

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 11856 of 2013-DB

[Arising out of Order-in-Original/Appeal No 79-DEMAND-2012 dated 19.03.2013 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]

J K Paper Limited

.... Appellant

P O Central Pump Mills,
Fort Songarh, TAPI GUJARAT-394660

VERSUS

Commissioner of Central Excise & ST, Vadodara Respondent

1st Floor, Central Excise Building, Race Course Circle,
Vadodara, Gujarat-390007

WITH

(i) EXCISE Appeal No. 11869 of 2013-DB (J K Paper Limited)

(ii) EXCISE Appeal No. 11034 of 2015-DB (J K Paper Limited)

(iii) EXCISE Appeal No. 12117 of 2016-DB (J K Paper Limited)

(iv) EXCISE Appeal No. 11714 of 2017-DB (J K Paper Limited)

(v) SERVICE TAX Appeal No. 10411 of 2020-DB (J K Paper Limited)

[Arising out of Order-in-Original/Appeal Nos. 79-DEMAND-2012 dated 19.03.2013 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I, No CCESA-VAD-APP-II-SSP-98-100-2014-15 dated 10.03.2015 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I, No CCESA-VAD-APP-II-VK-228-2016-17 dated 31.08.2016 passed by Commissioner of Central Excise and Service Tax-VADODARA-I (Appeal), No CCESA-VAD-APP-II-VK-422-2016-17 dated 19.01.2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-II, No CCESA-SRT-APPEAL-PS-571-2019-20 dated 26.12.2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I]

APPEARANCE :

Shri Anand Nainawati, Shri Ishan Bhatt, Advocates and Shri Sunil Vatvani Chartered Accountant for the Appellants

Shri Kalpesh P Shah, Asst. Commissioner (AR) for the Respondent

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)**

DATE OF HEARING : 18.04.2023

DATE OF DECISION: 02.05.2023

FINAL ORDER NO. A/11085-11090 / 2023**RAMESH NAIR :**

Brief facts of the case are that the appellant are engaged in the manufacture of writing and printing papers, paper board and bleached pulp falling under Chapter 48 and 47 respectively of the first schedule to Central Excise Tariff Act, 1985. They were also availing credit of inputs/capital goods and input services under the provisions of Cenvat Credit Rules, 2004. During the audit it was noticed that the appellant have shown sale of assets/goods to M/s. JK Envirotech Limited. Though the said Lime Kiln was located within the factory premises of the appellant. The appellant informed to the Range officer that the Cenvat credit on the said capital goods sold to M/s. JK Envirotech Limited has been availed and utilized amounting to Rs. 1,23,67,128/-. A show cause notice dated 09.10.2012 was issued for the period April 2007 to March 2009 wherein the demand of Cenvat credit of Rs. 1,23,67,128/- was raised on the capital goods which was sold to M/s. JK Envirotech Limited. Subsequently on the same issue periodical show causes notices dated 22.05.2013, 25.09.2013, 29.04.2014, 11.03.2013 and 09.03.2015 were issued for the period from May 2012 to September 2014 demanding Cenvat credit on the capital goods sold to M/s. JK Envirotech Limited. The show cause notice dated 09.10.2012 was adjudicated by the Commissioner vide order-in-original dated 19/20.03.2013. Subsequent show cause notices were adjudicated for the periodical show cause notices. In all the adjudication the demand of Cenvat credit was confirmed and except the order passed in show cause notice dated 09.10.2012, the appellant filed appeals before the Commissioner (Appeals) who also upheld the demand. Accordingly, the appellant filed the present five appeals on the issue of Cenvat credit of capital goods sold to M/s. JK Envirotech Limited. In the case of Appeal No. ST/10411, the issue involved is demand of Cenvat

credit in respect of input service though billed to the appellant but used in the processing at M/s. JK Envirotech Limited.

2. Shri Anand Nainawati learned Counsel along with Shri Ishan Bhatt, learned Advocate and Shri Sunil Vatvani learned Chartered Accountant appearing on behalf of the appellant submits that appellant is engaged in the manufacture of paper products wherein some effluent waste lime sludge is generated. For the treatment of said lime sludge, there is plant installed in the factory of appellant in which after treatment, from the sludge, the lime is obtained and the said lime is used in further manufacture of paper products in the appellant's factory. Though the lime sludge treatment plant was sold by the appellant to M/s. JK Envirotech Limited but the plant and machinery was remained within the factory premises of the appellant. Therefore, since there is no removal of capital goods, the demand raised under Rule 3(5A) of Cenvat Credit Rules, 2004 will not succeed. In support of his submission he placed reliance on the following judgments:-

- (a) CCE Vs. Sunrise Chemicals Industries - 2010 (262) ELT 110 (Guj)
- (b) L.G. Balakrishnan & Bros Limited vs. CCE - 2016 (340) ELT 78 (Tri.)
- (c) C.C.E. vs. Bhilai Steel Plant -2018 (12) GSTL 28 (Chhattisgarh)
- (d) Dalmia cements (Bharat) Limited vs. CCE - 2008 (224) ELT 484 (Tri.)
- (e) CCE vs. CESTAT Chennai - 2015 (323) ELT 290 (Mad. HC)
- (f) Indorama Synthetics (I) Limited vs. CCE - 2005 (190) ELT 193 (Tri.)
- (g) CCE vs. Indorama Synthetics (I) Limited - 2018 (15) GSTL 49 (Bom.)
- (h) Hero Motors Limited vs. CCE - 2014 (310) ELT 729 (All)
- (i) Tata Motors Limited vs. CCE - 2017 (349) ELT 786 (Tri.)
- (j) TVS Srichakra Limited vs. CCE - 2018 (15) GSTL 182 (Mad.)

(k) Ultratech Cement Limited vs. CCE - 2014 (310) ELT 554 (Tri.)
Affirmed by the Hon'ble High Court of Karnataka 2015 (321) ELT A150 (Kar.)

