IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 2

Excise Appeal No. 78046 of 2018

(Arising out of Order-in-Original No. 82/Central Excise/Pr. Commr/2018 dated 28.03.2018 passed by the Principal Commissioner, Central Goods & Service Tax & CX, Central Revenue Building, 5A, Main Road, Ranchi – 834 001)

M/s. Steel Authority of India Limited **: Appellant**
Bokaro Steel Plant,
Bokaro Steel City – 827 001

VERSUS

Principal Commissioner of C.G.S.T. and C.Ex. **: Respondent**
Central Revenue Building, 5A, Main Road,
Ranchi – 834 001

APPEARANCE:

Shri Rahul Tangri and Ms. Ekta Jhunjhunwala, both Advocates,
For the Appellant

Shri Debapriya Sue, Authorized Representative,
For the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 77610 / 2025

DATE OF HEARING / DECISION: 30.10.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed against the Order-in-Original No.82/Central Excise/Pr. Commr./2018 dated 28.03.2018 passed by Ld. Principal Commissioner of CGST & Central Excise, Ranchi, wherein the Ld. Principal Commissioner has confirmed the demand of Central Excise duty of Rs. 1,11,83,666/- along with interest and equivalent amount of duty as penalty.

2. The facts of the case are that M/s. Steel Authority of India Ltd. ('SAIL'), Bokaro Steel Plant (hereinafter referred to as the '**Appellant'**) is engaged in the manufacture of various iron & steel products falling under Chapter 72 and 73 of the Central Excise Tariff Act, 1985 and is availing the benefit of CENVAT Credit of duty/ tax paid on inputs, capital goods and input services under Rule 3 of the CENVAT Credit Rules, 2004.

2.1. During the course of audit, some discrepancies were noticed which were communicated to the Appellant vide audit report dated 09.01.2009, to which reply was furnished by the Appellant vide letter dated 22.06.2009. However, the Department did not accept the reply submitted by the appellant and after a gap of approximately 2 years, a Show Cause Notice dated 04.05.2011 was issued to the Appellant, by invoking extended period of limitation. In the Notice, five issues were raised proposing demand of central excise duty/ recovery of CENVAT credit totally amounting to Rs. 2,16,41,663/-under Section 11A of the Central Excise Act, 1944 read with the relevant provisions of the CENVAT Credit Rules, 2004 along with interest and equivalent penalty.

2.2. The above Show Cause Notice was adjudicated, and the impugned order was passed by Ld. Principal Commissioner of CGST and Central Excise, Ranchi wherein the demand for recovery of CENVAT Credit to the tune of Rs. 1,04,57,997/- was dropped and the balance demand of Rs. 1,11,83,666/- was confirmed. The issues against which demand has been confirmed vide the impugned order are tabulated below, for ease of reference:

Sl. No.	Issues	Amount (Rs.)
1.	Demand under Rule 3(5A) of the CCR on capital goods cleared as 'waste and scrap' without payment of applicable duty.	95,72,114/-
2.	Denial of Cenvat credit of capital goods used in lighting such as flood light, sodium vapour lamp, halogen lamp, high mast light tower, etc. holding the same to be outside the purview of the definition of "capital goods" under Rule 2(a) of CCRas well as the definition of inputs under Rule 2(k) of CCR	16,11,552/-

2.3. Being aggrieved with the confirmation of the above demands against the Appellant vide the impugned order, the Appellant has filed the instant appeal.

3. Regarding the confirmed demand of Rs.95,72,114/-, the appellant submits that the instant demand pertains to clearance as waste and scrap of those capital goods, which were procured prior to the year 1994 on which no CENVAT Credit was availed by them. Hence, it is their contention that the demand of an amount equal to the duty leviable on transaction value under Rule 3(5A) of CCR is unsustainable in the present case. The appellant submits that the Ld. Principal Commissioner, vide the impugned order, has admitted such factual position at Paragraph 22 of the impugned order; however, he has still confirmed the demand of amount under Rule 3(5A) of CCR on the ground that the question of availment of CENVAT Credit was not relevant during the period in dispute.

