

*Clear file*

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX  
PLOT NO.6776/B1 "SIDDHI SADAN" BUILDING  
NARAYAN UPADHYAY MARG,  
BHAVNAGAR- 364 001

F. No.V/15-94/Dem/HQ/2009

Date of order : 13.08.2012

Date of issue : 14.08.2012

Passed by Shri Harcharan Singh, Additional Commissioner.

Order-in-Original No. 23/ADC/BVR/2011-12

This copy is granted free of charge for private use of the person(s) to whom it is sent.

Any person(s) deeming himself aggrieved by this order may appeal against this order to the Commissioner Central Excise (Appeals), Rajkot, Central Excise Bhavan, Race Course Ring Road, Rajkot-360001 within 60 days from the date of its communication. The appeal should bear a court fee stamp if Rs. 2.50 paise only.

The appeal should be filed in Form EA-1 in duplicate, as per the provisions of Section 35(1) of the Central Excise Act, 1944 read with Rule 3 of the Central Excise (Appeals) Rules, 2002. It should be signed by the appellants in accordance with the provisions of sub-rule (2) of Rule 3 of the Central Excise (Appeals) Rules, 2002.

- \* It should be accompanied with the following :
- \* Copy of appeal in duplicate

Copies of order, one of which shall be certified copy of the order must bear a court fee stamp of Rs. 2.50 paise as per Schedule I to Article 6 of the Court Fee Stamp Act, 1870.

Sub – Show Cause Notice No. V/15-113/Dem/HQ/2009 dated 2.6.2010.

Brief facts :-

2.1 M/s Dynamic Engineering Company (P) Ltd, 268-269 GIDC, Wadhwan, District Surendranagar, (hereinafter referred to as "Noticee") are engaged in the manufacture of various types of Ball and Taper Roller Bearing under Chapter Heading No. 8482 of the First Schedule to Central Excise Tariff Act, 1985. The Noticee is registered with the Central Excise Department and is availing the benefits of CENVAT Credit on the duty paid by them on the inputs used in the manufacturing of their final products.

2.2 Acting on intelligence that M/s Regal Metal & Ferro Alloys, 205, 2<sup>nd</sup> Floor, Kanchan House, Commercial Complex, Karampura, Delhi, registered with Central Excise Department under Dealer's category vide Central Excise Registration No AAEFR7419LXD001 for trading of Iron and Steel mainly in Wire-rods, Round Bars, Forgings and other alloy Steel were passing on CENVAT Credit on the basis of improper Cenvatable Invoices to their customers, the office and godown premises of M/s Regal Metal & Ferro Alloys were searched on 3.4.2007 by the officers of Anti-Evasion Branch of Central Excise Commissionerate, Delhi-I.

2.3 From the scrutiny of the documents resumed from the premises of M/s Regal Metal & Ferro Alloys, it was observed that in sales invoices, they had changed the Tariff heading and description of the goods being supplied to their buyers vis-a-vis Tariff Headings and description of the said goods appearing in the respective purchase invoices. It appeared that the said changes were made to suit the requirements of their buyers. Further scrutiny of the documents resumed revealed that M/s Regal Metal & Alloys have issued invoices to parties who were mainly wire-drawing units, ERC manufacturers, registered dealers, auto parts (Ball Bearing) manufacturers etc. The Invoices mentioned in the Annexure-A to the Show Cause Notice dated 2.6.2010 were issued to M/s Dynamic Engineering Company (P) Ltd, Surendranagar in such a manner where both description and Tariff heading were changed.