(l) Bilag Industries Limited vs. CCE - 2010 (259) ELT 461 (Tri)

(m) Jamna Auto Industries Limited vs. CCE - 2001 (130) ELT 181 (Tri)

(n) Behr India Limited vs. CCE - 2016 (338) ELT 631 (Tri)

(o) CCE vs. Biocon Limited - (2014) 51 Taxmann 34 (Karnataka)

(p) CCE vs. Tuticorin Alkali Chem. & Fertilizers Limited - (2012) 21 Taxmann 341 (Chennai-CESTAT)

(q) ST Electricals Pvt. Limited vs. CCE 2019 (20) GSTL 273 (Tri.)

(r) CCE vs. Ballarpur Industries Limited - 2007 (215) ELT 489 (S.C)

(s) CCE vs. Gas Authority of India Limited - 2008 (232) ELT 7(SC)

(t) Commissioner vs. Reliance Ports and Terminal Limited - 2016 (334) ELT 630 (Guj)

3. He further submits that in the present case, there is no suppression of facts for the reason that the appellant had informed the department as early as in 2008 itself vide letter dated 24.08.2008 that the Lime Kiln plant would belong to M/s. JK Envirotech Limited but the appellant would be availing credit on capital goods pertaining to the same. The department did not dispute the availment of credit at that time. Subsequently the sale of the Lime Kiln plant was reflected in the balance sheet in 2008 and there was no objection by the department even then. In this fact, there is no suppression of fact on the part of the appellant. Therefore the demand for the extended period is not sustainable on the ground of time-bar also.

4. As regards the demand of Cenvat credit of service tax availed in respect of input service used at the Lime Kiln plant, he submits that the service was used undisputedly in relation to the manufacture of final product

and billing of the service is in the name of appellant, therefore credit cannot be disputed.

5. Shri Kalpesh P Shah, learned Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order. He submits that as regard the Cenvat credit on capital goods that the appellant have sold the Lime Kiln plant to M/s. JK Envirotech Limited, the same is deemed removal of capital goods and accordingly the demand under Rule 3(5A) is legally sustainable. He submits that once the said plant was sold by the appellant ownership of the capital goods has been transferred from the appellant to M/s. JK Envirotech Limited. Accordingly, the appellant cannot retain the Cenvat credit availed on said capital goods.

6. We have carefully considered the submissions made by both the sides and perused the record. We find that the entire case of the department is that since the Lime Kiln plant of the appellant was sold to M/s. JK Envirotech Limited, the same will be treated as removal of capital goods as the ownership of capital goods is changed and accordingly the appellant is liable to pay duty under Rule 3(5A) of Cenvat Credit Rules, 2004. We find that there is no dispute in the fact that even though the Lime Kiln plant was sold to M/s. JK Envirotech Limited but the same remains situated within the factory premises of the appellant. Therefore, there is no physical removal of the capital goods from the factory premises of the appellant. For the ease of reference, sub Rule (5A) of Rule 3 of Cenvat Credit Rules, 2004 is reproduced below:-

“[(5A) If the capital goods, on which CENVAT credit has been taken, are removed after being used, the manufacturer or provider of output services shall pay an amount equal to the CENVAT Credit taken on the said capital goods reduced by the percentage points

calculated by straight line method as specified below for each quarter of a year or part thereof from the date of taking the CENVAT Credit, namely:-

(a) for computers and computer peripherals:

for each quarter in the first year @ 10%
for each quarter in the second year @ 8%
for each quarter in the third year @ 5%
for each quarter in the fourth and fifth year @ 1%

(b) for capital goods, other than computers and computer peripherals @ 2.5% for each quarter:

Provided that if the amount so calculated is less than the amount equal to the duty leviable on transaction value, the amount to be paid shall be equal to the duty leviable on transaction value.”

From the plain reading of the above Rule, it is clear that the assessee is required to pay duty on the use of capital goods only when it is removed from the factory of the assessee. In the present case, since the plant was remained installed in the factory of the appellant and moreover the same was undisputedly used for conversion of lime sludge into lime and the said lime was used in the manufacture of the final product of the appellant. The demand in terms of sub-Rule (5A) of Rule 3 of Cenvat Credit Rules, 2004 is not legal and correct. In the present case, first the capital goods was not removed from the factory consequently the same was exclusively used in or in relation to manufacture of final product of the appellant. Therefore, in this position, Rule 3(5A) has no application. The Revenue’s only contention is that since the capital goods were sold by the appellant to M/s. JK Envirotech Limited and the ownership of the same stood transferred to M/s. JK Envirotech Limited the appellant is not entitled for Cenvat credit in terms of Rule 3(5A) of Cenvat Credit Rules. We would like to make it clear that, for the purpose of taking Cenvat credit and even for manufacture of finished goods, ownership has no criteria. The only requirement is that the capital goods should be used in the manufacture of final product within the factory of the appellant which is not disputed in the present case. This issue has

been examined time and again by this Tribunal in various judgments. Some of the judgments are referred below:-

(a) Sunrise Chemicals Industries (supra), The Hon'ble Gujarat High Court passed the following order;

"The appellant-Revenue has proposed the following two questions :

"(a) Whether in the facts and circumstances of the case, the Tribunal is justified in relying upon the decision of the Tribunal, rendered in the case of *Suntech Glass Pvt. Ltd.*, reported in [2006 \(199\) E.L.T. 517](#)?

(b) Whether in the facts and circumstances of the case, the Tribunal is justified in setting aside the order of the authorities below despite the wrongful availment of Cenvat credit by the respondent on capital goods of which the respondent was not owner?"

2. The case of Revenue, as propounded by the learned counsel for the appellant, is that respondent-assessee is carrying on job-work for M/s. Pidilite Industries Limited. That the capital goods which were used for the purposes of manufacturing final product were owned by M/s. Pidilite Industries Limited and did not appear in the balance sheet of respondent-assessee for financial year 2004-05. That though the capital goods may have been received by respondent-assessee from M/s. Pidilite Industries Limited, the said capital goods having not been installed in the factory premises of M/s. Pidilite Industries Limited, the owner of the capital goods, the credit of excise duty paid on such capital goods cannot be availed of by respondent-assessee, who is only doing job work for M/s. Pidilite Industries Limited.

3. As the adjudicating officer did not grant credit for the duty paid on capital goods, the assessee carried the matter in appeal before Commissioner (Appeals) but did not succeed. The second appeal was filed before the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Ahmedabad ("the Tribunal"). The Tribunal has held that there is nothing in CENVAT Rules which supports the view that credit will be available only if the burden of duty is borne by the input purchasing manufacturers. Applying the aforesaid ratio to the facts of the case, the Tribunal has allowed the appeal holding that the denial of credit was not correct.

