur 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.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) 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.



- (ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया, माल हो।
- (c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) 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 and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी 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.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35- एबी/35-इ के अंतर्गत:-

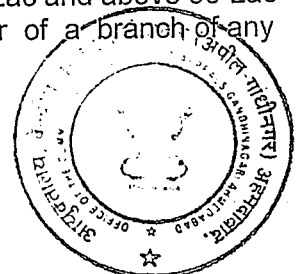
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

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.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / 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 Asstt. Registrar of a branch of any



nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number 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 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 63 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "माँग किए गए शुल्क" में निम्न शामिल हैं

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होंगे।

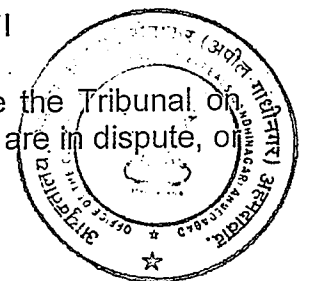
For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten 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.

(6)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

(6)(i) In view of above, 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."



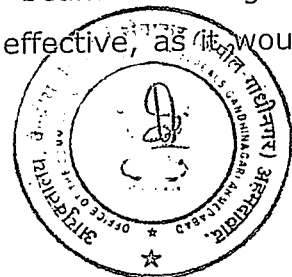
ORDER-IN-APPEAL

Following two appeals have been filed against Order-in-Original No.11/AC/DEM/CGST/17-18 dated 28.03.2018 [hereinafter referred to as "the appellant"] passed by the Assistant Commissioner, Central CGST, Kadi Division [hereinafter referred to as the ["adjudicating authority"]].

S No	Name of applicant	Duty involved	Penalty involved
1	M/s Ratnamani Metals and Tubes Ltd, 767, Indrad Unit, Tal-Kadi, Dis. Mehsana [hereinafter referred to as-"appellant-1"]	Rs.16,50,640/- with Interest	Rs.64,890/-
2	Assistant Commissioner of Central GST, Kadi Division, Gandhinagar [hereinafter referred to as appellant-2"]	-	Rs.16,50,640/-

2. As regards appeal filed by the appellant-1 (at Sr.No.1 above), the facts of the case are that they have availed CENVAT credit to the tune of Rs. 17,15,530/- on various materials viz. M.S Beam & Channel, M.S.Bright Bars and M.S.Perforated Trays falling under chapter heading 73/72 as capitals goods/component of capital goods for the period of 2012-13/2013-14. As it appeared, during the course of audit, that the appellant-1 has wrongly availed the CENVAT credit as per Rule 2(l) of CENVAT credit Rules, 2004, a show cause notice dated 12.04.2017 was issued to them for denying the said CENVAT credit availed and for recovery with interest. The show cause notice also proposes imposition of penalty Section 11AC of the Central Excise Act, 1944 read with provisions of Rule 15(2) of CENVAT credit Rules, 2004. Vide the impugned order, the adjudicating authority has denied the CENVAT credit amounting to Rs16,50,640/-on . M.S Beam & Channel, M.S.Bright Bars and allowed the remaining credit amount in respect of M.S.Perforated Trays. He also imposed penalty of Rs.64,890/-under the provisions of Section 11 AC (a) of CEA read with Rule 15(2) of CCR.

3. Being aggrieved with the said decision, the appellant-1 has filed the appeal mentioned at Sr.No.1 above on the grounds that the demand made vide impugned order is premised on an erroneous and a totally misconceived conjecture that the M S Bars, M S Bright Bars and Channels have been used for the purpose of the supporting the EOT crane and that they are essential for the functioning of the same, in the form of an accessory; that they submitted details with photographs of EOT crane located at its factory and explained how the items qualify as an accessory to EOT crane and resultantly qualifying "capital goods". In the present case, the said materials are accessories to the EOT crane and they assist in the effective and meaningful function of the EOT; that if they beams and bright bars were not fixed, the EOT crane would be handicap or less effective, as it would be



able to load and unload goods in a fixed area of the factory, instead moving in the entire length of their factory. The issue has already been partially covered and decided in favour of them in their own case vide Commissioner (Appeals) OIA No.53/2010 dated 23.02.2010. They further submitted that extended period is wrongly invoked and penalty imposed is not sustainable. The appellant-1 has cited various case laws.