2.4. During the course of investigation, statement of Shri Jitender Rajpal, partner of M/s Regal Metal & Alloys, Delhi was recorded under Section 14 of the Central Excise, Act, 1944 by the Superintendent, Central Excise Commissionerate, Delhi-I on 18.6.2007 wherein he, inter alia, stated that the change of description from Wire Rod to Steel Rod / Steel Round in their sale invoices was because they thought Wire Rod, Steel Rod, Steel Round were all the same items; that Wire Rod was being purchased in coil shape; that they had not changed the shape or form of the Wire Rods; that they were not having any facility to change the Wire Rods into Straight Lengths; that they had been dealing in Straight Length and Bars/Steel Rounds also. On being asked why they had mentioned Wire Rod in their Sales Invoices whereas the purchase was of Steel Round or Steel Rod, he stated that as per his knowledge Wire Rod/ Steel Round and Steel Rod were all one and same thing, so it might be possible that Wire Rods were written as Steel Rods / Steel Rounds and they might have written Steel Rod / Round as Wire Rod also. Regarding the change in the Tariff heading of the items purchased and sold against the said invoices, he stated that since the invoices were issued by their clerical staff who were not so educated and prepared the invoices copying from previous one and so it might be possible that the mistake might have been continued for a longer period; that they were regularly providing their returns with copies of the purchase and sales documents over a period to the Department but they were not appraised of the mistakes by the Department; that they also did not pay any attention to the mistakes being made by the clerical staff; that their purchases were duty paid; that the invoices were issued after making a reference of the purchases were duty paid; that the invoices were issued after making a reference of the purchase invoice, RG-23D Register and their previous invoice to the same party; that the previous invoice was being referred to make the customer's ECC number / registration, address, Tin No. concerned Range and Division of Central Excise; that usually RG-23 D register and purchase invoices were also referred; that he did not check the invoices already issued to check whether the description or the Tariff heading had been mentioned correctly in the sale invoices; that they were aware that it was important to check the correct description and Tariff heading were mentioned in the sale invoices but since they were not all the time available in the office, it was not practically possible to check all the invoices; that although he had told his clerical staff to check the same but they could not find these points ; that they had purchased Wire Rods ranging from the sizes 5 mm to 25.4 mm from M/s Usha Martin Ltd, that their major suppliers of Wire Rods were M/s Usha Martin Ltd, M/s Sunflag Iron & Steel Co and M/s Sakshi Alloys; that as per general trade practice, they were neither mentioning the sizes in their sales invoices nor it was ever demanded by the customers.

2.5 The investigation, scrutiny of records and statement have revealed that M/s Regal Metal & Ferro Alloys supplied different materials to their buyers than what have been purchased by them and it was observed that the materials supplied by M/s Regal Metal & Ferro Alloys cannot be used in manufacturing by the buyers of such materials.

2.6 On further investigation, the premises of Noticee was searched on 18.2.2010 by the officers of Anti-Evasion, Central Excise, Bhavnagar in the presence of two independent witnesses and in the presence of Shri Amrutlal Bhaljibhai Bhimani, Director of the Noticee and incriminating documents viz. Cenvat register, job-work registers, invoices-cum-delivery challans issued by M/s Regal Metal & Ferro Alloys were seized under Panchnama dated 18.2.2010.

2.7 Statement of Shri Amrutlal Bhaljibhai Bhimani, Director of the Noticee was recorded on 18.2.2010 under Section 14 of the Central Excise Act, 1944 wherein he inter alia stated that they were engaged in manufacturing of Ball and Taper Roller Bearings. They buy SAE-52100 Steel Rod from open market which subjected to forging and turning, resulting in Outer and Inner Race in raw form. Thereafter, inner and outer races are hardened and then ground. The inner and outer races so obtained are assembled with Ball or Taper / Bearing. The bearings so manufactured are washed and then marked. Thereafter, the same are oiled and packed. Ball, Roller and cages are purchased from open market; that the composition of Carbon in SAE-52100 Steel Rods should be in range of 0.98 to 1.10% and Chromium 1.3 to 1.60%, he produced a sample copy of Test Certificate received from the supplier. He stated that even though they were buying other components like Balls and Rollers from outside but the chemical composition thereof was also the same; that they were procuring Steel Rods mainly from M/s Usha Martin and M/s Ratnesh Metal Industries; That the Steel Rounds are in form of Rods i.e. not in coil form. That the suppliers of Steel Rounds are delivering goods to their job-workers' premises whereas the components like balls or rollers are dispatched to their factory; that their job-workers carry out the preparation of outer and inner case form Steel Rods and process of turning; that only steel rounds in form of Rods can be used for manufacturing of Ball and Taper bearings; that they had never purchased Wire Rods; that no Wire Rods can be used in manufacturing of said products as diameter of Wire Rods is generally not more than 25 mm whereas