CENVAT Credit Rules, 2002, define "capital goods" under Rule 2(b) of the Rules. Rule 3, as is material for the present, reads as under :

"(1) A manufacturer or producer of final products shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of -

(i) the duty of excise specified in the First Schedule to the Tariff Act, leviable under the Act;

(ii) the duty of excise specified in the Second Schedule to the Tariff Act, leviable under the Act;

(iii) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978);

- (iv) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);
- (v) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001), as amended by section 169 of the Finance Act, 2003 (32 of 2003);
- (vi) the additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under clauses (i), (ii), (iii), (iv) and (v) above; and
- (vii) the additional duty of excise leviable under section 157 of the Finance Act, 2003 (32 of 2003), paid on any inputs or capital goods received in the factory on or after the first day of March, 2002."

4. Thus, on overall reading, it is apparent that credit is available to a manufacturer or producer of final product, which means excisable goods manufactured or produced and such credit is for the duty paid on any inputs or capital goods received in the factory after the prescribed date. Admittedly, the capital goods in question were received in the factory of the respondent-assessee and were used for the purposes of manufacturing final product which is an excisable item. The Rule nowhere prescribes installation of the capital goods, nor does the Rule refer to ownership of the capital goods. The only requirement prescribed by the Rule is use of capital goods received in the factory after the prescribed date and used in the manufacture or production of final products. The respondent-assessee has/fulfilled all the requisite conditions of the Rule.

5. It is not the case of appellant-Revenue that even M/s. Pidilite Industries Limited had claimed credit for the same capital goods which were supplied by M/s. Pidilite Industries Limited to respondent-assessee. In the circumstances, there is no legal infirmity in the impugned order of Tribunal so as to warrant interference.

6. The appeal is accordingly dismissed in absence of any question of law, much less a substantial question of law."

(b) In the case of LG Balakrishnan & Bros. Limited, the Tribunal held as under:-

"9. The next issue is regarding amount payable on capital goods under Cenvat Credit Rules, 2004 consequent upon the sale and transfer of Chain Division to a new Joint venture company. An amount of Rs. 1,17,33,687/- has been confirmed for recovery from the appellant in terms of Rule 3(5) of Cenvat Credit Rules, 2004. The original authority held that the appellant deemed to have removed said capital goods from their premises to a new and separate factory premises of M/s. RCIPL consequent upon the sale and transfer of Chain Division. The relevant provision of Rule 3(5) of Cenvat Credit Rules, 2004 relied upon by the original authority is reproduced as below :-

"(5) When inputs or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in rule 9 :

Provided that such payment shall not be required to be made where any inputs are removed outside the premises of the provider of output service for providing the output service :

Provided further that such payment shall not be required to be made when any capital goods are removed outside the premises of the provider of output service for providing the output service and the capital goods are brought back to the premises within 180 days, or such extended period not exceeding 180 days as may be permitted by the jurisdictional Deputy Commissioner of Central Excise, or Assistant Commissioner of Central Excise, as the case may be, of their removal.”

The admitted fact of the case is that, there is no physical removal of either capital goods or inputs from the factory of the appellant. The original authority observed, in passing, that certain goods have been transferred by lorry. This has been categorically countered by the appellant stating that the transfer of capital goods with reference to other two establishments are mixed-up with the present case by the original authority. Even the demand in the present proceedings do not relate to other Units of the appellant and insofar a Gudalur Unit is concerned, there is no physical removal of either capital goods or raw materials at the time of sale and transfer of Chain Division. We find the central point to be considered for application of the abovementioned rule is whether or not the inputs or capital goods on which Cenvat credit has been taken are “removed” as such from the factory of the appellant. The Hon’ble Supreme Court in the case of *J.K. Spinning and Weaving Mills Ltd. & Anr.* (supra) examined the scope of term “removal”. It was held that there can be no doubt that the word “removal” contemplates “shifting of a thing from one place to another. In other words, it contemplates physical movement of goods from one place to another.” The Tribunal in *Dalmia Cements (Bharat) Ltd. v. Commissioner of Central Excise, Tiruchirapalli* reported in [2008 \(224\) E.L.T. 484](#) (Tri.-Chennai) following the ratio of the Hon’ble Supreme Court in the above decision examined the scope of application of Rule 3(5) of Cenvat Credit Rules, 2004. The Tribunal observed as follows :-

“9. We also find that one of the decisions cited by Id. Consultant for the Revenue, indeed, supports the assessee’s case and the same is the Apex Court’s decision in *J.K Spinning and Weaving Mills* case (supra). In that case, their lordships had examined, *inter alia*, the meaning of “place of removal” defined under Section 4(4)(b) of the Central Excise Act. After noting that the term “removal” had not been defined anywhere in the statute, the Apex Court observed as under :-

“There can be no doubt that the word ‘removal’ contemplates shifting of a thing from one place to another. In other words, it contemplates physical movement of goods from one place to another.”

The word “removal” has not been defined under CCR, 2004 either. In the circumstances, the above observation of the Apex Court assumes significance and has to be followed as binding ruling. Accordingly, we are of the view that all the decisions cited by Id. Counsel in support of the assessee’s contention that Rule 3(5) of the CCR, 2004 would not be invocable unless there was physical removal of capital goods/inputs are in accordance with the ruling of the Apex Court.

... ..

11. We are also in agreement with Id. Counsel’s proposition that a deeming provision should be express. Any quasi-judicial authority, however learned, cannot deem the existence of a deeming provision where there is none in the text of the relevant statute. The Hon’ble Supreme Court’s judgment rendered in *Shyam Oil Cake Ltd.* (supra) seems to support the assessee’s case on this point.”

