

	<p align="center"><b>कार्यालय आयुक्त, केन्द्रीय वस्तु एवं सेवा कर</b>  <b>"जी.एस.टी. भवन", रामलीला मैदान के सामने, सेक्टर-8,</b>  <b>(गांधीधाम) कच्छ-370201</b></p> <p align="center"><b>OFFICE OF THE COMMISSIONER OF CENTRAL GOODS AND SERVICE TAX - KUTCH (GANDHIDHAM)</b>  <b>"GST BHAVAN", OPP. RAMLEELA MAIDAN, SECTOR -8,</b>  <b>GANDHIDHAM - 370201 (KUTCH)</b></p>	
<b>File No.</b> GEXCOM/ADJN/CE/COM/21/2025-ADJN	By RPAD/Speed Post /Hand Delivery	
<p align="center"><b>मूल आदेश संख्या</b>  <b>ORDER IN ORIGINAL NO.</b>  <b>KCH-EXCUS-000-COM-12-2025-26</b></p>	<b>आदेश की तारीख</b> <b>Date of order</b>	28.08.2025
	<b>जारी करने की तारीख</b> <b>Date of Issue</b>	28.08.2025
	<p align="center"><b>अखिलेश कुमार</b>  <b>आयुक्त</b>  <b>केन्द्रीय वस्तु एवं सेवा कर आयुक्तलय,</b>  <b>गांधीधाम (कच्छ)</b>  <b>Akhilesh Kumar</b>  <b>Commissioner,</b>  <b>Central Goods &amp; Service Tax,</b>  <b>Kutch, Gandhidham</b></p>	
<p align="center"><b>के संदर्भ में</b>  <b>In the case of</b></p>	<p align="center"><b>M/s Sanghi Industries Limited</b>  <b>Clinker Unit, Sanghipuram, Motiber,</b>  <b>Abdasa, Kutch, Gujarat.</b></p>	
<p align="center"><b>कारण बताओ नोटिस संख्या एवं तिथि/ Show Cause</b>  <b>Notice No. &amp; Date</b>          V.25/AR-II-Bhuj/41/Commr/2014-15, dated          29.04.2014</p>	<p align="center"><b>Reversal of Cenvat Credit Amount</b>  <b>Rs. 75,46,827/-</b></p>	
<p align="center"><b>DIN-20250864WX000000B771</b></p>		

**विशेष सूचना / NOTE BELOW**

1. आदेश की यह प्रति उस व्यक्ति के निजी उपयोग के लिए निःशुल्क प्रदान की जाती है, जिसे यह जारी की जाती है।

This copy is granted free of charge for private use of the person to whom it is issued.

- कोई भी व्यक्ति जो स्वयं को इस आदेश से व्यथित समझता है, वह केंद्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35बी(1)(ए) के प्रावधान के अनुसार सीमा शुल्क, उत्पाद शुल्क और सेवा कर अपीलीय न्यायाधिकरण, पश्चिम क्षेत्रीय बेंच, अहमदाबाद, द्वितीय तल, बहुमाली भवन, असरवा, गिरधर नगर ब्रिज के पास, गिरधर नगर, अहमदाबाद-380004 में इस आदेश के विरुद्ध अपील कर सकता है। यदि मामला धारा 35बी(1) (प्रावधान) (ए) से (डी) में निर्दिष्ट श्रेणी के अंतर्गत आता है, यानी हानि, छूट, बांड के तहत निर्यात, शुल्क क्रेडिट मामले, तो संशोधन आवेदन भारत सरकार के संयुक्त सचिव, राजस्व विभाग, वित्त मंत्रालय, नई दिल्ली के पास होगा।

Any person(s) deeming himself aggrieved by this Order may appeal against this order to The Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Ahmedabad, 2nd Floor, Bahumali Bhavan, Asarwa, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad -380004, in terms of the provision of Section 35B(1)(a) of the Central Excise Act, 1944. If the case covered under the category specified in Section 35B(1) (Proviso) (a) to (d), i.e., Loss, Rebate, Export under Bond, duty credit cases, the Revision application shall lie to the Joint Secretary to the Government of India, Department of Revenue, Ministry of Finance, New Delhi.