their requirement is of more than 32 mm. He also stated that they have received Steel rounds only under issued by M/s Regal Metal & Ferro Alloys, New Delhi.

2.8 After conclusion of investigation, it appeared that the Noticee

- i. are engaged in manufacture of Ball and Taper Roller Bearings;
- ii. for manufacturing of this commodity, only steel rounds in form of Rods can be used;
- iii. Wire Rods are not used in manufacturing of the products manufactured by the Noticee;
- iv. the diameter of wire rods is generally not more than 25 mm whereas for manufacturing of Ball and Taper Roller Bearings, steel rounds in form of Steel rods of more than 32 m are required ;
- v. they received Steel rounds only and invoices issued by M/s Regal Metal & Ferro Alloys, New Delhi ;
- vi. the materials purchased by M/s Regal Metal & Ferro Alloys, New Delhi which they supplied cannot be used in manufacturing by buyers of such materials ;
- vii. M/s Regal Metal Ferro Alloys changed the Tariff heading and description of goods to suit the requirements of their buyers.

Therefore, it appeared the Wire Rods are not "Input" for the Noticee in as much as the same are not used in or in relation to manufacture of final products viz. Ball and Taper Roller Bearings or for any other purpose as per definition of "input" appearing in Rule of CENVAT Credit Rules, 2004.

Further, Rule 9(4) of the above said Rules reads " The CENVAT" credit in respect of input or capital goods purchased from a first stage dealer or second stage dealer shall be allowed only if such first stage dealer or second stage dealer as the case may be has maintained records indicating the fact that the input or capital goods was supplied from the stock on which duty was paid by the producer of such or capital goods and only an amount of such duty on pro rata basis has been indicated in the invoice issued by him".

2.9 Since, it appeared that M/s Regal Metal & Ferro Alloys, New Delhi supplied different materials to their buyers than that of what had been purchased by them and had changed the Tariff heading and description of good to suit the requirements of their buyers, Steel rods supplied by them were not from the stock on which duty was paid by the producer M/s Usha Martin Ltd, Jamshedpur or M/s Rashtriya Ispat Nigam Ltd, Vishakhapatnam indicated in the invoices issued and therefore, the noticee have wrongly passed on CENVAT credit under such invoices in contravention of Rule 9(4) of CENVAT Credit Rules, 2004 and therefore CENVAT Credit in respect of Steel Rods purchased from M/s Regal Metal & Ferro Alloys was not allowable to the Noticee, therefore, Show Cause Notice No. V/15-113/DEM/HQ/2009 dated 1.6.2009 was issued by Additional Commissioner, Central Excise Commissionerate, Bhavnagar to the Noticee proposing actions as under.

- i. Recovery of CENVAT credit amounting to Rs. 8,56,538/- (Rupees Eight lacs, fifty six thousand, five hundred and thirty eight only) (Basic Rs 8,39,791/- + Edu. Cess Rs 16,747/- Total Rs 8,56,538/-) under Rule 14 of the CENVAT Credit Rules read with Section 11A of the Central Excise Act, 1944 alongwith interest under Section 11AB of the Act, ibid .
- ii. Imposition of penalty under Rule 15 of the CENVAT Credit Rules 2004.