4. The appellant-2 has filed the appeal mentioned at Sr.No.2 of above table, being aggrieved with the impugned order with regard to imposition of penalty under Section 11 AC (a) of CEA, in view of Review Order No.6/2008-19 dated 03.07.2018 of Commissioner of Central GST, Gandhinagar, on the grounds that under Rule 15(2) of CCR, penalty has to be imposed in terms of provisions of clause (c), (d) and (e) of sub-section (1) of Section 11 AC of CEA. However, the adjudicating authority has committed gross error invoking clause (a) of Section 11 AC (1 for imposing penalty; that once the findings of the adjudicating authority falls within the parameters of Rule 15(2) of CCR and Section 11 AC (c) of CEA, the adjudicating authority has no discretion to reduce the penalty and it is mandatory to impose equivalent to the duty confirmed.

5. No cross objection was filed by the appellant-1 in this regard.

5. Personal's hearing in both the appeals were held on 07.09.2018. Shri Ravichandran, authorized representative of appellant-1 appeared and reiterated the grounds of appeal.

6. I have carefully gone through the facts of the case and submissions made by the appellant-1 and appellant-2 in the appeal memorandum and submissions made by the appellant-1 during the course of personal hearing. The limited point to be decided in respect of [i] appeal filed by the appellant-1 is as to whether the CENVAT credit amounting to Rs. 16,50,640/- in respect of goods viz. M.S Beam & Channel, M.S.Bright Bars denied by the adjudicating authority is correct or otherwise; and [ii] in respect of appeal filed by the appellant-2, whether the penalty imposed by the adjudicating is correct or otherwise.

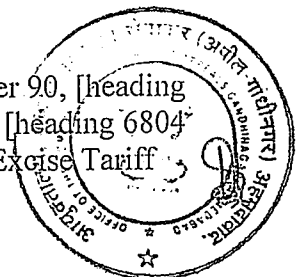
7. First, I take the appeal filed by the appellant-1. In the instant case, the adjudicating authority has denied the credit on the grounds that the goods/materials utilized as capital goods for the function EOT crane is not falling under the definition of "capital goods".

8. As per provisions of Rule 2 of CCR, Capital goods means:-

(a) "capital goods" means :-

(A) the following goods, namely :-

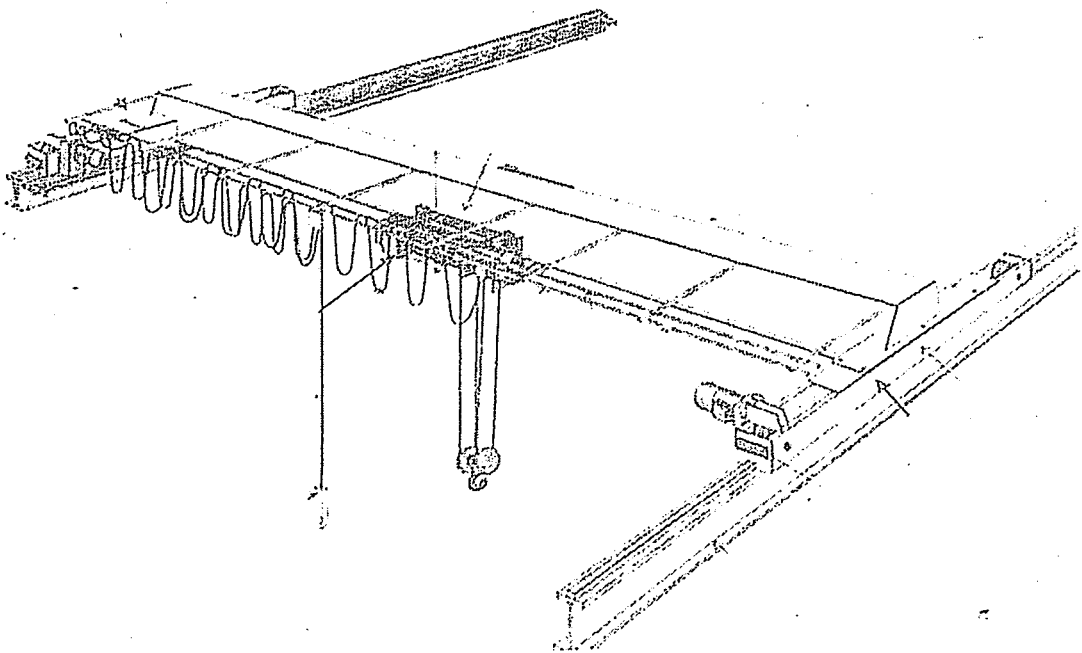
(i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, [heading 6805, grinding wheels and the like, and parts thereof falling under [heading 6804 and wagons of sub-heading 860692]] of the First Schedule to the Excise Tariff Act;



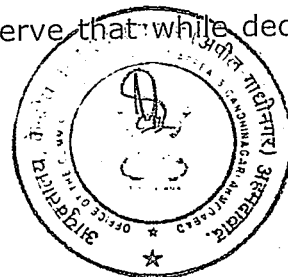
- (ii) pollution control equipment;
- (iii) components, spares and accessories of the goods specified at (i) and (ii);
- (iv) moulds and dies, jigs and fixtures;
- (v) refractories and refractory materials;
- (vi) tubes and pipes and fittings thereof; [\* \* \* ]
- (vii) storage tank, [and]
- [(viii) motor vehicles other than those falling under tariff headings 8702, 8703, 8704, 8711 and their chassis [but including dumpers and tippers,] used -
- (1) .....