- अपील चार प्रतियों में दायर की जानी चाहिए तथा उसके साथ उस आदेश की समान संख्या में प्रतियां संलग्न होनी चाहिए जिसके विरुद्ध अपील की गई है (जिनमें से कम से कम एक प्रमाणित प्रति होनी चाहिए)

The appeal should be filed in quadruplicate and should be accompanied by an equal number of copies of the Order appealed against (one of which at least should be a certified copy)



4. पार्टी द्वारा इस आदेश को व्यक्तिगत प्राप्त किए जाने की तारीख से नबे (90)दिन के अंदर अपील फाइल की जानी चाहिए।

The appeal should be filed **within Ninety days** from the date of receipt of this order.

5. इसे चार प्रतियों में दाखिल किया जाएगा और इसके साथ उस आदेश की समान संख्या में प्रतियां संलग्न की जाएंगी जिसके विरुद्ध अपील की गई है (जिनमें से कम से कम एक प्रमाणित प्रति होगी)। अपील के सभी सहायक दस्तावेज चार प्रतियों में भेजे जाने चाहिए। अपील व्यक्तिगत रूप से रजिस्ट्रार के समक्ष प्रस्तुत की जाएगी या रजिस्ट्रार को संबोधित पंजीकृत डाक द्वारा भेजी जाएगी। लेकिन उक्त रजिस्ट्रार के कार्यालय में समय पर या अन्यथा प्राप्ति की तारीख समय की सीमा के प्रयोजनों के लिए प्रासंगिक तारीख होगी।

It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (One of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate. The appeal shall be presented in person to the Registrar or sent by Registered Post addressed to the Registrar. But the date of receipt in office of the said Registrar in time or otherwise will be the relevant date for the purposes of limitation of time.

6. शुल्क का भुगतान न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के पक्ष में किसी राष्ट्रीयकृत बैंक की शाखा में क्रॉस बैंक ड्राफ्ट के माध्यम से किया जाना आवश्यक है, जो उस स्थान पर स्थित है जहां पीठ स्थित है और इसे अपील के फॉर्म के साथ संलग्न किया जाएगा। इस आदेश के खिलाफ अपील न्यायाधिकरण के समक्ष मांगे गए शुल्क के 7.5% के भुगतान पर की जा सकेगी, जहां शुल्क या शुल्क और जुर्माना विवाद में हैं, या जुर्माना, जहां केवल जुर्माना विवाद में है।

The Fee is required to be paid as through a cross Bank Draft in favour of the Assistant Registrar of Bench of the Tribunal on a branch of any Nationalized Bank located at the place where the Bench is situated and it shall be attached to the form of appeal. An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute

7. इस आदेश की संलग्न प्रति पर न्यायालय शुल्क स्टाम्प अधिनियम, 1970 के अनुच्छेद 6 की अनुसूची 1 के अंतर्गत निर्धारित 50 पैसे का न्यायालय शुल्क स्टाम्प लगा होना चाहिए।

The Copy of this order attached therein should bear a Court fee stamp of 50 paise as prescribed under schedule 1 of Article 6 of the Court fee stamp Act, 1970.

8. अपील प्रपत्र के साथ शुल्क, जुर्माना आदि के भुगतान का मूल प्रमाण भी संलग्न किया जाना चाहिए।

Proof of payment of duty, penalty etc. should also be attached in original to the form of appeal.

9. अपील पर ₹ 5 का न्यायालय शुल्क स्टाम्प लगा होना चाहिए।

Appeal should bear a Court Fee Stamp ₹ 5/-.

10. कृपया पूर्ण विवरण के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियम, 2001 और सीईजीएटी, प्रक्रिया नियम, 1982 देखें।

Please refer to the Central Excise (Appeals) Rules, 2001 and the CEGAT, Procedure Rules, 1982 for complete details.