2.10 The Noticee submitted their written reply No MRD/F-860/26 dated 1.7.2010 mainly contending as under :

- I. M/s Regal Metal & Ferro Alloys, New Delhi have correctly passed on the Cenvat Credit to us and they have rightly and correctly availed Cenvat Credit on the Steel Rods received by them under proper and valid Invoices and accordingly, neither any interest is recoverable nor any penalty is imposable on them.
- II. It is a question of fact that their unit had opted for Cenvat Credit Scheme contained in Cenvat Credit Rules, 2004 in order to avail Cenvat Credit of specified duty paid in the specified

inputs and Capital goods and for utilisation of such Cenvat Credit towards payment of specified duty leviable on input or Capital goods cleared as such or on partially processed inputs or on our finished excisable goods or goods removed under Rule 16 of the Central Excise Rules, 2002.

- III. It is a question of fact that inputs "Steel Rods" used in manufacture of our finished excisable goods namely 'Ball and Taper Roller Bearings' and we have availed Cenvat Credit of specified duty paid on such inputs "Steel Rods" used in manufacture of our finished excisable goods.
- IV. It is also a question of fact that during the relevant period i.e. from December, 2004 to January, 2006, they had brought "Steel Rods" from M/s Regal Metal & Ferro Alloys, New Delhi who is a dealer of such Steel Rods.
- V. It is also a fact that M/s Regal Metal & Ferro Alloys had bought "Steel Rods" from manufacturers M/s Usha Martin Ltd or M/s Rashtrya Ispat Nigam Ltd whose name and address, Central Excise Registration No., duty payment particulars, PAN No., Central Excise Range, Division, Collectorate, Quantity, Assessable Value, Tariff Classification, Duty payment particulars etc are mentioned as per the requirement under Rule 11 of the Central Excise Rules, 2002 for removal of goods under Central Excise Invoice by a Dealer .
- VI. There is no dispute or doubt about the fact nor the impugned Show Cause Notice has raised a point that they have not received the materials in their factory premises. The only point of issue raised in the impugned Show Cause Notice is that M/s Regal Metal & Ferro Alloys had sent "Wire Rods" which were not used in the manufacture of finished goods "Ball and Taper Bearings" manufactured by them. It is a fact that they do not use nor they buy any "Wire Rods" since the diameter of wire Rods is not more than 25 mm whereas their product requirement is more than 32 mm as also stated by their Director Shri Amrutlal B Bhimani in his statement dated 18.2.2010. Shri Bhimani had also further stated in his statement that they had received "Steel Rounds" only under the invoices issued by M/s Regal Metal & Ferro Alloys.
- VII. Then the dispute remained as to whether M/s Regal Metal & Ferro Alloys had sent them "Wire Rods" and mentioned "Steel Rods" in the invoices to fulfil their requirements alleged in the impugned Show Cause Notice and mentioned as Steel Rods in the invoices issued by them.

So far as description and classification of a product "Steel Rods" is concerned, all the invoices issued by M/s Regal Metal & Ferro Alloys had mentioned as "Steel Rods" only and classified it under Chapter heading 7227.90 which is absolutely correct and there is no dispute about this as can be seen in the invoices.

Whether M/s Regal Metal & Ferry Alloys had actually sent Steel Rods or Wire Rods, the same can be established only from the purchase invoices and corresponding Sales invoices of M/s Regal Metal & Ferro Alloys only. However, the fact is that they had not sent back the materials received by them from M/s Regal Metal & Ferro Alloys, therefore it can be safely established that the materials sent to them was not "Wire Rods" but it was "Steel Rods" only having 32 mm or more in diameter as they could not use "Wire Rods" having less than 32 mm of diameter. The onus is on the Department to prove that the materials sent to us was different than the materials mentioned in the invoices which is not proved beyond doubt by the Department. The Department has alleged that M/s Regal Metal & Ferro Alloys had purchased Wire Rods and sent them Wire rods by mentioning "Steel Rods" in the invoices. If that was the case, then the Director had also stated that they had received "Steel Rods" only and they could not use "Wire Rods" in their factory. They cannot buy and use "Wire Rods" and there is no reason why M/s Regal Metal & Ferro Alloys should send them "Wire Rods" instead of "Steel Rods" when the rate of duty is same on Wire Rods and Steel Rods and they were entitled to avail Cenvat Credit .