As per above definition, CENVAT credit is eligible to the goods falling under chapter 82, 84, 85 and 90 and components, spares and accessories of the said goods.

9. The appellant-1 has contended that the said goods viz., M S Bars, M S Bright Bars and Channels have been used for the purpose of the supporting the EOT crane and that they are essential for the functioning of the same, in the form of an accessory; that the said materials are accessories to the EOT crane and they assist in the effective and meaningful function of the EOT. They further contended that if the beam and bright bars were not fixed, the EOT crane would be handicap or less effective, as it would be able to load and unload goods in a fixed area of the factory, instead moving in the entire length of their factory. For the clarity they submitted photographs of EOT crane located at their factory which is as under:



10. I find that the Hon'ble Tribunal, Ahmedabad in the appellant's case has already been decided a similar nature issue, vide Order No.A/188/WB/Ahmedabad/07 dated 15.01.2007. I observe that while deciding the



case filed against Appellate Authority order No.Commr(A)/588/Ahd-II/2002 dated 02.08.2002, the Hon'ble Tribunal observe that :-

*"Since the authorities below have not applied 'user test' for testing whether the goods in question which admittedly do not fall in any of the categories enumerated at Sr.No.1 to 4 of the Table below Rule 57-Q(1) were used for the functioning of the machinery so as to merit their inclusion as capital goods on the ground that they were components, spares or accessories. The assumption by the authorities below that the structural cannot qualify for being capital goods and they were necessarily to be treated as building materials, cannot be sustained in view of the decision of the Tribunal in Ispat Industries supra. Therefore, the matter required to be reconsidered by the appellate Commissioner in respect of item other than tanks in which credit has been denied to the appellants."*

11. I further find that in view of above referred Hon'ble Tribunal's order, the Appellate Authority has decided vide his order No.53/2010 (Ahd-III)KCG/Commr(A) dated 12.02.2010 in favour of the appellant-1, by allowing CENVAT credit on the said goods viz M.S.Bright Bars, M.S.Plan Plates etc as capital goods. The Commissioner (Appeals) held that:

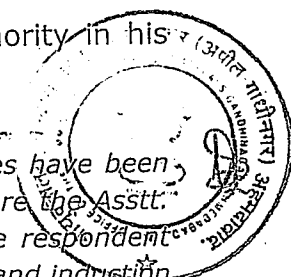
*"9.1. As per clarification given by the appellants, the items mentioned at Sr.No.5,12, to 20 are used for EOT Crane track and for crane track mounting. These items are M.S.Bright Bars, M.S.Plan plates and JSTI JOISTS. Since EOT crane is covered under the definition of capital goods, these items can be treated as component or accessory of EOT crane as EOT crane is operating by mounting on tracks. However, the actual usage of these items required to be verified. Therefore, I hold that M.S.Bright Bars, M.S.Plane Plates and JSTI JOISTS mentioned at Sr.No.5,12 to 20 of the Annexure to the show cause notice and used for operation of EOT crane are capital goods and are eligible for Modvat Credit subject to verification by the jurisdictional Assistant Commissioner....."*

12. I further, I find on record that the jurisdictional Assistant Commissioner has sanctioned refund claim of Rs.3,35,770/- towards CENVAT credit paid on capital goods in connection with above cited OIA dated 12.02.2010 vide OIO Ni,64/Refund/2013-excise dated 19.08.2013. In the said OIO, it has been stated as per OIA, the due verification was got done through the jurisdictional range office and found the claim admissible

12. In the instant case also, the appellant-1 has given full details of usage of the items viz. M.S Beam & Channel, M.S.Bright Bars along with its photographs supra. From the clarification given by the appellant, it is clear that without such items the EOT crane cannot move or use. Therefore, I find merit consideration in the argument of the appellant and these items can be treated as component or accessory of EOT crane which is capital goods used in their factory.