3.1. In this regard, the appellant has submitted that the interpretation of Rule 3(5A) of the Credit Rules, by Ld. Principal Commissioner, is incorrect being based on a piecemeal reading thereof in isolation, with total disregard to the language of entire Rule 3. It is the appellant's stand that Rule 3 of the CENVAT credit begins with eligible duties which can be availed as CENVAT credit, their utilization and situations, in which the assesses are required to reverse the CENVAT credit availed and working thereof; therefore, the only interpretation that can be accorded to Rule 3(5A) is that it would be applicable only in cases when the capital goods on which CENVAT Credit was initially availed are cleared as waste and scrap. The appellant submits that the interpretation of the Ld. Principal Commissioner seems to make Rule 3(5A) of Credit Rules as charging provision for levy of excise duty on transaction value at the time of clearance of used capital goods as waste and scrap, which is not permissible being beyond the mandate and intent of the CENVAT Credit Rules, which is only to provide for availment, utilization and reversals of CENVAT Credit. In this connection, they point out that the charging provision under the Excise Act is Section 3, which provides for levy of excise duty (which is payable on transaction value) only on manufacture/ production of articles; therefore, in the absence of any manufacturing activity for the subject waste and scrap of capital goods, no duty on transaction value of such unmanufactured waste and scrap can be sought under Rule 3(5A) of the CENVAT Credit Rules.

3.2. In this regard, reliance is placed by the appellant on the decision of *SRF LTD. Versus Commissioner of C. Ex. & Service Tax, Alwar [2018 (363) E.L.T. 1058 (Tri. - Del.)],* wherein analyzing the provision applicable during the relevant period, it has been categorically stated that Rule 3(5A) of CCR shall be attracted only in case when credit has been availed on capital goods cleared as waste and scrap. They also submit that a similar proposition has also been laid down in the case of *Shree Bhageswari Papers Ltd. V. Commissioner of C. Ex., Meerut-I [2016 (338) E.L.T. 132 (Tri. - All.)];* reliance is also placed on the decision in the case of *CCE, Allahabad vs. UP State Sugar Corporation [2012 (279) ELT 76 (Tri- Del)].*

3.3. Accordingly, the appellant submitted that the aforesaid demand confirmed in the impugned order on this issue is not sustainable.

4. Regarding the demand of Rs.16,11,552/- confirmed, the appellant submits that in the present case, CENVAT Credit of capital goods used in lighting such as flood light, sodium vapour lamp, halogen lamp, high mast light tower, etc. has been denied by holding the same to be outside the purview of the definition of "capital goods" under Rule 2(a) of CCR as well as the definition of inputs under Rule 2(k) of CCR. The appellant also points out that the impugned order has denied CENVAT credit to the tune of Rs. 2,64,482/- on sodium vapour lamp and halogen lamp falling under Chapter 85 of the Central Excise Tariff Act, 1985 *[as also admitted in paragraph 26 of the impugned order]* on the ground of no nexus between these goods and the process of manufacture of the appellant's final excisable goods; further, credit has been denied on items like High Mast Light Tower, Flood Lights, Fluorescent Lamps, flood light fittings/fixtures, etc. allegedly falling under Chapters 73 and 94 of the CETA on the ground that these items neither fall under the Chapters specified under Rule

2(a)(A)(i) of CCR nor are they components, spares and accessories of the goods specified at Rule 2(a)(A)(i) and (ii) of CCR; that it has further been observed by the ld. adjudicating authority that such goods cannot be considered as 'inputs' as they are not used directly or indirectly in the manufacture of final products.

4.1. In this regard, the appellant's submission is that all the lighting equipment under consideration fall under Chapter 85 of CETA; since Rule 2(a) of CCR specifically covers goods falling under Chapter 85 of CETA which are used in the factory of production as capital goods, it is their contention that credit has rightly been claimed by them under Rule 2(a) of CCR. Further, it is submitted that once there is no dispute regarding the usage of the goods in the factory of the appellant, there is no requirement on the part of the appellant to establish any further nexus of the capital goods with the manufacture of final products; the usage of the goods in question is sufficient nexus as sought in the CCR. Accordingly, the appellant argues that denial of credit on the ground that sodium vapour lamp and halogen lamp do not have nexus with the manufacturing process of the Appellant company and the other items allegedly fall under Chapters 73 and 94 of the CETA is grossly incorrect and untenable, in the absence of any allegation/ finding regarding non-use thereof in the factory of the appellant. Therefore, the appellant submitted that they have rightly availed CENVAT Credit on the items under consideration as capital goods under Rule 2(a) of CCR.