The said decision of the Tribunal was affirmed by the Hon'ble Madras High Court (supra). The High Court observed that when there is no removal of goods under cover of invoice, as provided under Rule 9, there is nothing in Rule 3(5) to invoke the deeming fiction as insisted by the department. The language of Rule 3(5) is plain and simple when the inputs are capital goods :-

"17. In this case, we find there is no removal of goods under cover of invoice as provided under Rule 9 of the Cenvat Credit Rules, 2004 and there is nothing in Rule 3(5) of the Cenvat Credit Rules, 2004 to invoke the deeming fiction as insisted by the adjudicating authority. The language of Rule 3(5) is plain and simple. When the inputs or capital goods on which cenvat credit has been taken are removed as such from the factory, then subject to compliance of other requirements, the credit availed in respect of inputs on capital goods shall be paid. This situation has not arisen in the present case, as no invoice has been issued for removal of the goods from the factory premises and, therefore, the said rule is not applicable to the case of the assessee.

18. The above is the view succinctly expressed by the Allahabad High Court in *Hero Motors* case (supra). This Court is in agreement with the view expressed by the Allahabad High Court in the above-cited decision and the above decision is squarely applicable to the facts of the present case. In view of the above, the interpretation with regard to Rule 3(5) of CCR, 2004, as made by the Tribunal in the present case is fully justified and it calls for no interference at the hands of this Court."

10. In view of the above settled decision, we find that the provisions of Rule 3(5) are not attracted in the present case. The original authority's attempt to distinguish the above findings is not appropriate. He found that these decisions are regarding change of ownership of whole factory whereas here only a part of the factory is transferred. We find such finding as untenable. Further, regarding question of issue of invoice by the appellant for sale and transfer of capital goods and inputs to the new legal entity, we find on perusal of sample invoice that these are not invoices in terms of Rule 11 of Central Excise Rules, 2002. The appellant contended that the goods were identified with value for the purpose of business transaction and not for sale transaction in terms of Sales Tax or Central Excise provision. We note that the invoices issued did not contain the details of any removal, mode of transport, rate of duty, duty payable thereon, etc., as per the requirement of Rule 11(2) of Central Excise Rules, 2002. We also note that based on these invoices no credit can be availed by any buyer as these are not in terms of Rule 9 of Cenvat Credit Rules, 2004. In view of settled legal position regarding need for physical removal of capital goods or inputs, in order to attract the provisions of Rule 3(5) of Cenvat Credit Rules, 2004, we find that there is no justification to invoke such provision to demand and recover any amount from the appellant in this case. As such, we find no justification for the confirmation of demand towards capital goods. The same reasoning is applicable to the recovery of amount for the inputs amounting to Rs. 91,76,449/-. The demand towards such recovery is also not sustainable. There is no allegation or finding regarding any irregular credit availed on inputs or capital goods or usage of these goods for other than approved purposes.

11. Regarding demand of the amount equal to credit availed to LPG transferred to M/s. RCIPL by the appellant during Oct., '08 to Jun., '09, the appellant conceded that the said amount is payable by them. The said LPG was cleared to M/s. RCIPL after the new Unit coming into existence.

12. We find that the show cause notice in the present case was issued on 17-9-2009 invoking suppression, misstatement, etc. The original authority confirmed the allegation

and imposed equal amount of penalty on the appellant. We find that the creation of new joint venture company, transfer of Chain Division to that company, consequent demarcation of excise premises of both the appellant and the new company have been done under due intimation and approval of the department. Regular returns have been filed containing details by the appellant as well as the new entity. We find no justification in invoking suppression of fact under these circumstances. As such, we find that apart from the merits of the demand (except for LPG clearance) the order is not sustainable with reference to imposition of penalty also.

13. In view of the above analysis and findings, we allow the appeal and set aside the impugned order except to the duty demand of Rs. 5,36,685/- towards LPG cleared by the appellant from M/s. RCIPL.

14. The misc. application also gets disposed of.”

(c) In the case of CCE & ST, Raipur vs. Bhilai Steel Plant case (supra), the Hon’ble Chhattisgarh high court passed the following order:-

“Having heard the Learned Counsel for the Appellant-Revenue, we see that the issue sought to be raised is one which cannot be treated as giving rise to common substantial question of law for decision in favour of the Revenue in an appeal under Section 35G of the Central Excise Act, 1944. The adjudicating authority concurrently held that there is no fiscal removal of the capital goods and that the concept of removal as delineated by the Hon’ble Supreme Court of India in J.K. Cotton Spinning and Weaving Mills Ltd. v. Union of India, 1987 (32) E.L.T. 234 (S.C.) and the decision of the Learned Tribunal in the case of L.G. Balakrishnan and Bros. Ltd. v. C.C.E., Trichy - 2016-TIOL-2356-CESTAT-MAD = 2016 (340) E.L.T. 708 (Tri.-Chennai) cover the issue in favour of the Assessee. It is accordingly held, even on assimilation of facts that ‘removal’ in the case in hand does not include any fiscal removal of goods from one place to other.

2. For the aforesaid circumstances, we are of the view that this appeal does not deserve to be entertained. In the result, the appeal is dismissed in limine.”

(d) Tribunal Chennai in the case of Dalmia Cement (Bharat) Limited (supra) passed the following order:-

“4. Ld. Sr. Advocate has cited case law in support of some of the above contentions of the assessee. Relying on the Apex Court’s judgment in *Shyam Oil Cake Ltd. v. CCE, Jaipur*, [2004 \(174\) E.L.T. 145](#) (S.C.), he has argued that nothing can be deemed in the context of applying any provision of law to a given set of facts unless the law contains an express deeming provision. He has submitted that, under Rule 3(5) of the CCR, 2004, inputs or capital goods, on which Cenvat credit had been taken, were to be *removed as such* from the factory so as to make the manufacturer liable to pay an amount equal to the credit availed. Rule 3 does not contain any deeming provision which could support the Commissioner’s view that the capital goods and inputs used in relation to the setting up of the power plant upon lease of the power plant by the assessee to M/s. KPPL can be deemed to have been removed from the assessee’s factory. Ld. Counsel is heavily relying on the Tribunal’s decision in *Steel Authority of India Ltd. v. CCE, Bhubaneswar* - [2007 \(219\) E.L.T. 960](#) (Tri. - Del.) = 2007-TIOL-438-CESTAT-DEL, wherein M/s. SAIL were held not liable to reverse the Modvat credit taken on a rotor received and used in their captive power plant, by reason of the power plant having been hived off into a new

