केंद्रीय कर आयुक्त (अपील)

सत्यमेव जयते

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

11730/11734

रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.) : **V2(29)138/Ahd-II/Appeals-II/ 2016-17**

ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP- 310-17-18**
दिनांक (Date): **30.01.2018** जारी करने की तारीख (Date of issue): 26/2/2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित
Passed by **Shri Uma Shanker** , Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-III), अहमदाबाद- II, आयुक्तालय द्वारा जारी मूल आदेश सं---------- दिनांक _----------से सृजित
Arising out of Order-In-Original No ._**18/AC/D/BJM/2016__Dated: 19.12.2016** issued by: Assistant Commissioner Central Excise (Div-III), Ahmedabad-II

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

M/s Concord Biotech 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 धरा 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, 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-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

Cont...2

(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 डयूटी केडिट 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 दिनाँक 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 रूपये या उससे कम हो तो रूपये 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 अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

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 अपीलोय 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 मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी 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 इ.ए–3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणें की गई अपील के विरूद्व अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगायां गया जुर्माना रूपए 5 लाख या उससे कम है वहां 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 वहां रूपए 10000/– फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से

रेखाकिंत 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. Registar 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 ओदश 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 हैं।

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 not withstanding 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 रू.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 in 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 अपीलो 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."

ORDER IN APPEAL

The subject appeal is filed by M/S.Concord Bio Tech Ltd. S.No. 1482-1486, Trasad Road, Dholka, Dist-Ahmedabad.(hereinafter referred to as *'the appellant'*) against Order in Original No. 18/AC/D/BJM/2016 (hereinafter referred to as *'the impugned order'*) passed by the Asstt. Commissioner, Central Excise, Division-III,Ahmedabad-II (hereinafter referred to as *'the adjudicating authority'*). The appellant is engaged in the manufacture of excisable goods viz. Organic Chemicals and Enzyme falling under Chapter 29 and 35 of the first schedule to CETA, 1985. The appellant avails the benefit of cenvat credit on inputs and capital goods as well as input services under Cenvat Credit Rules, 2004 (In short CCR 2004).

2. facts in brief of the case is that, during the audit by the department, it was noticed that the appellant procured materials i.e. HR plates, HR coils, SS plate, SS sheets, SS coils, MS channels, HB/MS/SS pipes under duty paying documents. Since these goods were to be used in the manufacture of capital goods viz. vessels, tanks and machines, appellant has availed cenvat credit under the provisions of cenvat credit Rules2004. The cenvat credit of Rs. 41,17,581/- was taken during the period June-2013 to December-2015. The Department took the view that said materials do not fall under the definition of either capital goods or inputs as defined under Rule 2(A) or 2(K) of CCR 2004. Accordingly, a show cause notice dated 16-03-2016 issued to the appellants for recovery of cenvat credit of Rs.41,17,581/- wrongly availed under Rule 14 of CCR read with Section 11A(4)/11A(5) of CEA and penalty should not be imposed under Rule 15 of CCR, 2004 read with Section 11AC of CEA, 1944. The adjudicating authority vide above order disallowed cenvat credit and imposed penalty of Rs.20,58,791/-on them.

3. Being aggrieved with the impugned order the appellant has filed the instant appeal, on the following main grounds;

1.1 That HR plates, HR coils, SS plate, SS sheets, SS coils, MS channels, HB/MS/SS pipes, etc. were used as accessories/components of storage tank and vessels, which are falling under the definition of capital goods; that show cause notice was issued without any verification of use of the goods received by the appellants and against the Plant Manger's Certificate;

1.2. That Rule 2(k) of CCR includes input used in the manufacture of capital goods;. The capital goods could not be captively consumed;

1.3 That decision of Honourable Tribunal and Honourable Supreme Court referred to in the show cause notice were not discussed as to how they would apply in the case of the appellant; that show cause notice did not dispute the use of inputs in the manufacture of capital goods; that inputs have been used in the manufacture of capital goods other than cases of excluding category .

1.4 The appellants requested to get verified use of HR plates, HR coils, SS plate, SS sheets, SS coils, MS channels, HB/MS/SS pipes. It was also stated that appellants would demonstrate the use of such inputs in the manufacture of capital goods.

1.5 The appellants furnished certificate of Chartered Engineer dated 22-11-2016, certifying that HR plates, HR coils, etc. were used in the manufacture of tanks, steeping vat and machineries. appellants submitted that said materials were used as accessory/component of tanks, vessels and machines used for manufacture of final product. The appellant relied on the decisions of Honourable Tribunal in the case of CCE, Rajkot V/s. Mardia Chemicals Ltd. cited at 2002(147)ELT-645(T) has held that Plates and Sheets are in the nature of accessories and covered under the definition of capital goods.