4.2. Without prejudice to the above submissions, the appellant further submits that the subject goods under consideration falls within the definition of capital goods and credit thereof has accordingly been correctly availed under Rule 2(a) of CCR. It is their pleading that such goods also qualify under the definition of 'inputs' under Rule 2(k) of CCR; Rule 2(k) of CCR *inter alia* defines the term 'input' as all goods used in or in relation to manufacture of final products whether directly or indirectly and whether contained in the final product or not. They have also emphasized that any goods which are commercially expedient, without which the process of manufacturing may be hampered, qualifies for the definition of inputs. Reliance in this regard is placed by the appellant on the judgment of *J.K. Cotton Spg. & WVG. Mills Co. Ltd. Versus Sales Tax Officer, Kanpur [1997 (91) E.L.T. 34 (S.C.)].*

4.3. In this connection, the appellant explains that in the instant case, the goods under consideration have been used by the appellant within the factory premises for ensuring proper lighting in various production areas which is essential for carrying on the production processes round the clock; hence, credit on such items qualifies the definition of 'inputs' under Rule 2(k) of CCR. Further, it is submitted that credit on the items under consideration have been held to be admissible in the case of *Steel Authority of India Ltd. v. Commissioner of C. Ex. & S.T., Raipur [2016 (343) E.L.T. 805 (Tri. - Del.)],* observing that items such as light structures, lamps, high mast lights, tubes & fixtures required to enhance illumination in building, mills and shops enables the assessee for round the clock manufacturing operation.

4.4. Reliance is further placed by the appellant on the judgment of *Commissioner of Cus. & C. Ex., Raipur Versus Bhilai Steel Plant [2010 (261) E.L.T. 612 (Tri. - Del.)],* wherein credit on sodium vapour lamp has specifically been held to be admissible.

4.5. They also submit that a similar proposition has been upheld in the following cases:

- *Maris Spinners Ltd. v. CCE, Trichy [2004 (176) ELT 537] affirmed by Madras High Court vide 2008 (223) ELT 163*
- *Gujarat State Fertilizers and Chemicals Ltd. VersusCommissioner of Central Excise & Service Tax, Vadodara-I [(2023) 4 Centax 1 (Tri.-Ahmd)]*

4.6. In view of the above submissions, the appellant has submitted that CENVAT Credit has been rightly availed by them on the lighting equipments, which are commercially expedient for the apellant's manufacturing process and therefore denial of credit to the appellant on these goods is unjustified. Accordingly, the appellant submitted that the demand confirmed in the impugned order on this issue is not sustainable.

5. Furthermore, the appellant has taken the stand that the entire demand raised for the period 2006-07 to 2007-08 is liable to be set aside on the ground of being time-barred as the entire demand has been raised by invoking the extended period of limitation. In this regard, the appellant submitted that the Department was aware of the facts of non-payment of amount under Rule 3(5A) of CCR and availment of allegedly inadmissible CENVAT Credit in the instant case much earlier in the year 2009 itself, when an

audit was conducted on the records of the Appellant and audit report issued on 09.01.2009; however, it was only on 04.05.2011 that the instant SCN was issued. Hence, they argue that the demand raised invoking extended period is untenable in the present facts and circumstances. Reliance in this regard is placed by the appellant on the following judgments:

- *Anand Nishikawa Co. Ltd. Versus Commissioner of Central Excise, Meerut [2005 (188) E.L.T. 149 (S.C.)]*
- *Alstom Projects India Limited vs Commissioner of Central Excise, Bolpur, Excise Appeal No.315 of 2009 (Tri-Kolkata), affirmed by the decision pronounced by Hon'ble Calcutta High Court on 24.04.2024 in CEXA/7/2024.*

6. In view of the above submissions, the appellant has prayed for setting aside the demands confirmed in the impugned order and allowing their appeal.

7. The Ld. Authorized Representative of the Revenue-respondent has reiterated the findings in the impugned order.

8. Heard both sides and perused the appeal records.

9. In the present case, we find that a demand of Rs.95,72,114/- has been confirmed on the clearance of waste and scrap of those capital good, which were procured prior to the year 1994 on which no CENVAT Credit was availed by the Appellant. We observe that the Ld. Principal Commissioner has admitted this factual position at Paragraph 22 of the impugned order. It is to be observed that Rule 3 of the CENVAT

Credit Rules does not envisage payment of duty on the scrap of capital goods generated, on which no CENVAT Credit has been availed by the appellant. This is evident from the wordings of Rule 3, which deals with eligible duties which can be availed as CENVAT credit, their utilization and situations, in which the assesses are required to reverse the CENVAT credit availed and working thereof. Therefore, the only interpretation that can be accorded to Rule 3(5A) is that it would be applicable only in cases when the capital goods on which CENVAT credit was initially availed are cleared as waste and scrap. As the appellant has not availed any CENVAT Credit on these capital goods, we hold that the demand of an amount equal to the duty leviable on transaction value under Rule 3(5A) of CENVAT Credit Rules (CCR), 2004, is not sustainable in the present case.