company (subsidiary). Ld. Counsel has also placed strong reliance on Final Order No. 814/07 dated 19-6-2007 - [2007 \(216\) E.L.T. 217](#) (Tribunal) passed by this Bench in E/746/05 (*M/s. BILT Industrial Packaging Company Ltd. v. CCE, Salem*), wherein the expression “*removed as such*” used in sub-rule (4) of Rule 3 of the Cenvat Credit Rules, 2002 (equivalent to sub-rule (5) of Rule 3 of the CCR, 2004) was interpreted and it was held that the Revenue, to invoke the provision, must satisfy two conditions viz. (a) the capital goods must have been physically removed from factory and (b) such removal should be under cover of invoice referred to in Rule 7 of the Cenvat Credit Rules, 2002 read with Rule 11 of the said Rules. Ld. Counsel has referred to the Supreme Court’s judgment in *Vikram Cement v. CCE, Indore*, [2006 \(197\) E.L.T. 145](#) (S.C.) in the context of submitting that Cenvat credit taken on capital goods used in the setting up of captive power plant cannot be disallowed to the assessee. In the cited case, the Apex Court held that Modvat/Cenvat credit on capital goods used in the mines of a cement manufacturer was not to be denied to them if the mines were captive mines which, along with the cement factory, constituted one integrated unit. In support of the assessee’s contention that, unless there was physical removal of capital goods from factory, Modvat/Cenvat credit taken thereon cannot be asked to be reversed, Id. Sr. Advocate has cited the following decisions :-

- (1) *Whirlpool of India Ltd. v. CC, New Delhi* - 2003 (58) RLT 241 (CESTAT - Del.)
- (2) *Metzeller Automotive Profiles India P. Ltd. v. CCE, Ghaziabad* - [2004 \(167\) E.L.T. 208](#) (Tri.-Del.)
- (3) *Associated Cement Companies Ltd. v. CCE, Belgaum* - [2004 \(173\) E.L.T. 210](#) (Tri.-Bang.)
- (4) *Indorama Synthetics (I) Ltd. v. CCE, Nagpur* - [2005 \(190\) E.L.T. 193](#) (Tri.-Mum.)

In support of the assessee’s contention that ownership is immaterial for availment of Cenvat credit on capital goods, Id. Counsel has cited the following decisions :-

- (1) *HIS Automotives Ltd. v. CCE, Chennai*, [2004 \(163\) E.L.T. 116](#) (Tri. - Chennai)
- (2) *Modernova Plastyles P. Ltd. v. CCE, Mumbai*, 2004 (60) RLT 448 (CESTAT-Mum.)
- (3) *JBM Sungwoo Ltd. v. CCE, Chennai*, 2005 (70) RLT 69 (CESTAT - Chennai)

5. Ld. Consultant for the Revenue has expressed the view that the present case has to be decided on its own facts and circumstances without reference to any of the cases cited by Id. Counsel. He has submitted that, even before the power plant in question was commissioned, M/s. DCL had transferred it on lease, along with the land on which it stood, to another legal entity viz. M/s. KPPL. The capital goods and inputs used in relation to the setting up of the power plant, thus, ceased to be in the actual possession or use of M/s. DCL. Therefore, according to Id. Consultant, the capital goods and inputs must be deemed to have been removed from the cement factory of M/s. DCL, for purposes of sub-rule (5) of Rule 3 of the CCR 2004. In this connection, he has referred to paragraphs 38 and 39 of the Apex Court’s judgment in *J.K. Spinning and Weaving Mills Ltd. v. UOI*, [1987 \(32\) E.L.T. 234](#) (S.C.), wherein certain deeming provisions of Rules 9 and 49 of the erstwhile Central Excise Rules, 1944 were examined. Ld. Consultant has also pointed out that there is no warrant for holding that specific mention of the word

“physical” as adjective for the word “removal” used in sub-rule (5) of Rule 3 of the CCR, 2004 and, therefore, it cannot be said that the provision applies only to cases where physical removal takes place. In this context, he has referred to the Tribunal’s decision in *CCE, Jaipur v. Shree Prithvi Rolling Mills (P) Ltd.*, [2003 \(162\) E.L.T. 353](#) (Tri.-Del.) wherein the Modvat credit taken on a weighing bridge was disallowed to the assessee on the ground that, on account of subsequent change of boundary of the factory premises, the weighing bridge had come to be outside the factory. Referring to Section 105 of the Transfer of Property Act, Id. Consultant has pointed out that the lease of the power plant in the present case involved transfer, of M/s. DCL to M/s. KPPL, of the right to enjoy the property. Such a transfer was accompanied by a change of possession of the property from M/s. DCL to M/s. KPPL and, therefore, it should be held that the capital goods and inputs used in the setting up of the power plant were removed from the factory of M/s. DCL to the premises of M/s. KPPL. Id. Consultant has heavily relied on the Tribunal’s decision in *Majestic Auto* case (supra). He has claimed that the present case is factually similar to the case of *M/s. Majestic Auto Ltd.* and, therefore, the decision in that case is squarely applicable. Id. Consultant has also questioned the preposition that the Cenvat credit taken and utilized in accordance with law cannot be disallowed subsequently on any ground whatsoever. In this connection, he has referred to Rule 14 of the CCR, 2004 and has submitted that, where any credit has been utilized wrongly, the same could be recovered along with interest.

6. We have given careful consideration to the submissions. The inputs and capital goods, on which Cenvat credit had been availed by the assessee on receipt of the goods in their factory, were used in the setting up of the power plant in question and the input services, on which Cenvat credit had been availed by the party, were utilized for the erection and commissioning of the power plant. It is not in dispute that the power plant was set up in a stretch of land which was part of the cement factory premises and its precincts covered by the approved ground plan of the factory and the same was set up for generating electricity for captive use for the manufacture of cement and ancillary purposes. In other words, it was set up as a captive power plant. The main issue arising in this case is whether, on account of the power plant having been leased out to another company (KPPL) w.e.f. 15-3-2005 for generation of electricity and supply thereof to the assessee at prescribed rates, the aforesaid capital goods and inputs should be held to have been *removed as such* from the assessee’s factory and whether, consequently, they should be directed under Rule 3(5) *ibid* to pay an amount equal to the sum of the capital goods credit, input duty credit and input service tax credit utilized for payment of duty on their final product (cement) from 15-3-2005. Id. Commissioner held that, as the land on which the power plant was situated had also been transferred together with the power plant and ancillary equipments to M/s. KPPL under the lease deed, the power plant ceased to be part of, or stood excluded from, the factory premises of M/s. DCL and thereby attracted provisions of Rule 3(5) of the CCR, 2004. On the above facts, Id. Commissioner further held that the capital goods and inputs used in the setting up of the power plant stood removed from the factory premises of M/s. DCL, by virtue of the lease of the power plant along with the land, on which it was situate, to M/s. KPPL. He appears to have taken the view that, by virtue of the said lease arrangement between DCL & KPPL, the capital goods and inputs should be deemed to have been removed from the cement factory of the assessee. Sub-rule (5) of Rule 3 of the Cenvat Credit Rules, 2004 reads as follows :-

“Rule 3(5). - When inputs or capital goods, on which Cenvat credit has been taken *are removed as such* from the factory, or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in

respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in Rule 9.”(emphasis added)

In the case of *M/s. BILT Industrial Packaging Company Ltd.* (supra), this Bench had occasion to consider a similar provision viz. sub-rule (4) of Rule 3 of the Cenvat Credit Rules, 2002, which reads as under :-

“(4) When inputs or capital goods, on which Cenvat credit has been taken, are removed as such from the factory, the manufacturer of the final products shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in Rule 7”.

In Final Order No. 814/07 *ibid* - [2007 \(216\) E.L.T. 217](#) (Tribunal), we made an attempt to decipher the meaning of the expression “as such” used in the above provision. As the same expression has been used in an identical context in sub-rule (5) of Rule 3 of the CCR, 2004, we have the advantage of making useful reference to the following excerpt from Final Order No. 814/07 *ibid* :-

“6.....Both sides have dwelt much on the expression ‘as such’ used in sub-rule (4) of Rule 3 of the CCR. According to learned Counsel, removal of capital goods as such means removal of unused capital goods, whereas, according to learned SDR, it would mean removal of capital goods, whether used or unused. It is significant that the expression ‘as such’ was not used under the erstwhile Rule 57S which dealt with the manner of utilization of capital goods and the credit of the duty paid thereon. Sub-rule (1) of Rule 57S imposed a liability on the manufacturer of final product to pay appropriate duty of excise on his capital goods when removed from the factory for home consumption as if such capital goods had been manufactured in the said factory. Sub-rule (2) of Rule 57S prescribed the extent to which such duty of excise was payable. This sub-rule reads as under :-

“(2) In a case, -

- (a) *where capital goods are removed without being used* from the factory for home consumption, on payment of duty, or for export on payment of duty of excise, such duty of excise shall in no case be less than the amount of credit that has been allowed in respect of such capital goods under Rule 57Q ;
- (b) *where capital goods are removed after being used in the factory* for home consumption on payment of duty of excise or for export under rebate on payment of duty of excise, such duty of excise shall be calculated by allowing deduction of 2.5 per cent of credit taken for each quarter of a year of use or fraction thereof, from the date of availing credit under Rule 57Q ; and
- (c) *where capital goods are sold as waste and scrap*, the manufacturer shall pay the duty leviable on such waste and scrap”.

It appears that clause (c) of sub-rule (2) of Rule 57S covered a case of removal of capital goods as waste and scrap from the factory by the manufacturer of final product, while clauses (a) and (b) of the sub-rule covered two different cases of removal of capital goods as such from the factory by the manufacturer of final product. Though the expression ‘as such’ was not used in clause (a) or clause (b) of sub-rule (2) of Rule 57S, it must not be difficult for a prudent man to understand the distinction between the

removal of capital goods under clauses (a) and (b) on the one hand and the removal of capital goods under clause (c) on the other. It is true that clause (a) covers a case of removal of unused capital goods from the factory by the manufacturer of final product, while clause (b) covers a case of removal of used capital goods from the factory. However, each of these is a case of removal of capital goods *as such* in contradistinction with the case covered under clause (c) involving removal of capital goods *as waste and scrap*. In our considered view, the expression 'as such' occurring in sub-rule (4) of Rule 3 of CCR, 2002 has to be understood in the light of this construction of the provisions of sub-rule (2) of Rule 57S of the erstwhile Central Excise Rules, 1944. Accordingly, when capital goods, whether used or not, on which Cenvat credit has been taken, are removed from the factory, the manufacturer of final products shall pay an amount equal to the credit availed in respect of such capital goods. But one cannot ignore the second leg of sub-rule (4), which says that *such removal shall be made under the cover of an invoice referred to in Rule 7*. Rule 7 of CCR lists out of the documents on the basis of which Cenvat credit on inputs or capital goods can be taken by a manufacturer of final products. One of these documents is an invoice issued by a manufacturer for clearance of inputs or capital goods as such *in terms of the provisions of the CER, 2002*. Rule 11 of the CER, 2002 mandates that no excisable goods shall be removed from a factory or a warehouse except under an invoice signed by the owner of the factory or his authorised agent. Obviously, the invoice, mentioned under Rule 7 (1) of the CCR, 2002, issued by a manufacturer for clearance of inputs or capital goods as such, is the one specified under Rule 11 of the CER, 2002 which stipulates that excisable goods shall be removed from a factory/warehouse only under an invoice signed by the owner of the factory or his authorised agent. Contextually, it may also be noted that, while Rule 7 of the CCR, 2002 employs the word 'clearance', Rule 11 of the CER, 2002 uses the word 'removal'. Elsewhere in the CER as well as in the parent statute also, 'clearance' and 'removal' have been used synonymously. Removal of excisable goods under Rule 11 of the CER, 2002 is, beyond doubt, physical removal of the goods. Rule 4 of the CER, 2002 (which corresponds to Rule 9 of the erstwhile CER, 1944) mandates that no excisable goods, on which any duty is payable, shall be removed from factory/warehouse without payment of duty, the scheme is quite clear. Duty of excise can be collected only at the stage of removal of the excisable goods from the factory/warehouse and such removal must be effected under an invoice issued by the owner of the factory or his authorised agent. Interpretation of sub-rule (4) of Rule 3 of CCR, 2002 has to be harmonious with this scheme. Accordingly, for a manufacturer of final products to be asked to pay an amount equal to the credit availed by him in respect of his capital goods, under Rule 3(4) of the CCR, 2002, the Revenue must satisfy at least two conditions viz. (a) the capital goods must have been physically removed from his factory and (b) such removal should be under cover of invoice referred to in Rule 7 of the CCR, 2002 read with Rule 11 of the CER, 2002. But Rule 11 of the CER, 2002 stipulates that removal of excisable goods from a factory/warehouse must be made under an invoice signed by the owner of the factory or his authorised agent...."