1.6 Further, the appellants submitted The definition of 'input' with effect from 1-4-2011 which 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

(C) capital goods except when used as parts or components in the manufacture of a final product;

that all goods used in the factory by the manufacture of the final product are covered under the definition of input. Since SS coils and SS sheets, angles, etc. have been received by the noticee and used in the manufacture of tanks and vessels, the same are covered under the ambit of "input", as defined under Rule 2(k) of CCR.

1.5 That the Assistant Commissioner has passed the order beyond the scope of the show cause notice, inasmuch as the ground in the show cause notice and the findings given in the order-in-original are all together on different footing and contradictory They on the decision of 1. Dhampur Sugar Mills Ltd. V/s. CCE, Meerut-II cited at 2010(260)ELT-271(Tri.-Del.) 2. Parikh Resins & Polymers Ltd. V/s. CCE, Ghaziabad cited at 2001(138)ELT-356(Tri.-Del.), 3. Mini Industries Ltd. V/s. CCE, Indore cited at 2007(210)ELT-431(Tri.-Del.).

1.7 That appellants availed cenvat credit of Rs.13,60,732/- on MS pipe, SS pipe out of total cenvat credit of Rs. 41,17,581/- The tubs and pipes are covered under Rule 2(a)(A)(vi) of CCR. That there is no condition in the definition of capital goods that goods should be used in the manufacture of final product. the words used in the definition are "used in the factory of the manufacturer of the final products" and not 'used in the manufacture of final product'. Relied on the decision of 1. Indian Oil Corporation Ltd. V/s. CCE & ST, Rohtak cited at 2014(307)ELT-560(Tri.-Del.)

2. Maruti Suzuki India Ltd. V/s. CCE, Delhi-III cited at 2016(344)ELT-1125(Tri.-Chan.).

1.8 That issue raised in the show cause notice was pertaining to availing of cenvat credit in respect of HR plates, etc. and the dispute relates to whether such goods are inputs or capital goods .They Relied on the judgment of CCE, Coimbatore V/s. Jawahar Mills Ltd. cited at 2001(132)ELT-3(SC).

1.9 That show cause notice was issued without any verification of the use of the goods in respect of which cenvat credit was availed by the appellant. The appellants had raised the issue of use of the goods. Contrary to discharging the burden, the adjudicating authority has disallowed cenvat credit without conducting any verification. Further, when appellants have produced evidence in form of Chartered Engineer certificate, same has been discarded by finding fault with the certificate. Relied on the case of Metrochem Industries V/s. CCE, Vadodara-I cited at 2013(292)ELT-578(Tri.Ahmd.)

2.0 it is submitted that issue raised in the show cause notice is of admissibility of cenvat credit on HR plates, etc. as to whether such goods are covered under the definition of input / capital goods or not. The appellants produced a certificate from Chartered Engineer, who has certified the use of goods in the manufacture of capital goods;

2.1 the adjudicating authority has construed name of the fabricator mentioned on the equipment as brand name. That he has examined and adjudicated upon the certificate. The dispute was not relating to consumption or correlation between input and capital goods.

2.2 In para 24.2 the Assistant Commissioner has referred the decision of Honourable Tribunal in the case of Commissioner of Central Excise, Surat V/s. M/s. Hemani Organics and Chemicals Pvt. Ltd. reported in 2013-TIOL510-CESTAT-AHM. first appellate authority had allowed the appeal. In this regard certificate of fabricator and certificate of Chartered Engineer, furnished by M/s. Hemani Organics, were taken into consideration. In the present case also appellant produced the certificate of Chartered Engineer, and certificate from M/s. Engineers Associates in connection with fabrication of various tanks and steeping vats.

2.3 The Assistant Commissioner in his order has disallowed cenvat credit on the basis of presumption and assumption that HR plates, etc. might have used for other than manufacture of tanks and steeping vats. that demand cannot be confirmed on presumption and assumption. They relied on the case laws of 1. Varun Coating V/s. CCE, Thane-II cited at 2007(218)ELT-709(Tri.-Mumbai), 2. Suguna Metals Pvt. Ltd. V/s. CC,CEX&ST,Hyderabad-I cited at 2016 (339) ELT- 119 (Tri.Hyd] 3. Srinathji Ispat Ltd. V/s. CCE&ST, Ghaziabad cited at 2016(333) ELT-454 (Tri.-Del.)

2.4 The appellants contested invocation of larger period .that the issue being admissibility of cenvat credit may be subject to different interpretations, however that cannot be labeled as suppression, as held by Honourable Tribunal in the case of 1. CCE, Raipur V/s. Rajaram Maize Products cited at 2010(258)ELT-539(Tri.Del). 2. CCE, Raipur V/s. Orion Ferro Alloys Pvt. Ltd. cited at 2010(259)ELT-84(Tri. Del.),

2.5 show cause notice was issued to recover cenvat credit of Rs. 41,17,588/- whereas the adjudicating authority has held that cenvat credit of Rs.1,94,322/- is required to be disallowed.

2.6 With respect to imposition of penalty, they availed credit in consonance with the provisions of cenvat credit Rules .Therefore, penalty cannot be imposed .they relied in the case of CCE, Daman, M/s. Paras Motors Mfg. Co. cited at 2013-TIOL-525- CESTAT-AHM .

2.7 Further, Assistant Commissioner has imposed penalty equal to 50% of the duty under Clause (a) of Section 11AC(1) of CEA. Clause (a). As such adjudicating authority has imposed the penalty against the provisions of Section 11AC(1)(a) of CEA. Therefore, order needs to be quashed and set aside.

4. Personal hearing in this case was granted on 01.12.2017; Shri P. G. Mehta,, Advocate appeared on behalf of the appellant. He reiterated submissions made in their GOA .They also submitted additional submission on dated 19-12-17, with copies of tax invoices/ bills. I have carefully gone through the case records, facts of the case, additional submission made by the appellant and the case laws cited. I find that, the appellant have procured HR plates, HR coils, SS plate, SS sheets, SS coils, MS channels, HB/MS/SS pipes under duty paying documents. Since these goods were to be used in the manufacture of capital goods viz. vessels, tanks and machines, appellant availed credit under the provisions of cenvat credit Rules. The cenvat credit of Rs. 41,17,581/- was taken for the period June-2013 to December-2015. The Department took the view that HR plates, HR coils, SS plate, SS sheets, SS coils, MS channels, HB/MS/SS pipes etc. do not fall under the definition of either capital goods or input as defined under Rule 2(A) or 2(K) of CCR. Accordingly, a show cause notice dated 16-03-2016 issued to the appellants for recovery of cenvat credit of Rs.41,17,581/- with interest and penalty .Vide above order disallowed cenvat credit and imposed penalty of Rs.20,58,791/-on them.

5. I find that the issue to decide is pertaining to admissibility of cenvat credit in respect of HR plates, HR coils, SS plate, SS sheets, SS coils, MS channels, HB/MS/SS pipes, etc. and whether such goods are inputs or capital goods falling under Rule 2(k) and Rule 2(A) of CCR. I find that, said materials i.e. HR plates, etc. were used as accessories/components of storage tank and vessels, which are falling under the definition of capital goods; that show cause notice was issued without any verification of use of the goods received by the appellants and against the Plant Manger's Certificate; I find that, Rule 2(k) of CCR includes input used in the manufacture of capital goods; that it was not disclosed in the show cause notice as to why the goods received by the appellants were not covered under the definition of input / capital goods; that MS plates, HR plates, SS coils, etc. were used in the manufacture of capital goods viz. storage tank, steeping vat and machines.

6. I find that, that decision of Hon'ble Tribunal and Hon'ble Supreme Court referred to in the show cause notice were not discussed as to how they would apply in the case of the appellant; that show cause notice did not dispute the use of inputs in the manufacture of capital goods; that inputs have been used in the manufacture of capital goods other than cases of excluding category and since credit was availed strictly in consonance with the provisions of cenvat credit Rules, penalty could not be imposed.

7. I find that, the appellants requested to verify use of HR plates, HR coils, SS plate, SS sheets, SS coils, MS channels, HB/MS/SS pipes, and the use of such inputs in the manufacture of capital goods. I find that, the appellants furnished certificate of Chartered Engineer dated 22-11-2016, certifying that HR plates, HR coils etc. were used in the manufacture of tanks, steeping vat and machineries. However, without taking into consideration the pleas put-forth by the appellant, Assistant Commissioner, disallowed cenvat credit and imposed penalty of Rs. 20,58,791/- on them.

8. I find that Assistant Commissioner has disallowed the cenvat credit without comprehending the issue raised in the show cause notice. With respect to the ground for disallowing cenvat credit, appellants have submitted that said goods were accessory/component of tanks, vessels and machines used for manufacture of final product. I rely on the decisions of Honourable Tribunal in the case of CCE, Rajkot V/s. Mardia Chemicals Ltd. cited at 2002(147)ELT-645(T) wherein while upholding the order of the Commissioner (Appeals), Ahmedabad, Honourable Tribunal has held that *Plates and Sheets are in the nature of accessories and covered under the definition of capital goods.*

9. Further, I find that the definition of 'input' w.e.f 1-4-2011 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

(C) Capital goods except when used as parts or components in the manufacture of a final product;

10. On perusal of the definition of input, I find that all goods used in the factory by the manufacture of the final product are covered under the definition of input. Since SS coils and SS sheets, angles, etc. have been received by the noticee and used in the manufacture of tanks and vessels, the same are covered under the ambit of "input", as defined under Rule 2(k) of CCR. Therefore, noticee have availed the cenvat credit strictly in consonance with the provisions of Rule 2(k) of cenvat credit Rules 2004. I find that ,since Assistant Commissioner has not disputed the admissibility of cenvat credit nor referred the definition of input or capital goods under the provisions of cenvat credit Rules, order of disallowing the cenvat credit is ex-facia illegal.

11. I find that the Assistant Commissioner has passed the order beyond the scope of the show cause notice, inasmuch as the ground in the show cause notice and the findings given in the order-in-original are all together on different footing and contradictory. I find that the Assistant Commissioner has disallowed the cenvat credit on the ground that appellant has not established that goods on which cenvat credit was taken were used in the manufacture of capital goods. As such Assistant Commissioner has traveled beyond the scope of the show cause notice and thus impugned order is not sustainable. I rely on the decision of 1. Dhampur Sugar Mills Ltd. 2010(260)ELT-271(Tri.-Del.) 2. Parikh Resins & Polymers Ltd. V/s. CCE, Ghaziabad cited at 2001(138)ELT-356(Tri.-Del.),

12. I find that appellants availed the cenvat credit of Rs.13,60,732/- on HB Pipe, MS pipe, SS pipe out of total cenvat credit of Rs. 41,17,581/- The tubes and pipes and fittings thereof are specifically covered under the ambit of capital goods. The tubs and pipes are covered under Rule 2(a)(A)(vi) of CCR. As such cenvat credit ought not to have been disallowed on tubes and pipes. Same are being used in the factory of the appellants.

13. I find that there is no condition in the definition of capital goods that goods should be used in the manufacture of final product. Inasmuch as the words used in the definition are "used in the factory of the manufacturer of the final products" and not 'used in the manufacture of final product'. I rely on the decision of 1. Indian Oil Corporation Ltd. V/s. CCE&ST, Rohtak cited at 2014(307)ELT-560(Tri.-Del.) wherein it has been held as under:

6. *In term of the definition of 'capital goods' as given in Rule 2(a) of the Cenvat Credit Rules, 2004, ... The words used in Rule 2(a) are "used in the factory of manufacturer of the final product" not "used in the manufacture of final product".*

Therefore, once any item received in the factory is "capital goods" in terms of Rule 2(a) of the Cenvat Credit Rules, and is used in the factory the manufacturer would be entitled to Cenvat credit of excise duty paid in respect of the same.

2. Maruti Suzuki India Ltd. V/s. CCE, Delhi-III cited at 2016(344)ELT-1125(Tri.-Chan.).

14. I find that the issue pertaining to availing of cenvat credit in respect of HR plates, HR coils, SS plate, SS sheets, SS coils, MS channels, HB/MS/SS pipes, etc. Since goods used in the manufacture of capital goods are covered under the definition of input, the admissibility of cenvat credit does not remain under dispute. The submission of the appellants is substantiated in the judgment of Honourable Supreme Court in the case of CCE, Coimbatore V/s. Jawahar Mills Ltd. cited at 2001(132)ELT-3(SC). held as under:

"The submission is that parts of the items .....On the facts and circumstances of these cases, therefore, the stand that the items in question are not used for manufacture of final product cannot be accepted for the reasons aforestated."

15. I find that show cause notice was issued without any verification of the use of the goods in respect of which cenvat credit was availed by the appellants. In fact appellants in their reply to the show cause notice specifically raised the issue of verification, Contrary to discharging the burden, the adjudicating authority has disallowed cenvat credit without conducting any verification. Since appellants were in position to demonstrate the use of said goods in the manufacture of vessels, tanks and machines,. As such impugned order needs to be quashed and set aside.

16. I find that HR plates, HR coils, SS plate, SS sheets, SS coils, MS channels, HB/MS/SS pipes were used in the manufacture of storage tanks and steeping vat and as such cenvat credit was admissible under the provisions of Rule 2(k) read with Rule 3 of CCR. However, Assistant Commissioner in para 24.1 of the order has discarded the certificate of Chartered Engineer, produced by the appellants during the course of personal hearing, on flimsy ground. I find that identical issue came up before Honourable Tribunal in the case of Metrochem Industries V/s. CCE, Vadodara-I cited at 2013(292)ELT-578(Tri.Ahmd.) wherein Honourable Tribunal has held as under:

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 ld. 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.

In light of the above submissions order impugned is set aside.

17. With respect to not providing above documents, I find that The appellants produced certificate from Chartered Engineer, who has certified the use of goods in the manufacture of capital goods, the certificate issued by a chartered engineer has consistently been considered as vital evidence by Honourable Tribunals/Courts. I rely on the case of Metrochem Industries cited supra Ttherefore, order passed by the adjudicating authority is set aside.

18. I find that Assistant Commissioner has referred the decision of Honourable Tribunal in the case of M/s. Hemani Organics and Chemicals Pvt. Ltd. reported in 2013-TIOL510-CESTAT-AHM. However, the adjudicating authority has not discussed as to how the decision referred to by him would support his findings. In fact Honourable Tribunal has upheld the order of first appellate authority; first appellate authority had allowed the appeal on the ground that appellant used goods for fabrication of storage tank. In this regard certificate of fabricator and certificate

of Chartered Engineer, were taken into consideration. In the present case also appellant produced the certificate of Chartered Engineer; and from M/s. Engineers Associates in connection with fabrication of various tanks and steeping vats. it would be seen that ratio of the decision squarely applicable to the case of the appellant.

19. I find that, It is well settled principle that demand cannot be confirmed on presumption and assumption .I Rely on the case of 1. Suguna Metals Pvt. Ltd. V/s. CC,CEX&ST,Hyderabad-I cited at 2016 (339) ELT- 119(Tri.Hyd] 2. Srinathji Ispat Ltd. V/s. CCE&ST, Ghaziabad cited at 2016(333) ELT-454 (Tri.-Del.)

20. I find that the appellants contested invocation of larger period . I find that allegation of suppression can be made when an assessee fails to furnish any relevant information which is required under the law. As such when question of suppression of fact does not arise, the larger period ought not to have been invoked. I rely on the decision of Honourable Tribunal in the case of 1. CCE, Raipur V/s. Rajaram Maize Products cited at 2010(258)ELT-539(Tri.Del 2. CCE, Raipur V/s. Orion Ferro Alloys Pvt. Ltd. cited at 2010(259) ELT-84(Tri.-Del.),

21. With respect to imposition of penalty, I find that the appellant has availed the credit strictly in consonance with the provisions of cenvat credit .Further, Honourable Tribunals /Courts have consistently been holding the view that cenvat credit in respect of plates, SS coils, MS angles, MS channels, etc. is admissible. Therefore, penalty cannot be imposed .I rely cn the case of CCE, Daman, M/s. Paras Motors Mfg. Co. cited at 2013-TIOL-525- CESTAT-AHM .

22. Further, I find that the Assistant Commissioner has imposed penalty equal to 50% of the duty under Clause (a) of Section 11AC(1) of CEA. The penalty equal to 50% of duty is imposable under proviso to Clause (c) of Section 11AC(1) of CEA. Therefore, order passed by the Assistant Commissioner, is set aside.

23. In view of above discussion and findings, I hold that the impugned order is not legal and not sustainable Therefore, I set aside the impugned order and allow the appeal filed by the appellant.

24. अपीलकर्ता द्वारा दर्ज की गई अपीलो का निपटारा उपरोक्त तरीके से किया जाता है।

24. The appeals filed by the appellant stand disposed off in above terms.

(उमा शंकर)
आयुक्त (अपील्स)

Date- /01/18

Attested

(K.K.Parmar)
Superintendent (Appeals)
Central tax, Ahmedabad.

F.NO. V [29]138 /Ahd-II/Appeal-II/16-17

By Regd. Post A. D

M/S. Concord Bio Tech Ltd.
S.No. 1482-1486,
Trasad Road,
Dholka,
Dist-Ahmedabad

Copy to-

1. The Chief Commissioner, CGST Central Excise, Ahmedabad zone.
2. The Commissioner, CGST Central Excise, Ahmedabad- North.
3. The Asstt. Commissioner, CGST C.Ex. Div-Dholka, Ahmedabad- North.
4. The Asstt.Commissioner (Systems), CGST C.Ex. Ahmedabad-North.
5. Guard file.
6. PA File.