- VIII. The Department has failed to prove that and establish by documentary evidence that M/s Regal Metal and Ferro Alloys had bought "Wire Rods" only and had sent them "Wire Rods" instead of "Steel Rods". So far as legality is concerned, the invoices were as per Rule 11 and there was also no dispute about the fact that they had received the materials in their factory

premises and utilised in the manufacture of their final product and the Central Excise Duty was also been paid by the Original Manufacturer M/s Usha Martin and M/s Rashtriya Ispat Nigam Ltd and the same has been correctly passed on by the dealer M/s Regal Metal & Ferro Alloys under proper duty paying document. Accordingly, they have correctly and rightly availed Cenvat Credit on it. Therefore, the proposal to disallow the Cenvat Credit is not sustainable on feeble grounds raised by the Department and accordingly, no interest is recoverable from them and no penalty can be imposed on them. In view of above, they referred and relied upon decision of Hon'ble High Court of Calcutta in case of M/s Hindlallo Industries Ltd Vs C Cus as reported in 1994 (74) ELT 233.

- IX. It is settled law that the Revenue cannot dispute classification and payment of duty at the recipients' end to deny the credit. In the present case, the department accepted the duty paid by manufacturer of input and no question had been raised in the present proceedings regarding the payment of duty. Therefore, there is no reason to deny the Cenvat Credit and raise a demand alongwith interest and impose penalty. In view of the same, they referred to rely upon the decision of Hon'ble Tribunal in case of CCE Ludhiana Vs Pawan Ispat Udyog reported in 2007 (2123) ELT 134 (Tri-Del), CCE Jalandhar Vs Aggarwal Iron Industries reported in 2005 (184)ELT 397 (Tri-Del), Camphor and Allied Products Ltd., Vs CCE Lucknow reported in 2002 (147) ELT 600.
- X. They submitted that the entire charge against them is framed purely on assumption, speculation or conjectures and without even so much of evidence, howsoever flimsy so as to corroborate the Department's own story. There is no strong evidence to support the allegation of the departmental officers. They submitted that the Department cannot hold them liable without any evidence at all for the alleged offence under the Act. The SCN alleging for wrong availment of Cenvat Credit on strength of invoices issued by the dealer for sending "Wire Rods" instead of "Steel Rods" is lacking as the department has not established by documentary or circumstantial evidences, therefore on this ground also the demand is untenable.
- XI. Fact or circumstances creating a suspicion, however grave, cannot take the place of proof to constitute an offence for establishing beyond doubt existence of any such proof as also essential ingredients of the penal provisions on us, is squarely on the department and such evidence are totally absent. They relied on the decisions of Hon'ble Tribunal in case of Bachcha Prasad Vs Coll of Cus (Prev) Patna reported in 1988 (18) ECR 419 (Cegat ERB), Anita silk Mills Vs CCE Vadodara reported in 2003 (159) ELT 1169 (Tri-Mumbai ) and in case of decision of Hon'ble High court of Madras in case of A K Hanbeen Mohamed Vs CCE Madras reported in 2000 (125) ELT 173.
- XII. That in case of any quasi-judicial criminal proceedings like the instant one, the burden to prove the offence justifying imposition of penalty is squarely on the department. Here this burden is not discharged and the benefit of doubt must be given as per well settled law.

They submitted that the penalty proposed to be imposed under Rule 15 of the Cenvat Credit Rules, 2004 where the provisions are for confiscation and penalty but in this case goods were not held liable for confiscation, hence no penalty can be imposed. Secondly, there are four sub-rules under Rule 15 of Cenvat Credit Rules, 2004 specifying different situations under which the penal action can be taken against the assessee. The impugned Show Cause Notice has invoked Rule 15 in general without invoking proper provisions and sub-rule under which the penalty is proposed on us.