7. In the present case, it is not in dispute that the demand of duty on M/s. DCL in respect of capital goods is consequential to lease of their captive power plant to M/s. KPPL. Admittedly, it was the power plant as a whole (with the land on which it was situate) that was leased out to M/s. KPPL w.e.f. 15-3-2005. There was no physical removal of the capital goods *as such* from the factory inasmuch as the capital goods had, by the time the power plant was leased out, lost their separate identity, having become integral part of the power plant. On this fact, obviously, there was no question of issue of any such invoice as envisaged under Rule 11(1) of the Central Excise Rules, 2002 read with Rule 3(5) of the CCR, 2004, for clearance of any capital goods *as such*

from M/s. DCL's factory. It is, thus, abundantly clear that the provisions of Rule 3(5) of the CCR, 2004 are not applicable to the instant case.

8. In the case of *BILT Industrial Packaging Company* (supra), covered by Final Order No. 814/07 - [2007 \(216\) E.L.T. 217](#) (Tribunal), we had also considered a line of decisions, some cited by the assessee and others cited by the Revenue. Most of such decisions have been cited before us in the present case also. While Id. Counsel has cited a number of decisions to establish that physical removal of capital goods from factory is a peremptory condition for invoking Rule 3(5) of the CCR, 2004, Id. Consultant has argued to the contra by relying on the Tribunal's decision in *Majestic Auto* case (supra). As our final order in *BILT Industrial Packaging Co.* has dealt with these aspects also, we would like to reproduce the relevant paragraph of that order for the purpose of the present case :-

"7. We note, that in the cases of *Jamna Auto Industries* (supra) and *Whirlpool of India* (supra), this Tribunal had occasion to consider a similar factual situation under the erstwhile Rule 57S of the CER, 1944. In both the cases, the assessee had sold their factories with capital goods therein after availing credit on such goods. The Tribunal held that the credit so availed was not recoverable in the absence of removal of capital goods from factory. In the case of *Metzeller Automotive Profiles* (supra), the question was whether, under sub-rule (1) of Rule 57AB of the CER, 1944, the assessee was liable to pay duty equivalent to the Modvat credit taken on their capital goods, consequent upon transfer of their factory to another company. It was held that they had no such liability in the absence of removal of the capital goods from the factory. A similar view as taken by the Tribunal in the case of *Associated Cement Co. Ltd. v. Commissioner of Central Excise, Belgaum* [[2004 \(173\) E.L.T. 210](#) (Tri.-Bang.)] cited by learned Counsel. All these decisions were followed by the Tribunal in the case of *Tata Motors Pvt. Ltd. v. Commissioner of Central Excise, Jamshedpur* [[2005 \(190\) E.L.T. 269](#) (Tri.-Mumbai)] cited by learned Counsel. However, the decision in *Majestic Auto* (supra) relied on by learned SDR is to the contra. As rightly pointed out by learned Counsel, the Bench in that case apparently did not consider the decision rendered in *Jamna Auto Industries* (supra). The decision in *Whirlpool of India* (supra) or the one *Metzeller Automotive Profiles* (supra) was apparently not cited before the Bench which dealt with the case of *Majestic Auto Ltd.* Learned SDR has relied on the referral order passed by a co-ordinate Bench in the case of *SAIL*. We note that the question referred by the said Bench was not addressed by the Larger Bench, which returned the case to the regular Bench for decision on merits. The subsequent decision of the regular Bench vide Final Order Nos. 80-81/07 *ibid*, in the case of *SAIL*, is rather against the Revenue. The view taken by the regular Bench in the referral order was only tentative and the same was subject to final view of the Larger Bench. But the Larger Bench did not take any view on the referred issue, with the result that the view taken by the regular Bench in the referral order continued to be tentative. Ultimately, the final order passed by the regular Bench in *SAIL*'s case on merits went in favour of the assessee, thereby extinguishing the tentative view taken earlier in the referral order. Consequently, the view expressed in the referral order vide 2006 (201) E.L.T., 114 (Tri.-Del.) has no precedent value."

9. We also find that one of the decisions cited by Id. Consultant for the Revenue, indeed, supports the assessee's case and the same is the Apex Court's decision in *J.K Spinning and Weaving Mills* case (supra). In that case, their lordships had examined, *inter alia*, the meaning of "place of removal" defined under Section 4(4)(b) of the Central Excise Act. After noting that the term "removal" had not been defined anywhere in the statute, the Apex Court observed as under :-

“There can be no doubt that the word ‘removal’ contemplates shifting of a thing from one place to another. In other words, it contemplates physical movement of goods from one place to another.”

The word “removal” has not been defined under CCR, 2004 either. In the circumstances, the above observation of the Apex Court assumes significance and has to be followed as binding ruling. Accordingly, we are of the view that all the decisions cited by Id. Counsel in support of the assessee’s contention that Rule 3(5) of the CCR, 2004 would not be invocable unless there was physical removal of capital goods/inputs are in accordance with the ruling of the Apex Court.

10. In the present case, it is also pertinent to note that the assessee’s contention that the power plant continued to be their captive power plant even after its lease to KPPL has not been successfully rebutted. It is their definite case that the land on which the power plant is situate remained part of the approved ground plan of their cement factory even after 15-3-2005. For want of rebuttal, we have got to sustain this case of the assessee and to hold that the power plant remained a part of the assessee’s cement factory and could be called “captive power plant”. Consequently, it has also to be held that the capital goods in question, which formed an integral part of the power plant, remained within the factory premises of M/s. DCL even after the lease of the power plant to M/s. KPPL. In other words, there was no physical removal of any capital goods from the cement factory.

11. We are also in agreement with Id. Counsel’s proposition that a deeming provision should be express. Any quasi-judicial authority, however learned, cannot deem the existence of a deeming provision where there is none in the text of the relevant statute. The Hon’ble Supreme Court’s judgment rendered in *Shyam Oil Cake Ltd.* (supra) seems to support the assessee’s case on this point.

12. We have already found that the provisions of Rule 3(5) of the CCR, 2004, are not attracted on the facts of the present case. Accordingly, we have to set aside the demands raised on the assessee by the Commissioner.

13. In the result, the impugned order is set aside and the assessee’s appeal is allowed and, consequently, the Revenue’s appeal gets dismissed.”

(d) The Hon’ble Madras High Court in the case of CCE, Tiruchirappalli vs. CESTAT Chennai (supra) –]

In this case one of the issues was –“*whether the inputs and capital goods used in a power plant and on which Cenvat credit of duty had been taken could be deemed as removed as such in terms of the provisions of Rule 3(5) of the Cenvat Credit Rules, 2004, when the right to use the said power plant along with the land, building, plant and machinery were leased by the assessee for consideration to another company?*”

The Hon’ble High Court passed the following order:-

“15. On the questions of law framed above, at the outset, it is brought to the notice of this Court that the decision of *Majestic Auto* case (supra), which was relied upon by the jurisdictional Commissioner has since been reversed by the Allahabad High Court in *Hero Motors Ltd. v. Commissioner of Central Excise, Ghaziabad* [[2014 \(310\) E.L.T. 729](#) (All.)]. A cursory glance at the said decision would reveal that the case was also a case of

lease and in the said case also the capital goods remained installed in the same premises and in the said circumstances, the Allahabad High Court held as under :-

“22. In the present case we find substance in the contention of Shri Bharat Ji Agarwal that at the time of obtaining registration HBSA Pvt. Ltd. had submitted a ground lay out plan, which was approved by the Superintendent, Customs and Central Excise, Range-6, Division-III, Ghaziabad on 21-8-1998 and in which the engine assembly on ground flour in the premises of Majestic Auto Limited was clearly demarcated. The plant and machinery was installed and was never removed from the premises. The I.C. Engines manufactured by HBSA Pvt. Ltd. in the same premises were used by the appellant. Once it was admitted that the capital goods, on which Modvat Credit was taken by the appellant remained installed in the same premises, which was leased out and continued to be engaged in the manufacture of I.C. Engine, which was further used in the manufacture of two wheelers and that a separate registration certificate was obtained by HBSA Pvt. Ltd., there was no removal of goods. The capital goods remained installed in the same premises and thus even if the premises were transferred on lease, the capital goods even if they were deemed to be installed in the premises of HBSA Pvt. Ltd., Rule 57-S, would not be attracted.”

16. On a plain reading of Rule 3(5) of the Cenvat Credit Rules, 2004, we find that Rule 3(5) only speaks about the removal of goods under cover of invoice referred to in Rule 9 on inputs or capital goods on which cenvat credit has been taken and if such goods are removed as such from the factory or premises of the provider of output service, the manufacturer of the final products or provider of output service, shall be liable to pay an amount equal to the credit availed in respect of such inputs or capital goods.

17. In this case, we find there is no removal of goods under cover of invoice as provided under Rule 9 of the Cenvat Credit Rules, 2004 and there is nothing in Rule 3(5) of the Cenvat Credit Rules, 2004 to invoke the deeming fiction as insisted by the adjudicating authority. The language of Rule 3(5) is plain and simple. When the inputs or capital goods on which cenvat credit has been taken are removed as such from the factory, then subject to compliance of other requirements, the credit availed in respect of inputs on capital goods shall be paid. This situation has not arisen in the present case, as no invoice has been issued for removal of the goods from the factory premises and, therefore, the said rule is not applicable to the case of the assessee.

18. The above is the view succinctly expressed by the Allahabad High Court in *Hero Motors* case (supra). This Court is in agreement with the view expressed by the Allahabad High Court in the above-cited decision and the above decision is squarely applicable to the facts of the present case. In view of the above, the interpretation with regard to Rule 3(5) of CCR, 2004, as made by the Tribunal in the present case is fully justified and it calls for no interference at the hands of this Court.

19. For the foregoing reasons, we find no reason to interfere with the well-considered findings of the Tribunal on the questions of law as raised above. Accordingly, the substantial questions of law are answered in favour of the 2nd respondent/assessee and against the appellant/Revenue.

20. In the result, finding no merits warranting interference with the order of the Tribunal, these appeals are dismissed. However, in the circumstances of the case, there shall be no order as to costs.”

7. In view of the above judgments, the law is settled that even though the ownership of the capital goods has been changed but the capital goods remained installed and used within the factory premises of the assessee, the Cenvat credit cannot be demanded under Rule 3(5A) of Cenvat Credit Rules, 2004. Following the above decisions coupled with our observations, we are of the view that the demand of Cenvat credit of capital goods in the present case made under Rule 3(5A) is not sustainable.

8. As regard the appeal No. ST/10411/2020 wherein the demand of Cenvat credit in respect of input service used in relation to the activity of conversion of lime sludge into lime by M/s. JK Envirotech Limited, we find that even though the input service was used in the processing related to conversion of lime sludge into lime but the same was directly connected to manufacture of final product of the appellant. Undisputedly the billing of said services are in the name of the appellant therefore, the condition prescribed under Rule 2(I) which defines input service scrupulously fulfilled inasmuch as the input service was purchased by the appellant and the same was used in or in relation to manufacture of the final product of the appellant. In case of Cenvat on service, the location is not criteria for allowing credit. Accordingly, the demand on the same is not sustainable.

9. As regards the issue of demand being time bar, we find that the appellant and categorically informed the department about entire fact of availing credit on capital goods and despite the same was sold/ billed to M/s. J.K Envirotech, hence there is no suppression of fact on the part of the appellant, accordingly the demand for extended period is not sustainable also on time bar. Since the appeals are being allowed on merit, the personal penalty imposed on Shri Surendra Behani, General Manager is also not

sustainable. As a result, the impugned orders are set-aside and all the appeals are allowed with consequential relief, if any, in accordance with the law.

(Pronounced in the open court on 02.05.2023)

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

KL