9.1. In support of the above view, we refer to the decision in the case of ***SRF LTD. Versus Commissioner of C. Ex. & Service Tax, Alwar [2018 (363) E.L.T. 1058 (Tri. - Del.)],*** wherein, it has been categorically stated that Rule 3(5A) of CCR shall be attracted only in case when credit has been availed on capital goods cleared as waste and scrap. Relevant portion of the said judgment is extracted below, for ease of reference:

> *"2. During adjudication, the appellant took a categorical stand that the scrap in question has arisen out of non-Modvatable capital goods and inasmuch as they have not taken the Cenvat credit on the capital goods, out of which the various damaged structural parts have arisen, there was no requirement of payment of any duty or reversal of any Cenvat credit.*
>
> *3. The appellate authority while dealing with the above plea of the assessee observed as under :*

"From the above judgements it is clear that an amount equal to the duty leviable on transaction value is liable to be paid and it cannot be said that this amount is liable to be paid only when credit has been availed of on the capital goods, scrap of which is being sold. I find that the allegation of revenue that duty is payable on sale of scrap and waste generated out of capital goods cannot be belittled by the contention of the appellants that, since they have not taken the credit of duty on capital goods, they cannot be fastened with the liability to pay duty on transaction value of this waste and scrap of capital goods. Hence, even the submission of sample copies of sale as well as purchase invoices, by the appellants, which point towards non-availability of Cenvat credit of duty at the time of purchase of the said capital goods, would be of no help to the appellants."

4. As is seen from above, the Commissioner (Appeals) has confirmed the demand in terms of Rule 3(5A) by observing that even if the credit was not availed on the capital goods, out of which the scrap has arisen, still the appellant was required to pay the duty on the transaction value. ***For the above proposition, he has strongly relied upon the provisions of Rule 3(5A) which are to the effect that - "if the capital goods are cleared as waste and scrap, the manufacturer shall pay an amount equal to the duty leviable on transaction value". I find that admittedly waste and scrap is not manufactured by the appellant and as such is not an excisable item requiring payment of any duty of excise on the same. The said sub-rule (5A) of Rule 3 of Cenvat Credit Rules, 2004 require payment of duty on the transaction value when waste and scrap has arisen out of the capital goods. If the said sub rule is read independently of the preceding and the succeeding rules, it may emerge that waste and scrap of capital goods would attract duty of excise even if no credit has been availed on the capital goods. However, I note that the entire Rule 3 of Cenvat Credit Rules, 2004 relates to the availment of Cenvat credit on capital goods and the clearance of capital goods subsequently, either as such or in the shape***

> ***of waste and scrap. As such sub-rule (5A) would also take its colour from the preceding rules which are relatable to the clearance of capital goods on which credit has been availed. Independent and solo reading of Rule 5A without appreciating the context in which the same is appearing, as has been done by the authorities below, is not in accordance with the principles of interpretation of law. The said sub-rule (5A) has to be interpreted by applying the principles of noncitur-a-sociis and cannot be picked up independently***.”
>
> *[Emphasis Supplied]*

9.2. We find that a similar proposition has also been laid down in the case of ***Shree Bhageswari Papers Ltd. V. Commissioner of C. Ex., Meerut-I [2016 (338) E.L.T. 132 (Tri. - All.)]***, the relevant portion of which is extracted below, for ease of reference:

> *“3. …..It is further argued that no demand can be raised on the basis of presumption of having availed Cenvat credit, wizen the appellant have categorically denied of availing of any Cenvat credit, nor the revenue could bring any facts on record in support of the same. It is further contention that there is no suppression of facts by the appellant as the revenue audit found the facts from the books of account maintained by the appellant in the ordinary course of business.*
> *….*
> *5. Having considered the rival contentions and that the facts of the present case, I hold that the provisions of Rule 3(5A) read with Rule 3(5) are not applicable in view of the categorical assertion of the appellant that no Cenvat credit was availed, which fact is further corroborated by the memorandum of purchase of 1997.I also hold that the extended period of limitation is not invocable as no case of any suppression or misconduct is made out on the part of the appellant. Thus, the appeal is allowed with consequential benefits in accordance with law."*