It is now well settled that the Show Cause Notice is a mirror reflecting Civil Liability of the Citizen. Therefore, it must be very specific and not vague so as to enable the assessee to defend his case efficaciously and properly. However, in the instant case, the proposal for imposition has been made without invoking proper provisions/sub-rule. The impugned Show Cause Notice is therefore vitiated and void ab-initio and the same requires to be quashed as such. They submitted that there is no proper sub-rule mentioned. The sub-rule (1) to (4) of Rule 15 of Cenvat Credit Rules, 2004 makes it clear that they are distinct and separate. **In the absence of any valid statutory provision, it makes no sense.** In fact, it creates a misconception or ambiguity with reference to the offences complained of because that would cast a cloud of doubt to the essential ingredients and naturally the discharge of the burden of proof would be stifled. Proceedings should not be allowed to prosecuted on vague basis and

camouflaged hypotheses and prejudice must be presumed to have been caused to the accused in the circumstances. The proposed action for imposition of penalty under Rule 15 is without application of mind and therefore, the proposed action deserves to be set aside. The essential ingredients have not been specifically set out with reference to either of the Sub-rules. Hence, there was no making up of a mind as to which of the sub-rule would be attracted in the instant case, the whole matter has been dealt with in a sphere of ambiguity. In view of the above, they referred and relied upon the decision of Hon'ble High Court of Madras in case of B. Laxmichand Vs GOI reported in 1983 (12) ELT 322 (Mad), Amrit Foods Vs CCE , U.P. - 2005(190) ELT 433 433 (SC).

- XIII. A close scrutiny of the impugned Show Cause Notice will clearly reveal that the Show Cause Notice dated 2.6.2010 covering period from December, 2004 to January 2006, is patently time-barred and longer period of limitation is not invokeable as the issue is raised from the invoices and record like RG 23 D of M/s Regal Metal & Ferro Alloys as well as from their Cenvat account which means that the department was very well aware about the factual aspects as documents were properly and regularly been filed with the department along with Monthly returns by them as well as M/s Regal Metal & Ferro Alloys. Therefore, under the circumstances longer period of limitation cannot be applied and the demand deserves to be set aside on this ground itself. There is not wilful mis-statement or suppression of facts with intent to evade payment of duty as can be seen from the Show Cause Notice itself. It is pertinent to mention that the department is fully aware of business activities of theirs as well as M/s Regal Metal & Ferro Alloys. Therefore, when the department had investigated from records maintained by them as well as from records of M/s Regal Metal & Ferro Alloys, there cannot be any allegations as "Suppression of facts". Therefore, just to cover the face, department cannot raise a ground of "Suppression of facts" and issue Show Cause Notice to cover longer period.

It is now well settled that when the investigation is done based on basis of assessee's their own records, longer period of limitation cannot be invoked.

They submitted that it is by now well settled that when the demand is worked out on the basis of records and documents initially drawn by the Central Excise Assessee, larger period for recovery is not invocable nor penalty is impossible. In view of this, they relied on decision of Hon'ble Tribunal in case of M/s Narbada Steels Ltd Vs CCE Jammu reported in 2007 (82) RLT 825/ 2007 (217) ELT 469 (Tri-Del) .Finally they requested to pass a speaking order after granting a personal hearing.

2.11 A personal hearing was fixed on 30.01.2012 before the adjudicating authority, however, the Noticee in their reply dated 14.02.2012 requested to pass a speaking order without any personal hearing.

### **3 Defence, Discussion and findings :**

3.1 I have gone through the facts of the case, defence reply filed by the Noticee and all the relevant documents placed in the file. On going through the facts of the case, I find that the Noticee is engaged in the manufacture of various types of Ball and Taper Roller Bearing under Chapter Heading No 8482 of the First Schedule to the Central Excise Tariff Act, 1985 and is registered with Central Excise Department and is availing the benefit of CENVAT Credit on the duty paid by them on the inputs used in the manufacture of their final products. In the present case, it is undisputed fact that the Noticee has availed Cenvat Credit on the basis of improper Cenvatable Invoices issued by M/s Regal Metal & Ferro Alloys, New Delhi, a registered dealer and while issuing sales invoices, they had changed the Tariff heading and description of the goods supplied to their buyers vis-a-vis Tariff heading and description of goods appearing in the respective purchase invoices.