**Notes:** - [These notes are for broad general guidance only. The original text of the Finance Act, 1994/The Central Excise Act, 1944 and the Rules framed there under may be referred to before taking any action in terms of these Notes.]



1. Present proceedings have arisen out of Final Order No. A/11781/2023, dated 23.08.2023, issued by the Hon'ble CESTAT, Ahmedabad, vide which the Order – in - Original No. RAJ-EXCUS-000-COM-18-14-15, dated 28.08.2014 issued by the Commissioner, Central Excise, Rajkot was set aside and the matter was remanded back to the adjudicating authority for fresh decision after ascertaining the amount of Cenvat Credit for the goods used in foundation and construction of building respectively.
  - 1.1 Stated in brief, the issue involved is that M/s. Sanghi Industries Ltd., (Clinker Unit), Sanghipuram, P.O. Motiber, Taluka Abdasa, Distt. Kutch (hereinafter referred to as 'the Noticee') are holding Central Excise Registration No. AAEC5510QXM003, for manufacture of excisable goods viz. Clinker, falling under CETSH No. 25231000 of the First Schedule to the Central Excise Tariff Act, 1985.
  - 1.2 During the course of scrutiny of the records of the Noticee by the audit officials for the month of April, 2009 to June, 2009, it was observed that the Noticee have wrongly availed the Cenvat Credit amount of Rs. 75,46,827/- in respect of Cement and TMT Bars, which were listed in their capital goods register as Capital Goods used in the factory for manufacture of excisable goods. Further, there appeared no evidence that these items i.e. Cement, TMT Bars, have been used as raw material/input either for manufacture of their final product i.e. Clinker or in the manufacture of capital goods which were further used in the factory for manufacture. Thus, these items having been used in civil construction did not appear to be classifiable either as 'Capital Goods' under Rule 2(a) of the Cenvat Credit Rules, 2004 (hereinafter referred to as 'CCR') or 'input' as prescribed under Rule 2(k) ibid, as has also been clarified by the Board vide Instruction dated 08.07.2010 issued from F.No. 267/11/ 2010-CX8.
  - 1.3 Accordingly, the Noticee was issued Show Cause Notice No. V.25/AR-II-Bhuj/41/Commr. /2014-15, dated 29.04.2014 proposing as to why:-
    - a). The Cenvat Credit amount of Rs. 75,46,827/- availed/utilized during the period from April, 2009 to June, 2009, should not be disallowed to them and recovered under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11A(5) of the Central Excise Act, 1944;
    - b). Interest at appropriate rate should not be recovered from them on the aforesaid Cenvat Credit amount under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11AA of the Central Excise Act, 1944; and
    - c). Penalty should not be imposed upon them under Rule 15(2) of the CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.
  - 1.4 The Show Cause Notice dated 18.07.2003, adjudicated by the Commissioner, Central Excise & Service Tax, Rajkot vide Order – in - Original No. RAJ-EXCUS-000-COM-18-14-15, dated 28.08.2014, whereby, the adjudicating



authority has disallowed the Cenvat Credit amount of Rs. 75,46,827/- and confirmed the demand of the same alongwith interest in terms of Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11AA of the Central Excise Act, 1944. The adjudicating authority has further imposed penalty of Rs. 37,73,414/- under Rule 15 of the CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.

- 1.5 Being aggrieved with the Order – in - Original No. RAJ-EXCUS-000-COM-18-14-15, dated 28.08.2014, the Noticee had preferred appeal before the Hon'ble CESTAT, Ahmedabad. The Hon'ble Tribunal, Ahmedabad vide Final Order No. A/11781/2023, dated 23.08.2023 remanded the matter back to the adjudicating authority to take fresh decision. The Hon'ble CESTAT, Ahmedabad has directed, inter-alia, to decide the matter only after ascertaining the amount of Cenvat for the goods used in foundation and construction of building respectively.

## **2. PERSONAL HEARING AND DEFENCE SUBMISSION**

- 2.1 Shri Ishan H Bhatt, Advocate, as authorized person of the Noticee has appeared virtually for personal hearing on 27.05.2025.
- 2.2 During the course of personal hearing, he referred to the statutory provisions and case laws in support of their claim that the subject goods/items fulfill the conditions and definition of inputs and also claimed that these goods/items are used in relation to the manufacture of final product. Accordingly, they are eligible to avail the Cenvat Credit on the same.
- 2.3 He further added that he will submit the required additional submission in support of their claim, which he submitted on 13.06.2025 as elaborated hereinafter.
- 2.4 **The Noticee has made submission vide their letter dated 13.06.2025 contending that:**

The CENVAT credit amount of Rs. 75,46,827/- availed during April, 2009 to June, 2009 on Cement and TMT bars is proposed to be denied on the ground that the Cement and TMT bars were used in civil construction work and credit is not admissible on the same in view of Explanation 2 inserted in Rule 2(k) of CENVAT Credit Rules, 2004 by Notification No. 16/2009-CE(NT) dated 07.07.2009. Relevant portion of Rule 2(k) of CENVAT Credit Rules, 2004 is reproduced below:

*“Explanation 2 – Input includes goods used in the manufacture of capital goods which are further used in the factory of the manufacturer but shall not include cement, angles, channels, centrally twisted deform (CTD) bar or Thermo Mechanically Treated (TMT) bar and other items used for construction of factory shed, building or laying of foundation or making of structures for support of capital goods; [Amendment was made to Explanation 2 vide Notification No. 16/2009-CE(N.T.) dated 07.07.2009]”*

It is now settled law in their own case that the amendment to Rule 2(k) of the CENVAT Credit Rules, 2004 by amendment to Explanation 2, is only prospective in nature and is not applicable for the period prior to July 2009. Reliance is placed upon the judgment issued in their own case reported at



**C.C.E. & S.T. - Rajkot V. Sanghi Industries Ltd. - 2022 (5) TMI 475 - CESTAT AHMEDABAD** In the present case, the entire credit is proposed to be denied for the period April 2009 to June 2009. The said restriction regarding availment of CENVAT credit on cement and TMT bars is only applicable for the period from 07.07.2009 onwards. Reliance is also placed upon the following judgments, including the binding judgment of the Hon'ble High Court of Gujarat in the case of **Mundra Ports & Special Economic Zone Ltd. v. Commissioner 2015 (39) STR 726 (Guj.):**

- a. **CCE, Lucknow v. Mankapur Chini Mills 2019 (367) ELT 889 (All.)**
- b. **Singhal Enterprises Pvt. Ltd. 2016 (341) ELT 372 (Tri. Del.**
- c. **Vandana Global Limited v. CCE 2018 (16) GSTL 462 (Chhattisgarh)**

Thus, the CENVAT credit availed on TMT Bars and Cements in dispute is eligible.

- 2.5 The Noticee vide letter dated 26.06.2025 has submitted that they are liable to provide bifurcation of the goods i.e. TMT Bar and Cement used for foundation of Capital Goods and construction of building/sheds during the subject period of SCN (i.e. April, 2009 to June, 2009). They further requested that as the matter pertains to 2009-10, they required reasonable time and accordingly requested for 21 days time to submit the bifurcation of same.
- 2.6 The Noticee further submitted vide letter dated 24.07.2025 that they do not find the required documents in their record to submit the bifurcation of the goods used for foundation of Capital Goods and construction of building/sheds during the period April, 2009 to June, 2009. Hence, they required two weeks more time to submit the bifurcation of the same.
- 2.7 As the Noticee failed to submit the required submissions in support of their claim even after giving the sufficient time, another opportunity for personal hearing was given which was attended by Shri Ishan H Bhatt, Advocate on 11.08.2025.
- 2.7.1 During the course of hearing, he stated that **the Noticee do not have the required documents to provide the bifurcation of the subject goods i.e., TMT Bars and Cements used for construction of foundation/structure of Capital Goods and for construction of Buildings/Sheds and others.**

### 3. DISCUSSION & FINDINGS:

- 3.1 I have carefully gone through the case records, Show Cause Notice dated 29.04.2014, Order - in - Original No. RAJ-EXCUS-000-COM-18-14-15, dated 28.08.2014 passed by the Commissioner, Central Excise & Service Tax, Rajkot, Final Order No. A/11781/2023, dated 23.08.2023 passed by the Hon'ble CESTAT, Ahmedabad and submissions made by the Noticee, both written as well as oral.



- 3.2 It is observed that the Hon'ble CESTAT, Ahmedabad had vide Final Order No. A/11781/2023, dated 23.08.2023 allowed Noticee's appeal by way of remand to the adjudicating authority with the following observations:

*"4. We have carefully considered the submission made by both sides and perused the records. We find that there is no dispute that the cement and TMT bars were used for construction of building as well as foundation for erection and installation of machinery. As regard the cement and TMT bars used for construction of building, the appellant have relied upon various judgments, however, those judgments are related to the cenvat credit to the service provider and not to the manufacturer, therefore, these judgments are not directly applicable in support of credit on cement and TMT bars used in construction of factory building.*

*4.1 As regard the cenvat credit to the manufacturer in respect of cement and TMT bars for making foundation for erection, installation of the machinery, there are judgments in favour of the assessee. However neither the show cause notice nor adjudication order has given bifurcation of the material used separately for making foundation and construction of building. Therefore, we are of the view that the matter must go back to the Adjudicating Authority for ascertaining the amount of cenvat for the goods used in foundation and construction of building respectively and only thereafter, the final decision can be taken considering various judgments cited by the appellant. All the issues are kept open.*

*5. Accordingly, the impugned order is set aside. Appeal is allowed by way of remand to the Adjudicating Authority."*

The above said order dated 23.08.2023 of the Hon'ble Tribunal, Ahmedabad has been accepted by the Commissioner, Central Excise and GST, Gandhidham on 08.02.2024.

- 3.3 As per the observations of the Hon'ble CESTAT, Ahmedabad in the Final Order No. A/11781/2023, dated 23.08.2023, I find that the adjudicating authority in the present case has to ascertain the amount of Cenvat Credit in respect of TMT Bar and Cement used in foundation and construction of building and decide the admissibility of Cenvat Credit accordingly,
- 3.4 As regard the admissibility of Cenvat Credit in respect of the TMT Bars and Cement, the Noticee contended that they are eligible to avail the Cenvat Credit on these items as held by the Hon'ble CESTAT, Ahmedabad in their own case reported at **C.C.E. & S.T. - Rajkot V. Sanghi Industries Ltd. - 2022 (5) TMI 475 - CESTAT AHMEDABAD**. In the present case, the entire credit is proposed to be denied for the period April 2009 to June 2009. The said restriction regarding availment of CENVAT credit on cement and TMT bars is only applicable for the period from 07.07.2009 onwards. Reliance is also placed upon the following judgments, including the binding judgment of the Hon'ble High Court of Gujarat in the case of **Mundra Ports & Special Economic Zone Ltd. v. Commissioner 2015 (39) STR 726 (Guj.):**
- a. **CCE, Lucknow v. Mankapur Chini Mills 2019 (367) ELT 889 (All.)**
  - b. **Singhal Enterprises Pvt. Ltd. 2016 (341) ELT 372 (Tri. Del.**
  - c. **Vandana Global Limited v. CCE 2018 (16) GSTL 462 (Chhattisgarh)**



- 3.4.1 I further find that the Hon'ble Tribunal, Ahmedabad in the own case of the Noticee reported at **C.C.E. & S.T. - Rajkot V. Sanghi Industries Ltd. - 2022 (5) TMI 475 - CESTAT AHMEDABAD** has held that:

*"04. We have carefully considered the submissions made by both sides and perused the record. Having considered the rival contentions, we find that the department have erred in relying upon the amended Explanation-II with effect from the year 2009, whereas admittedly the credits in question were taken during period June 2007 to Dec. 2007. **We further find that the ruling in the case of "VandanaGlobal Ltd.", by Larger Bench Tribunal [2010 (253) E.L.T. 440 (Tribunal-LB)], have been overruled by Hon"ble Gujarat High Court in the case of 'Mundra Port' [2015 (39) S.T.R. 726 (Guj.)] and by Hon'ble Madras High Court in the case of 'India Cement Ltd.' reported at 2015 (321) E.L.T. 209 (Mad.), wherein it is categorically held that steel items and supporting structures are essential part of the machinery, so as to run the same for manufacture of dutiable finished products. Accordingly, the Hon"ble High Court held that the steels items used in the plant and machinery and supporting structures are eligible for Cenvat credit.** In the present matter use of the impugned goods were not disputed by the department, further revenue also not disputed the Joint verification report duly signed by the Deputy Commissioner, Central Excise, Gandhidham and representative of assessee. The said verification report has categorically described the usage of the materials under dispute on which cenvat credit has been availed by the assessee. We also find that the issue of utilization of goods for repairs and maintenance of capital goods is no longer res integra and the same have been decided in favour of the assessee by number of decisions. If any items is used for repair and maintenance of the plant and machinery, the same would be eligible for Cenvat credit in view of the judgment of the Hon'ble Chhattisgarh High Court in the case of Ambuja Cement Eastern v. CCE, Raipur [2010 (256) E.L.T. 690 (Chhattisgarh)] and Hon"ble Karnataka High Court in the case of CCE, Bangalore v. Alfred Herbert (India) Ltd. [2010 (257) E.L.T. 29 (Kar.)]. Therefore, in the present matter Ld. Commissioner has rightly allowed the Cenvat Credit of Rs. 1,71,26,939/- .*

*4.1 The disputed items in question are also claimed to have been used for repairs/maintenance of capital goods by way of replacement of old/worn out parts/components of such capital goods. This factual position is to be seen through the verification reports. **However, the revenue has proceeded on the premise that the disputed items were used for fabricating/manufacturing of capital goods. If this finding is presumed to be correct for a moment, then there is a prima facie case for holding that the disputed items were used in the manufacture of capital goods and, hence, by virtue of the aforesaid Explanation to the definition given under Rule 2(k), disputed items could be considered as "inputs". We hold that the credit is admissible on the disputed goods in question.**"*

- 3.5.2 In view of the above discussions and the case laws referred by the Noticee, I find that the Noticee is eligible to avail the Cenvat Credit on Steel items to the extent that the same are used for manufacture of Capital Goods in the factory. I further find that the impugned goods on which the Noticee has availed the Cenvat Credit of Rs. 75,46,827/-, were used either for construction of factory/civil structure or for laying foundation or making structures for supporting the capital goods viz., plant and machinery. However, the Noticee



failed to produce any documentary evidence i.e., verification report or a certificate regarding quantification of the impugned goods used in foundation and construction of building. I also find that the Noticee had not submitted the Cenvat Credit Register for Capital Goods in the concerned ER-1 Returns and has submitted vide their letter dated 12.08.2011 that too only after being asked for by the department.

3.5.3 Further, the Noticee vide their letter dated 24.07.2025 as well as orally during the person hearing held on 11.08.2025 has submitted that they do not have required documents to submit the bifurcation of the goods used for foundation of capital goods and construction of buildings/sheds.

3.5.4 It is relevant in this regard that the Hon'ble CESTAT, Ahmedabad has in Final Order No. A/11781/2023, dated 23.08.2023 held that the judgments relied by the Noticee in support of the cement and TMT bars used for construction of building, are related to the cenvat credit to the service provider and not to the manufacturer. Hence, the same are not applicable in the instant case. Accordingly, the Hon'ble Tribunal has remanded the matter back to ascertain the amount of Cenvat Credit for the goods used in foundation and construction of building respectively. Therefore, in absence of any corroborative evidences submitted by the Noticee that the impugned goods were used for laying foundation or making structures for supporting the capital goods, I find that the impugned goods were used for construction of factory/civil structure, for which the Noticee is not eligible to avail the Cenvat Credit.

3.5.5 Therefore, I find that the Noticee have willfully suppressed the facts with clear intention to avail the ineligible Cenvat Credit amount of Rs. 75,46,827/-. Accordingly, I hold that the Noticee's claim of admissibility of the Cenvat Credit amount of Rs. 75,46,827/- in respect of TMT Bar and Cement, is not legally sustainable. Hence, demand of Cenvat Credit of Rs. 75,46,827/- proposed in the impugned SCN, is liable to be recovered from the Noticee under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11A(5) of the Central Excise Act, 1944.

3.6 As discussed and concluded hereinbefore, Cenvat amount of Rs. 75,46,827/- has been wrongly availed and utilized by the Noticee. In terms of provisions of Rule 14 of the Cenvat Credit Rules, 2002 "*Where the CENVAT credit has been taken and utilised wrongly or has been erroneously refunded, the same shall be recovered along with interest from the manufacturer or the provider of output service, as the case may be, and the provisions of sections 11A and 11AA of the Excise Act or sections 73 and 75 of the Finance Act, 1994, as the case may be, shall apply mutatis mutandis for effecting such recoveries*". Thus, interest is required to be recovered on the Cenvat Credit amount of Rs. 75,46,827/-, wrongly taken by the Noticee.




3.7 As regard to penalty proposed under Rule 15(2) of the Cenvat Credit Rules, 2004, I find that the discussions made in the abovesaid para clearly establish that the Noticee have wrongly availed the ineligible Cenvat Credit in guise of capital goods which was not admissible to them. This fact came to the knowledge of the department only when the audit of the records of the Noticee was carried out. Hence, the act on the part of Noticee of availing the said credit, has resulted in violation of the provisions of the Cenvat Credit Rules and to be attributed with malafide or mens rea. I therefore find that provisions of extended period and consequent penal action attached to such act of contravention, is liable to be invoked. So, by acting in the manner, the Noticee has rendered themselves liable for penal action under Rule 15 of the CCR. I, therefore, hold that the Noticee is liable for penalty under Rule 15 of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.

3.8 In view thereof, I pass the following order:

**: ORDER :**

- (i) I disallow the Cenvat Credit amount of Rs. 75,46,827/- availed by the Noticee during the period from April, 2009 to June, 2009 and order to recover the same from them under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A(5) of the Central Excise Act, 1944;
- (ii) I order to recover the interest at appropriate rate on the Cenvat Credit amount of Rs. 75,46,827/- wrongly availed and utilized by the Noticee, under Rule 14 of the Cenvat Credit Rules, 2004, read with Section 11AA of the Central Excise Act, 1944;
- (iii) I impose penalty of Rs. 37,73,414/- upon the Noticee under Rule 15 of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.

  
(Akhilesh Kumar)  
Commissioner  
Central GST & Excise, Kutch

28<sup>th</sup> August, 2025

F.No. GEXCOM/ADJN/CE/COM/21/2025-ADJN

R.P.A.D./Speed Post

M/s Sanghi Industries Limited  
Clinker Unit, Sanghipuram,  
Motiber, Abdasa,  
Kutch, Gujarat.

Copy Submitted to:

1/ The Chief Commissioner, CGST and Central Excise, Ahmedabad Zone, Ahmedabad.



Copy to :

1. The Deputy Commissioner (TRC), CGST and Central Excise, HQ, Gandhidham for necessary action.
2. The Assistant Commissioner (System), CGST and Central Excise, HQ, Gandhidham for uploading on official site.
3. The Assistant Commissioner, CGST and Central Excise, Bhuj Division, for information and necessary action.
4. The Superintendent concerned Range of Bhuj Division, for information and necessary action.
5. Guard File.