13. I also rely the decision of Hon'ble Tribunal, Delhi in the case of CCE, Raipur V/s Ashok Ispat 2009 (244) ELT 482, as relied by the Appellate Authority in his order supra.

*"I find that though the SCN alleged that the beams, columns and plates have been used for building of civil structure, at the time of personal hearing before the Asstt. Commissioner and the Commissioner (Appeals), it was pleaded by the respondent that these items have been used as part of the crane operating system and industrial*



*furnace and this plea was accepted by the Asstt. Commissioner and subsequently by the Commissioner (Appeals). Even in the grounds of appeal in the Revenue's appeal, this has not been disputed. The crane operating system and induction furnace falling under Chapter 84 are covered by the definition of capital goods and the items, in question, being parts and components of these capital goods are covered by the definition of capital goods. I, therefore, hold that the same are eligible for Cenvat credit. In view of this, there is no infirmity in the impugned order. The Revenue's appeal is dismissed."*

Further, I rely on Hon'ble Tribunal, Mumbai in the case of Crompton Greaves Ltd [2015 (329) E.L.T. 600 ], wherein it has been held that:

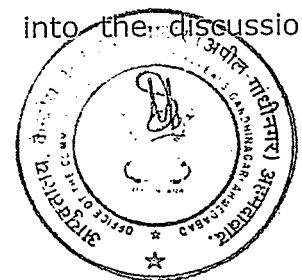
*7.2 On the issue of capital goods, both the lower authorities have not cared to examine the nature of the goods and analyse whether Cenvat credit can be allowed. We note that these goods are HR Plates, Hand Rails, fabrication racks, platform, etc., which are found to be used in erection of machinery used in factories. The Cenvat credit is allowable in such cases as held by the Tribunal in the case of Andhra Pradesh Paper Mills Ltd. v. CCE, Visakhapatnam - 2009 (240) E.L.T. 555 (Tri. - Bang.), which in turn relied on various judgments including that of Hon'ble High Court of Rajasthan in the case of Aditya Cement v. UOI - 2008 (221) E.L.T. 362 (Raj.). This matter needs to be looked into again by the adjudicating authority after examining the use of the goods".*

14. In view of above discussion, I allow the appeal filed by the apapellant-1 and set aside the impugned order.

15. Now I take the appeal filed by the appellant-2 mentioned at Sr.No.2 of the above table in para 1.

16. I observe that, the appellant-2 has filed the instant appeal, being aggrieved with the impugned order with regard to imposition of penalty under Section 11 AC (a) of CEA, in view of Review Order No.6/2008-19 dated 03.07.2018 of Commissioner of Central GST, Gandhinagar, on the grounds that under Rule 15(2) of CCR, penalty has to be imposed in terms of provisions of clause (c), (d) and (e) of sub-section (1) of Section 11 AC of CEA. In the implaugned order, the adjudicating authority has imposed penalty of Rs. 64,890/-under the provisions of Section 11 AC (a) of CEA read with Rule 15(2) of CCR. The appellant has a view that the adjudicating authority has committed gross error invoking clause (a) of Section 11 AC (1) for imposing penalty; that once the findings of the adjudicating authority falls within the parameters of Rule 15(2) of CCR and Section 11 AC (c) of CEA, the adjudicating authority has no discretion to reduce the penalty and it is mandatory to impose equivalent to the duty confirmed.

17. Vide discussion at para 7 to 14 above, I set aside the impugned order totally by allowing the appeal filed by the appellant-1. In other words, no denial of CENVAT credit and recovery with interest, imposition of penalty exist. In the circumstances, there is no merit in the appeal filed by the appellant-2 with regards to imposition of penalty equal to CENVAT credit denied. Therefore, looking into the discussion above, I reject the appeal filed by the appellant-2.





18. Both the appeals mentioned at Sr.No.1 and 2 of above table disposed of in above terms.

उमाशंकर

(उमा शंकर)  
आयुक्त  
केन्द्रीय कर (अपील्स)

Date: / 09 /2018

Attested

*Mohan V. V.*  
(Mohan V. V.)

Superintendent (Appeal)  
Central GST, Ahmedabad  
BY R.P.A.D



To,  
M/s Ratnamani Metals and Tubes Ltd,  
767, Indrad Unit, Tal-Kadi, Dis. Mehsana

The Assistant Commissioner,  
Central GST, Kadi Division,  
Gandhinagar.

Copy to:-

1. The Chief Commissioner, Central GST Zone, Ahmedabad.
2. The Commissioner, Central GST, Gandhinagar
3. The Addl./Joint Commissioner, (Systems),CGST, Gandhinagar.
4. Guard file.
5. P.A file.