3.2 In the Show Cause Notice, the case of the Department is that the "Wire Rods" are not "input" for the Noticee in as much as the same are not used in or in relation to manufacture of final products viz. Ball and Taper Roller Bearings or for any other purpose. M/s Regal Metal & Ferro Alloys supplied different materials to their buyers than that of what have been purchased by them and have changed the Tariff heading and description of goods to suit the requirements of their buyers , therefore, Steel Rods supplied were not from the stock on which duty was paid by the producer M/s Usha Martin Ltd, Jamshedpur or M/s Rashtriya Ispat Nigam Ltd, Vishakhapattanam indicated in the invoices issued and therefore, M/s Regal Metal & Ferro Alloys, New Delhi had wrongly passed on

CENVAT Credit under such invoices. The Noticee has argued that all the invoices issued by M/s Regal Metal & Ferro Alloys have mentioned as "Steel Rods" only and classified it under Chapter heading 7227.90 which is absolutely correct and there is no dispute about this and they have rightly availed CENVAT Credit therefore, they are not liable for penalty under Rule 15 of Cenvat Credit Rules, 2004.

(a) The view of the Department is that the "Wire Rods" are not input for the Noticee as the same are not used in or in relation to manufacture of final product viz, Ball and Taper Roller Bearing or for any other purpose. The Noticee has submitted that they do not use or buy any "Wire rods" since the diameter of Wire rod is more than 25 mm whereas their product requirement is more than 32 mm as stated by Shri Amrutlal B. Bhimani in his statement 18.02.2010 and the materials supplied to them was not "Wire Rods" but it was "Steel Rods". I do not agree with this argument. Cenvat Credit Rules, 2004 governs the availment and utilisation of the credit and Rule 3 of the Rules provides that a manufacturer shall be allowed to take credit of duty of excise paid on any input received in the factory of manufacturer. The Rule 2 of the said Rules defines "input" as all goods, except light diesel oil, high speed diesel oil and motor spirit commonly known as petrol used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not and includes lubricating oil, greases, cutting oils, coolants, accessories of the final products cleared along with the final products, goods used as paint or as packing material or as fuel or the generation of electricity or steam used in or in relation to manufacture of final products or for any other purpose within the factory of production. Therefore, the "Wire rods" are not input for the Noticee inasmuch as the same were not used in or in relation to manufacture of their final product viz. Ball and Taper Roller Bearings. Therefore, the Cenvat Credit is disallowable on this count. The reliance placed by the Noticee on the decision of Hon'ble High Court of Calcutta in case of Hindalco Industries Ltd Vs C Cus reported in 1194(74) ELT 233 is regarding classification dispute of imported coal tar pitch which has no relevance to the facts of present case. Similarly, the reliance placed by the Noticee on other decisions of Hon'ble Tribunal in case of CCE, Ludhiana Vs Pawan Ispat Udyog reported in 2007 (213) ELT 14 (Tri-Del), CCE, Jalandhar Vs Aggarwal Iron Industries in 2005 (184) ELT 397 (Tri-del), Camphor & Allied Products Ltd Vs CCE, Lucknow reported in 2002 (147) ELT 600 which are regarding classification of the products and payment of duty at the recipients' end and are not relevant to the present case.

(b) The Noticee has contended that the entire charge against them is framed purely on assumption, speculation or conjectures and without even so much of evidence so as to corroborate the Department's own story. I do not agree with contention. In statement dated 18.06.2007, Shri Jitender Rajpal, partner of M/s Regal Metal & Ferro Alloys, New Delhi, the supplier of the materials has stated that the change of description from Wire Rod to Steel Rod/ Steel Round in their Sale Invoices was because they thought Wire Rod, Steel Rod/ Steel Round were all the same items. He has also accepted the change in the Tariff heading of the items purchased and sold against the said invoices issued the Noticee. Therefore, the "Wire Rods" are not the input for the Noticee as the same were not used in or in relation to manufacture of final products viz., Ball and Taper Roller Bearings. Therefore, the Department has rightly proposed disallowance of Cenvat Credit. Further, Rule 9(4) of the Rules reads "The CENVAT Credit in respect of input or capital goods purchased from a first stage dealer or second stage dealer shall be allowed only if such first stage dealer or second stage dealer as the case may be has maintained records indicating the fact that the input or capital goods was supplied from the stock on which duty was paid by the producer of such input or capital goods and only an amount of such duty on pro rata basis has been indicated in the invoices issued by him". Therefore, I do not accept Noticee's contention and the reliance placed by the Noticee on the decisions in cases of Hon'ble Tribunal in case of Bachcha Prasad Vs Collector of Customs (Patna) in 1988 (18) ECR 419 (Cegat ERB), Anita Silk Mills Vs CCE Vadodara in 2003 (159) ELT 1169 (Tri-Mumbai) and in case of A.K. Manbeeb Mohamed Vs CCE Madras are of no help.

(c) The Noticee has contended that Show Cause Notice proposes to impose penalty under Rule 15 of Cenvat Credit Rules, 2004 where the provisions are for confiscation. In their case, goods were not held liable for confiscation and hence no penalty can be imposed. I do not agree with the contention of the Noticee. The Department has after investigation concluded in the Show Cause Notice dated 2.6.2010 that the Noticee has wrongly availed the Cenvat Credit on the basis of wrongly passed on Cenvat Credit and therefore is recoverable under Rule 14 of the Cenvat Credit Rules, 2004 along with penalty. Therefore, the reliance placed by the Noticee on the decisions of Hon'ble High Court of Madras in case of B. Lakshmi Chand Vs GOI reported in 1983 (12) ELT 322 (Mad), Amrit Foods Vs CCE U.P. in 2005 (190) ELT (SC) are of no help.

(c) The Noticee has further argued that the Notice dated 2.6.2010 covers the period from December, 2004 to January, 2006 which is time barred in view of the fact that they had filed all documents with Department in time and the Department was aware of it, therefore there was no suppression of facts with intent to evade payment of duty. I hold that M/s Regal Metal & Ferro Alloys, New Delhi have suppressed the material facts and have misstated the description and Tariff heading of the goods in their invoices, hence extended period as contemplated in Section 11A of the Central Excise Act, 1944 is rightly invokeable in this case for recovery of Cenvat Credit. I hold that the actions proposed in the subject Show Cause Notice are legally correct.

In view of the above facts, evidences, discussion and findings I pass the following orders.

### ORDER

1. I confirm the CENVAT Credit amount of Rs. 8,56,538/- (Rs Eight lacs, fifty six thousand, five hundred and thirty eight only) as calculated in Annexure-B under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11 of the Central Excise At, 1944 .
2. In addition to the above, confirmed CENVAT Credit of Rs.8,56,538/- the Noticee shall pay interest on the said amount as provided under Section 11AB of the Central Excise Act, 1944.

*sd/-*

(HARCHARAN SINGH)  
ADDL. COMMISSIONER

To,  
M/s Dynamic Engineering Company (P) Ltd,  
268-269, GIDC Wadhwan,  
District Surendranagar.

Copy to :-

1. Commissioner, Central Excise, Bhavnagar.
  2. Assistant Commissioner (AE), Central Excise, Bhavnagar.
  3. Assistant Commissioner, Central Excise, Surendranagar.
  4. Superintendent, Central Excise, AR-I, Surendranagar.
  5. Superintendent (Recovery Cell), Central Excise, Hqrs, Bhavnagar.
- ✓* Guard File.

*sd/-*  
14/8/2012  
ADDL. COMMISSIONER