9.3. A similar view has also been expressed in the decision in the case of ***Commissioner of C.Ex., Allahabad vs. UP State Sugar Corporation [2012 (279) ELT 76 (Tri-Del)]***, which held as follows:

> *"7. ….The respondents contested the show cause notice and stated that scrap or waste have arisen out of capital goods received minimum 15 years back i.e. prior to 1994 when the credit on capital goods were extended. Original authority held that the burden of proof that the goods were received prior to 1994 is on the assessee. At the same time, he has confirmed the duty under section 11A and imposed penalty under section 11 AC of the Central Excise Act. In other words, he has held that the assessee has cleared the waste and scrap as excisable goods. Commissioner (Appeals) held that there is no finding that these goods are manufactured and accepted the claim by the respondents that they have arisen out of capital goods on which modvat credit was not taken. The learned DR relied on the decision of the Court in the case of Birla Corpn. Ltd. v. C.C.E., Jaipur reported in [2011 (266) E.L.T. 275 (Tri.-Del.)[particularly para 11 of the order. On perusal of said decision, it is noticed that the Tribunal has not held that scrap obtained by dismantling old/damaged machinery as excisable goods. At the same time it also held that in the case of repair and maintenance, if any goods are used for manufacture of parts and the parts are replaced, such parts are excisable goods. In any case, presently we are not dealing with any parts which are replaced, as the duty demand is relating to waste and scrap sold by the respondents.*
> *Therefore, the said decision does not support the view of the department.*
>
> *8. The goods are admitted to be waste and scrap. Undisputedly the waste and scrap sold by the respondents have arisen out of capital goods and the appellant's claim was that such capital goods were procured prior to introduction of Modvat credit on capital goods. Since the original authority has chosen to confirm the demand treating the goods as excisable goods, clearly the order of the original authority was not sustainable. In view of the above, the order of the*

> *Commissioner (Appeals) setting aside the order of the original authority does not call for any interference."*

9.4. By relying on the ratio of the decisions cited supra, we hold that the demand confirmed in the impugned order on this issue is not sustainable and hence we set aside the same.

10. Regarding the demand of Rs.16,11,552/- confirmed against the appellant, we observe that CENVAT Credit of the items which were used by the appellant in lighting, such as flood light, sodium vapour lamp, halogen lamp, high mast light tower, etc., has been denied by holding the same to be falling outside the purview of the definition of "capital goods" under Rule 2(a) of CCR as well as the definition of "inputs" under Rule 2(k) of CCR.

10.1. In this regard, we note that the goods under consideration have been used by the appellant within the factory premises for ensuring proper lighting in various production areas which is essential for carrying on the production processes round the clock. Hence, we are of the view that CENVAT Credit on such items qualifies under the definition of 'inputs' as defined under Rule 2(k) of CCR. We concur with the submission of the appellant that any goods which are commercially expedient, without which the process of manufacturing may be hampered, shall qualify for the definition of 'inputs'. In support of this view, we place our reliance on the decision in the case of ***J.K. Cotton Spg. & WVG. Mills Co. Ltd. Versus Sales Tax Officer, Kanpur [1997 (91) E.L.T. 34 (S.C.)],*** the relevant portion of which is extracted below, for ease of reference:

> *"The expression "in the manufacture of goods" should normally encompass the entire process carried on by the dealer of converting raw materials into finished goods. Where any particular process is so integrally connected with the ultimate production of goods that but for that process, manufacture or processing of goods would be commercially inexpedient, goods required in that process would, in our judgment, fall within the expression "in the manufacture of goods."*

10.2. In the said decision, it has further been held that without electric lighting it would be very difficult to carry on the business, hence, such electrical equipment without use of which the production process is difficult to be carried out, would be regarded as intended for use in the manufacture of goods. The relevant paragraph of the above judgement reads as follows: -

