
 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील)	
O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,		
केंद्रीय उत्पाद शुल्क भवन, सातवीं मंजिल, पोलिटेकनिक के पास, आम्बावाडी, अहमदाबाद-380015		
7 th Floor, Central Excise Building, Near Polytechnic, Ambavadi, Ahmedabad-380015		
☎ 079-26305065		टेलिफैक्स : 079 - 26305136

रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.) : V2(0)11/North/Appeals/ 2017-18

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-288-17-18

दिनांक (Date): 28/01/2018 जारी करने की तारीख (Date of issue): 5/3/2018

श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित

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

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-Custom house), अहमदाबाद- II, आयुक्तालय
द्वारा जारी

मूल आदेश सं _____ दिनांक _____ से सृजित

Arising out of Order-In-Original No. IV/16-30/MP/16-17 Dated: 18/05/2017

issued by: Deputy Commissioner Central Excise (Div-Custom house), Ahmedabad-II

घ अपीलकर्ता/प्रतिवादी का नाम एवम पता (Name & Address of the Appellant/Respondent)

M/s Inox Wind Limited

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 an 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) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001 को की जानी चाहिए।

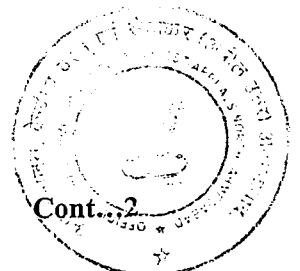
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jævan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid:

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

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 मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

G. file



- (c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

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-बी/35-इ के अंतर्गत:-

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

- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

- (ख) 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 मेटल हॉस्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

- (b) 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 और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और 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 और 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 जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।

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 पढ़ी 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 अनुसूचि-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 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 उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

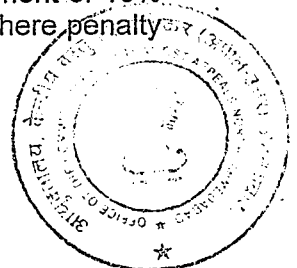
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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.

इस सन्दर्भ में 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।

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."



M/s Inox Wind Limited, Plot No. 128, Village: Rohilla, Ahmedabad-Rajkot Highway (NH-8A), Taluka: Bavla, Ahmedabad-382 230 (hereinafter referred to as 'the appellant') is a subsidiary of INOX Group of companies engaged in the manufacture of **Wind Operated Electricity Generators (WOEGs)** that includes Tower, Nacelle, Rotor, Wind Turbine Controller, Nacelle Controller and Control Cables meant for generation of electricity. The appellant was procuring some parts required for manufacture of WOEG by availing exemption from payment of Excise duty as per Sr.No.332 read with **Sr.No.332A of Notification No.12/2012-CE dated 17/3/2012** (as amended by Notification No.12/2014-CE dated 11/07/2014).

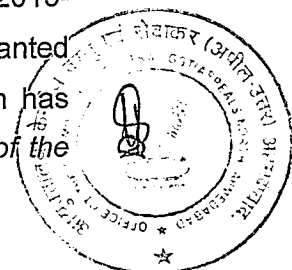
2. The relevant portion of Notification No.12/2012-CE dated 17/3/2012 as amended by Notification No.12/2014-CE dated 11/07/2014 is reproduced as follows:

Sl. No.	Chapter or heading or sub-heading or tariff item of the First Schedule	Description of excisable goods	Rate	Condition No.
332	Any Chapter	Non-conventional energy devices or systems specified in List 8	Nil	-
"332A	Any Chapter	Parts consumed within the factory of production for the manufacture of goods specified in LIST 8	Nil	2";
-				
Condition 2.	Where such use is elsewhere than in the factory of production, the exemption shall be allowed if the procedure laid down in the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 , is followed.			

Further, WOEG is covered under Sr.No.13 of in List 8 of Notification No.12/2012-CE dated 17/3/2012 as follows:

(13) Wind operated electricity generator, its components and parts thereof including rotor and wind turbine controller

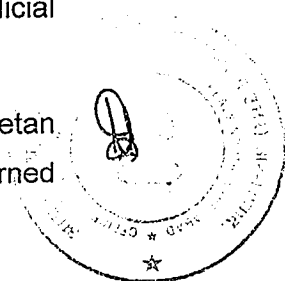
The appellant had submitted a letter dated 04/03/2016 to the Assistant Commissioner of Central Excise, Division-III, Ahmedabad (hereinafter referred to as 'the jurisdictional A.C.') seeking permission under **Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001** to procure 'Plates HR' from M/s Essar Steel India Limited to be used in the manufacture of WOEGs as per condition 2 for Sr. NO.332A of Notification No.12/2012-CE dated 17/3/2012. The Assistant Commissioner, Central Excise, Division-III issued a letter F.No.III/Inox/B-1Bond/47/15-16 dated **01/03/2017** to the appellant intimating that as per the clarification given by C.B.E.C. vide Circular No.1008/15/2015-CX issued from F.No.201/08/2015-CX.6, exemption under Notification No.12/2012-CE dated 17/3/2012 has been granted only to 'parts' of WOEG and its 'parts and components' but no such exemption has been provided for 'raw materials' consumed in the manufacture of 'parts' or 'part of the



parts' of WOEG. The jurisdictional A.C. held that in the instant case, unlike parts which can be directly fitted into the final product, the H.R. Plates have to further undergo manufacturing process before they can be converted to a tower and hence HR Plates can be considered as raw materials and certainly cannot be considered as parts or components. On the basis of the said reasoning, the Assistant Commissioner rejected the applications filed by the appellant for removal of goods at concessional rate of duty under Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001, *vide* his letter dated **01/03/2017**.

3. The appellant submitted a letter dated 12/04/2017 to the jurisdictional Commissioner of Central Excise, Ahmedabad-II in support of its claim for exemption under Notification No.12/2012-CE dated 17/3/2012. The view of the Commissioner to the effect that "*a part has to be of specific size and shape which is suitably for use solely or principally with a particular machine and the benefit of the said Notification, as amended cannot be extended to HR Plates / Sheets*" **was communicated to the appellant by the Deputy Commissioner, Central Excise (Technical), HQ, Ahmedabad-II** (hereinafter referred to as 'D.C.(Technical)) *vide* letter dated 12/04/2017. The appellant in the instant appeal has claimed that this letter was received on 24/05/2017 and **filed the instant appeal on 21/07/2017**. The grounds of appeal adduced by the appellant are that the appellant relies on the decision in the matter of *Wimco Limited vs Collector of Central Excise, Shillong – 1986 (26) ELT 877 (Tribunal)* where in it has been held that letters of communication in the nature or the impugned decision denying benefit / refusing grant of relief maintainable are appealable in the court of law; that the D.C. (Technical) has neither deliberated the submission made by the appellant nor has it brought out any logical analogy to reject the same because it blindly refers to the decision of the learned Commissioner and follows the same blindly without taking into cognizance the submissions made by the appellant and that the submissions of the appellant are very crucial to the present case and if the same are taken into cognizance then the decision communicated through the subject letter is a non-speaking order and is liable to be set aside; Reliance is placed on *Anil Products vs CCE – 2010 (257) ELT 523 (Guj.)*. The appellant has also contended that '*part of a part*' constitutes '*part of the whole*'; that List 8 pertaining to Entry No. 332 of Notification No. 12/2012-CE dated 17/3/2012 are exempt from levy of Excise duty; that not only WOEGs but its components are also eligible for the exemption; that parts consumed within the factory of production for manufacture of WOEG and Parts thereof are eligible for Excise duty exemption; that in the case of *Gemini Instratech vs CCE, Nashik* it has been held that tower and blades constitute an essential component of WOEGs; that the subject steel plates is not merely raw material but duly constitute as parts used in the manufacture of Tower. The appellant has also pleaded that binding principal of judicial precedent needs to be followed.

4. Personal hearing in the appeal was held on 23/01/2018 attended by Shri Ketan V. Tadsare, Advocate and Shri Ketan Mohananey, C.F.O. of Inox Wind Ltd. The learned



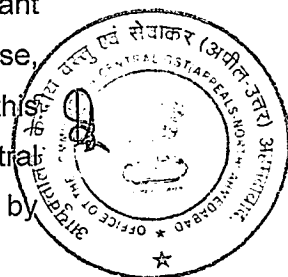
Advocate reiterated the grounds of appeal and explained the case. He submitted that Surat & Indore Commissionerates have accepted their view point.

5. On carefully considering the facts of the instant case it is seen that the disputed issue pertains to rejection of applications filed by the appellant with the jurisdictional A.C. under Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 to procure 'Plates HR' from M/s Essar Steel India Limited to be used in the manufacture of WOEGBs as per condition 2 for Sr. NO.332A of Notification No.12/2012-CE dated 17/3/2012. The applications were rejected by the jurisdictional A.C. vide letter F.No.III/Inox/B-1Bond/47/15-16 dated 01/03/2017. The appellant has filed the instant appeal on 21/07/2017 under the provisions of Section 35 of the Central Excise Act, 1944 challenging the rejection of the said applications on merit. The relevant portion of Section 35 of CEA, 1944 is as follows:

SECTION 35. Appeals to [Commissioner (Appeals)]. — (1) Any person aggrieved by any decision or order passed under this Act by a Central Excise Officer, lower in rank than a [Principal Commissioner of Central Excise or Commissioner of Central Excise], may appeal to the Commissioner of Central Excise (Appeals) [hereafter in this Chapter referred to as [the Commissioner (Appeals)]] within sixty days from the date of the communication to him of such decision or order :

[Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.]

From the above, it is clear that the statutory limit for filing an appeal with Commissioner (Appeals) against an order passed by an officer lower in rank than Principal Commissioner / Commissioner is within sixty days of the date of communication of such an order that can be allowed to be presented within a further period of thirty days. In the instant case the appellant has filed the appeal under Section 35 of CEA, 1944 on 21/07/2017. On considering the appeal from the date of issue of the rejection order by the jurisdictional A.C. issued on 01/03/2017, the appeal filed by the appellant is after 142 days of the date of issue. The date of communication of this rejection order dated 01/03/2017 is not available in the appeal documents. However, it is pertinent to note that the appellant has clearly brought out in the grounds of appeal that it had made a representation against the rejection order by submitting a letter dated 12/04/2017 to the Commissioner, Central Excise, Ahmedabad-II. Thus as per its own admission, it is clear that the appellant was in possession of this rejection order as on 12/04/2017. Even if 12/04/2017 is considered as the date of communication of the rejection order of the jurisdictional Assistant Commissioner dated 01/03/2017, the instant appeal filed on 21/07/2017 is after a period of 100 days, which is clearly beyond the normal period of appeal of sixty days and the further period of ninety days permitted under Section 35 of CEA, 1944. In the appeal memorandum, the appellant has mentioned that the instant appeal is being filed against the letter of D.C. (Technical), HQ, Central Excise, Ahmedabad-II dated 16/05/2017 communicated on 24/05/2017. On considering this letter placed in the appeal documents, it is seen that the D.C. (Technical), HQ, Central Excise, Ahmedabad-II is not the proper authority to deal either the applications filed by



the appellant under Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 or with the rejection of applications ordered by the jurisdictional A.C. The letter of D.C. (Technical), HQ, Central Excise, Ahmedabad-II dated 16/05/2017 merely conveys the opinion of learned Commissioner that the benefit of Notification No. 12/2012-CE, as amended, cannot be extended to H.R. Plates / Sheets. An appeal under Section 35 of CEA, 1944 has to be against the order of an officer lower in rank than Commissioner and hence there is no scope to entertain the instant appeal to qualify as filed against the letter of D.C. (Technical) intimating the opinion of Commissioner given in reply to the representation made by the appellant. The appeal filed on 21/07/2017, when considered as against the rejection order issued by the jurisdictional A.C. dated 01/03/2017 is filed beyond ninety days of the date of communication. Accordingly, the appeal is rejected as non-maintainable on the grounds of limitation.

6. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed of in the above terms.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स-१)

Date: 28/07/2018

Attested

(K. P. Jacob)
Superintendent (Appeals-I)
Central Excise, Ahmedabad.

By R.P.A.D.

To
M/s Inox Wind Limited,
Plot No. 128, Village: Rohila,
Ahmedabad – Rajkot Highway (N.H. 8A),
Taluka: Bavla, Ahmedabad-382 230.

Copy to:

1. The Chief Commissioner of C.G.S.T., Ahmedabad.
2. The Commissioner of C.G.S.T., Ahmedabad (North).
3. The Additional Commissioner, C.G.S.T (System), Ahmedabad (North).
4. The A.C / D.C., C.G.S.T Division: IV, Ahmedabad (North).
5. Guard File.
6. P.A.