> "*12. The expression "electricals" is somewhat vague. But in a factory manufacturing cotton and other textiles, certain electrical equipment in the present stage of development would be commercially necessary. For instance, without electric lighting it would be very difficult to carry on the business. Again electrical humidifiers, exhaust fans and similar electrical equipment would in the modern conditions of technological development normally be regarded as equipment necessary to effectually carry on the manufacturing process. We are not prepared to agree with the High Court that in order that "electrical equipment" should fall within the terms of Rule 13, it must be an ingredient to the finished goods to be prepared, or "it must be a commodity which is used in the creation of goods." If, having regard to normal conditions prevalent in the industry, production of the finished goods would be difficult without the use of electrical equipment, the equipment would be regarded as intended for use in the manufacture of goods for sale and such a test, in our judgment, is satisfied by the expression "electricals." …"*

10.3. In this regard, we also find that credit on such items under consideration have been held to be admissible in the case of ***Steel Authority of India Ltd. v. Commissioner of C. Ex. & S.T., Raipur [2016 (343) E.L.T. 805 (Tri. - Del.)],*** observing that items such as light structures, lamps, high mast lights, tubes & fixtures required to enhance illumination in building, mills and shops enables the assessee for round the clock manufacturing operation. Relevant extract of the aforesaid decision is given below, for ease of reference:

> "*6. Regarding light fittings, the admitted fact is that they are classified under the eligible Chapter Heading (Chapters 84, 85 and 9405) of the Tariff and are used by the manufacturer in the factory of manufacturer. The items are light structures, lamps, high mast light, tubes/glass and fixtures. The eligibility for credit is thus satisfied. I find no substance in the reasoning of the Original Authority regarding light fittings becoming part of civil structure. I find this by itself is not a ground for denial of credit. Admittedly the various light fittings and fixtures were brought into the factory after duty payment and were installed for the intended purposes. To call these items as immovable property is without basis. These goods are used within the building premises, mills and shops to enhance illumination. This enables round the clock operation of the assessee."*

10.4. It may also be pertinent to refer to the decision in the case of ***Commissioner of Cus. & C. Ex., Raipur Versus Bhilai Steel Plant [2010 (261) E.L.T. 612 (Tri. - Del.)],*** wherein credit on sodium vapour lamp has specifically been held to be admissible. Relevant extract of the judgment is given below, for ready reference:

> *"28. As regards the sixth category of items, it has been observed that sodium vapour lamp has been used by the respondents for lighting purposes in the various shops and mills and even if the item is used for lighting purpose, the same contributes to the proper functioning of the various machines during the night.As regards the other items in this group, it has been observed that for effective controlling of the quality of the goods, the various parameters like the temperature, moisture etc. are required to be monitored and controlled. Accordingly, the said items could be said to have been used in the manufacturing process and therefore, entitled for the credit."*

10.5. Moreover, similar propositions have been upheld in the following cases:

- *Maris Spinners Ltd. v. CCE, Trichy [2004 (176) ELT 537] affirmed by the Hon'ble Madras High Court vide 2008 (223) ELT 163*
- *Gujarat State Fertilizers and Chemicals Ltd. Versus Commissioner of Central Excise & Service Tax, Vadodara-I [(2023) 4 Centax 1 (Tri.-Ahmd)]*

10.6. By relying on the ratio of the decisions cited supra, we are of the considered view that credit has been rightly availed by the Appellant on the lighting equipments, which are commercially expedient for the Appellant's manufacturing process and therefore, we hold that denial of credit to the Appellant on these goods is unjustified. Accordingly, we hold that the demand confirmed in the impugned order on this issue is also not sustainable and hence we set aside the same.

11. We have also examined the submissions of the Appellant as regards the entire demand raised for the period 2006-07 to 2007-08 being time-barred, which has been raised by invoking the extended period of limitation. In this regard, we find that the Department was aware of the facts of non-payment of amount under Rule 3(5A) of CCR and availment of allegedly inadmissible CENVAT Credit in the instant case much earlier in the year 2009 itself, when an audit was conducted of the records of the Appellant and an audit report was issued on 09.01.2009. However, it was only on 04.05.2011 that the Show Cause Notice was issued. Hence, we find the demand raised and confirmed by invoking extended period to be untenable in the present facts and circumstances. Accordingly, we hold that the demand confirmed in the impugned order by invoking the extended period of limitation is not sustainable.

12. As the demand of central excise duty and denial of CENVAT Credit are not sustained, the question of demanding interest or imposing penalty does not arise and hence, we set aside the same.

13. In the result, we set aside the impugned order and allow the appeal filed by the appellant, with consequential relief, if any, as per law.

(Operative part of the order was pronounced in open court)

Sd/-
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd