

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD**

REGIONAL BENCH - COURT NO. - I

Excise Appeal No. 27150 of 2013

(Arising out of **Order-in-Original** No.07/2013-CE-HYD-III-ADJN (COMMNR) dated 31.03.2013 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad)

M/s ITC Ltd.,

Paperboards & Specialty Papers Division,
P.b.No.4,
Sarapaka Village,
Bhadrachalam,
Khammam,
Telangana - 507 128.

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APPELLANT

VERSUS

**Pr. Commissioner of Central Tax
Rangareddy - GST**

H.No.1-98-7-43.
Vip Hills,
Jaihind Enclave,
Madhapur,
L.B. Stadium Road,
Basheerbagh,
Hyderabad,
Telangana - 500 081.

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RESPONDENT

APPEARANCE:

Shri Narendra Dave, Advocate for the Appellant.

Shri K. Sreenivasa Reddy, Authorized Representative for the Respondent.

**CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)**

FINAL ORDER No. A/30321/2026

Date of Hearing: 23.02.2026

Date of Decision: 12.06.2026

[ORDER PER: ANGAD PRASAD]

The present appeal is directed against the Order-in-Original No. 07/2013-CE-HYD-III-ADJN (COMMNR) dated 31.03.2013, whereby, Learned Commissioner disallowed CENVAT Credit amounting to Rs. 1,89,28,243/- availed by the appellant on Capital goods and inputs used for setting up an Air Separation Plant, and also confirmed interest under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11AA of the Central Excise Act,

1944 and imposed equal penalty under Rule 15 of the CENVAT Credit Rules read with Section 11AC of the Act.

2. The fact, in brief, is that the appellant is engaged in the manufacture of paper and paper boards falling under the first schedule to the Central Excise Tariff Act, 1985. For manufacture of its final products, the appellant required oxygen and other industrial gases. Accordingly, it entered into an agreement dated 27.09.2006 with Inox Air Products Ltd., under such arrangement, Inox supplied various machinery, components, parts and accessories under the cover of Central Excise invoices specifically naming the appellant as the consignee. These goods were received in the appellant's factory at sarapaka and used for erection and commissioning of an Air Separation Plant with the factory premises. The appellant availed CENVAT Credit of duty paid on such goods during the period October 2007 to April 2009 and reflected the same in its statutory returns.

3. The Show Cause Notice dated 06.11.2012 was issued, alleging that:

a) these parts and components lost their identity in the Air Separation Plant;

b) these parts do not belong to M/s ITC;

c) the said goods were procured by M/s Inox and the same were used in erection of a plant, which is attached to earth and ceased to be goods on erection and thus, the said Air Separation Plant cannot be treated as goods for availment of CENVAT Credit, and

d) M/s Inox have not discharged the duty liability on the said Air Separation Plant.

4. The Adjudicating Authority confirmed the entire demand with interest and penalty, giving rise to the present appeal.

5. Learned Counsel for the appellant submitted that the Air Separation Plant falls within the ambit of Capital goods under Rule 2(a) of the CENVAT Credit Rules and thus have correctly availed credit. The appellant has procured various items falling under chapter 82, 84, 85, 90 etc. which are 'capital goods' on which excise duty has been paid and the same have been installed in the Air Separation Plant. Certain items which falls under chapter 35, 38, 40, 69, 83, 87 are parts, components and accessories of the capital goods i.e., Air Separation Plant. The appellant is eligible to availing CENVAT Credit on these duty paid items as 'capital goods' under Rule 2(a)(A)(i) read with Rule 2(a)(A)(iii) of the CENVAT Credit Rules. Since the duty paid capital goods and inputs used in setting up the Air Separation Plant are used by the Appellant for manufacture of the final product i.e., paper products, the appellant is eligible to avail CENVAT Credit on such capital goods and inputs. There is no requirement that the entire air separation plant should be excisable to avail CENVAT Credit. The inputs used in the manufacture of Capital goods which are used in the factory is sufficient reason to give CENVAT Credit. Reliance has been placed on the decision of KCP Ltd., Vs CCE [2009 (237) E.L.T. 500 (Tri-Bang)].

6. It is further submitted that the Air Separation Plant is used exclusively within the appellant's Sarapaka factory to produce oxygen necessary for manufacturing paper, the nexus between the input/capital goods and the final product is established and hence credit cannot be denied on the various items used in the Air Separation Plant. Reliance in this regard has been placed on JSW Ispat Steel Ltd., Vs Commissioner of Central Excise [2013

(11) TMI 1389 (Tri-Mumbai)] which has been accepted by the Department on merits.

7. Learned Counsel for the appellant alternatively submitted that assuming but not admitting that the Air Separation Plant is excisable good, such manufacture in the factory is exempt from payment of duty as Notification No. 67/95-CE dated 16.03.1995 grants exemption in respect of capital goods manufactured in a factory and used within the factory for production.

8. Learned Counsel for the appellant submitted that the said equipment is also covered under the definition of 'inputs' as defined under Rule 2(k) of CENVAT Credit Rules. Now it is a settled position that the definition of 'inputs' is very wide and covers all goods used in the factory by the manufacture of the final product. Reliance in this regard has been placed on the following decisions:

i) Dredging Corporation of India Vs Commissioner of Central Tax Visakhapatnam – GST, 2025 (10) TMI 616 (Tri-Hyd)

ii) Dish TV India Ltd., Vs Commissioner of CGST, Noida, 2024 SCC Online CESTAT 508 (Tri-All)

9. Learned Counsel for the appellant submitted that the Air Separation Plant which provides oxygen and other industrial gases which are used in various phases of pulp and paper making process and hence, directly used in the manufacture of the final products. Hence, the equipment qualifies as 'inputs' and the appellant is eligible to take CENVAT Credit on the same. Learned Counsel for the appellant further submitted that credit is availed under the category of Capital goods, if credit is per se eligible as inputs, credit cannot be denied on that count. Reliance has been placed on the decision.

i) Sanghvi Forging & Engineering Ltd., Vs Commissioner of Central Excise, Vadodara-I, 2014 (302) E.L.T. 136 (Tri-Ahmd)

10. Learned Counsel for the appellant submitted that the Air Separation plant was leased out to the appellant and invoices for inputs and capital goods named the appellant as the consignee. The impugned order erred in failing to appreciate that the equipment received in the factory of the appellant are excisable goods and they were used in the factory of the appellant for setting up Air Separation Plant. Ownership of the equipment is not relevant for the purpose of taking credit as long as the said materials are eligible materials, received in the factory and used in the manufacture of final products. Reliance has been placed JSW Ispat Steel Ltd., Vs Commissioner of Central Excise 2013 (11) TMI 1389 (Tri-Mumbai), wherein, the appellant therein entered into a contract with M/s Inox Air Products Ltd., for setting up of an oxygen plant and certain equipment procured by Inox for setting up the Oxygen Plant were received in the factory of the appellant and were leased out to them by Inox. The Hon'ble Tribunal held that ownership of goods is not a criterion for denial of credit on capital goods.

11. Learned Counsel for the appellant submitted that the impugned order misconstrued Rule 4(3) of CENVAT Credit Rules and incorrectly draws a conclusion that because Inox is not a Finance Company, the appellant is ineligible for credit. This rule covers all leasing arrangements. The objective of this rule is to expand the scope of eligibility to include various financial arrangements, ensuring that the benefit of CENVAT Credit remains available to the actual user of the machinery. The rule does not state that credit is only allowed if the lessor is a finance company; rather, it clarifies that credit shall be allowed even if such an arrangement exists. Reliance in this regard has been placed on the following decisions:

- i) LeaMak Healthcare Pvt Ltd., Vs Commissioner of Central Excise Ahmedabad 2010 (6) TMI 424 (Tri-Ahmd)
- ii) CCE Vs Kalyani Seamless Tubes Ltd., 2004 (176) E.L.T. 899 (Tri-Mumbai)
- iii) German Remedies Ltd., Vs CCE 2002 (144) E.L.T. 606 (T)

12. Learned Counsel for the appellant submitted that though the appellant intimated the Department that the Air Separation Plant was taken on lease from Inox prior to issuance of Show Cause Notice, the Show Cause Notice never alleged that the appellant was not the owner of the equipment and thus cannot avail CENVAT Credit on the same. Thus impugned order travels beyond the Show Cause Notice. Hence, impugned order is not sustainable.

13. It is further submitted that the impugned order has confirmed the demand on one of the grounds that the Air Separation Plant is immovable. The Air Separation Plant is attached to earth through nuts and bolts for stability, functionality and vibration-free operation. Such fastening is universally recognized as a temporary and functional attachment, insufficient to classify the plant as immovable property. Reliance has been placed on the decision of the Hon'ble Supreme Court in the case of Bharati Airtel Ltd., Vs CCE, Pune 2024 (11) TMI 1042 (SC).

14. Learned Counsel for the appellant submitted that Board Circular No. 58/1/2002-CX dated 15.01.2002 clarifies that turnkey projects involving supply of large number of components, machinery, equipment, pipes and tubes etc. for their assembly/installation/erection/integration/inter-connectivity on foundation/civil structure etc. at site, will not be considered as excisable goods for imposition of Central Excise Duty. The Show Cause Notice relied upon this Circular is completely erroneous as the said Circular is solely about classification of goods that are embedded to earth and not on

denial of CENVAT Credit. Reliance has been placed in this regard on the following decisions:

- i) Ashtech (India) Pvt Ltd., Vs Commissioner of Central Excise & Central Tax, Mangaluru 2026 (1) TMI 1457 (Tri-Bang)
- ii) The Ramco Cements Ltd., Vs The Commissioner of G.S.T. & C.Ex., Tiruchirappalli Commissionerate 2019 (5) TMI 129 (Tri-Chennai)

15. Learned Counsel for the appellant submitted the Departments has relied on the explanation 2 of Rule 2(k) added via amendment dated 07.07.2009, which excluded goods used in the construction of a building or a civil structure or laying of foundation or making of structures for support of capital goods. However, since the appellant's procurement and installation were largely completed prior to this date, the restrictive interpretation introduced by the amendment cannot be applied to the period in dispute. The amendment w.e.f. 07.07.2009 was not a 'clarification' but a restrictive amendment to deny credit and thus amendment cannot be applied to the period in dispute. Reliance has been placed in this regard on the following decisions:

- i) Mundra Ports and SEZ Ltd., Vs CCE, 2015 (5) TMI 663 (Guj)
- ii) Thiru Arooran Sugars, Dalmia Cements (Bharat) Ltd., Vs CCE, 2017 (7) TMI 524 (Madras HC)
- iii) Vandana Global Ltd., and others Vs CCE, 2018 (5) TMI 305 (Chhattisgarh HC)
- iv) Winsome Yarns Ltd., (Unit-III) Vs CCE, 2023 (6) TMI 143 (P&H HC)

16. It is further submitted that extended period of limitation is not invocable as the Department was well aware of the details of the CENVAT Credit availed by the appellant. The Department was put to notice about the components of CENVAT Credit which were being availed by the refinery, and the lease agreement was also submitted to the Department vide letter dated

12.07.2012 which was submitted much before the issuance of the notice.

Reliance has been placed by the appellant on the following decisions:

- i) Emnar Pharma Pvt Ltd., 2026-TIOL-225-CESTAT-HYD
- ii) Commissioner of Central Excise & Customs Vs Reliance Industries Ltd., 2023 (385) E.L.T. 481 (S.C.)
- iii) Principal Commissioner Vs Mammen Engineering Works, 2024 7 (2) TMI 1134-Chhattisgarh HC
- iv) Commissioner of Customs Excise and Service Tax Indore Vs Zyg Pharma Pvt Ltd., 2017 (358) E.L.T. 101 (M.P.)

17. Learned AR reiterates the finding of the Adjudicating Authority, inter alia, if there is no provision applicable to any particular situation, CENVAT Credit in such circumstances, would not be admissible as the legislature have not intended to extend the benefit of credit to such circumstances.

18. We have heard both the parties at length and peruse the records with their submissions.

19. The following issues arise for consideration:-

- i) Whether duty-paid goods received in the appellant's factory and used for erection of the Air Separation Plant qualifies as Capital goods under Rule 2(a) of the CENVAT Credit Rules of 2004.
- ii) Whether alternatively, they qualify as inputs under Rule 2(k) of the CENVAT Credit Rules, 2004.
- iii) Whether ownership of the goods by Inox disentitles the appellant from availing credit.
- iv) Whether the Air Separation Plant becoming attached to earth affects admissibility of credits.

v) Whether Rule 4(3) of the CENVAT Credit Rules restricts credit only to goods leased from financing companies.

vi) Whether the impugned order travels beyond the allegations contained in the Show Cause Notice.

vii) Whether the amendment made to Rule 2(k) of the CENVAT Credit Rules w.e.f. 07.07.2009 can be applied retrospectively.

20. Rule 2(a) of the CENVAT Credit defines "Capital goods" to include goods falling under chapter 82, 84, 85, 90 and components, spares and accessories thereof. The undisputed position is that the impugned machinery and equipment fall under chapter 84 and related chapters, were duty-paid, and were received in appellant's factory under valid invoices. In JSW Ispat Steel Ltd., supra, the Tribunal dealt with an identical arrangement involving an Oxygen Plant setup by Inox Air Products Ltd. The Tribunal held that ownership of the machinery is not relevant and that credit on machinery, equipment, appliances, parts and components used in setting up an Oxygen Plant within factory is admissible. The relevant paras of the judgment are thus:

"5.1 As per Rule 2(a) of Cenvat Credit Rules, 2004, 'capital goods' means:-

(A) the following goods, namely:-

(i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, Heading No. 68.05 grinding wheels and the like, and parts thereof falling under heading 6804 of the First Schedule to the Excise Tariff Act;

(ii) pollution control equipment;

(iii) components, spares and accessories of the goods specified at (i) and (ii);

(iv) moulds and dies, jigs and fixtures;

(v) refractories and refractory materials;

(vi) tubes and pipes and fittings thereof; and

(vii) storage tank, used -

- (1) in the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office; or
- (2) for providing output service;”

Thus, it includes not only goods falling under Chapters 82, 84, 85 and 90, which are machinery, equipment, appliances and also components, spares and accessories of the goods falling under the aforesaid Chapters. In the present case, the plant has been set up using various machinery and equipments falling under Chapter 82, 84, 85 or 90 or components, spares or accessories of these goods and these facts are not disputed. Merely because the various machinery, equipment, appliances and parts have been assembled at the site to set up the Oxygen Plant and such a plant being immovable property, Cenvat credit is sought to be denied. Nowhere in the Cenvat Credit Rules, it is envisaged that the machinery, equipment, appliances or their components should be used as such in the manufacture of excisable goods. The manufacturing plant facility in a factory would comprise of a number of capital goods and all these things have to be assembled together so that they act in unison to perform the required processes. For example, in a sugar factory there may be a Boiler plant for generation of steam, a crusher installed for crushing of the sugar cane, a distillation plant for undertaking the various chemical processes involved in the manufacture of sugar. The boiler, crusher and distillation equipment, all have to be assembled together to form a sugar plant. Merely because all have been assembled together to form a sugar plant, can it be said that the capital goods credit cannot be allowed on Boiler, Crusher or a distillation equipment. Such a view according to us results in an absurd situation. In none of the manufacturing plants, all the machineries can be used as such and directly, the various machineries and equipments have to function in conjunction and in unison with each other and for this purpose, they are assembled into a plant. Merely because all the individual equipment, machinery or components are assembled together, it will be pre-posterous to suggest that the capital goods credit cannot be allowed on this individual machinery/equipment or appliances. The purpose of allowing capital goods credit is to relieve the burden of cascading effect of taxes. If that purpose is to be achieved in a meaningful way, the law has to be interpreted in a reasonable manner so that the object is achieved.

5.2 In the decisions relied upon by the appellant, the issues contested by the Revenue have been adequately addressed. For example, in the case of Pepsi Foods (supra), it has been held that ownership of goods is not a criterion for denial of credit on capital goods and even if it is leased for a particular period, the assessee is eligible to take Cenvat credit. In the present case, merely because M/s Inox Air Products Ltd. has leased out the plant to the appellant, that does not disentitle the appellant from availing Cenvat credit of the excise duty paid on capital goods. Similarly, in the case of Gujarat Ambuja Cement Ltd. (supra), Rajarambapu Patil SSK Ltd. (supra) and KCP Ltd. (supra), this Tribunal and the Hon'ble High Court of Himachal Pradesh held that Cenvat credit of excise duty paid on parts, components and accessories would be admissible under the Capital Goods Credit scheme even if they are assembled into goods which are immovable or exempted. Similarly, in the ICL Sugars Ltd. (supra), it was held that immovability has no bearing on eligibility for availment of Cenvat credit on capital goods. In the

light of these decisions, the interpretation of law undertaken in the impugned order does not appeal to any common sense or logic. So long as the individual machinery, equipment or appliance or parts and components thereof fall within the definition of capital goods under Rule 2(A) of the Cenvat Credit Rules, 2004 and so long as they are used within the factory of production for the manufacture of excisable goods which are chargeable to duty, the benefit of capital goods credit cannot be denied and we hold accordingly.

5.3 As regards the reliance placed by the Revenue on the Vandana Global (supra), the said case did not deal with the admissibility of Cenvat credit on capital goods. The issue before the Larger Bench was whether angles, channels, cement, etc., used in the erection of structures for the support of capital goods would be eligible for capital goods credit as parts and components of capital goods. The Larger Bench held that such cement, angles, channels, components, etc., used in the fabrication of structures for installation of production machinery cannot be considered as inputs for the manufacture of capital goods and, therefore, it was held that they will not be eligible for the Cenvat credit of excise duty paid under the category of capital goods. In the said decision, there was no finding by the Larger Bench stating that capital goods credit is not admissible in respect of machinery, equipments and appliances used within the factory of production which were used in the assembly of the manufacturing plant. Therefore, the facts of the said case are completely different and distinguishable from the facts of the present case and, therefore, the ratio of the said decision is not applicable to the present case. Similarly, in the case of Bharti Airtel Ltd. (supra), the question before the Tribunal was whether the erection of a tower consisting of various Iron & Steel items and cement can be considered as capital goods and this Tribunal held that tower per se is not capital goods as it does not undertake any process either in relation to manufacture of goods or in the rendering of any services and, therefore, it was held that iron and steel products and cement which have gone into the erection of any immovable property cannot be considered as capital goods. Thus, the facts involved in the said case are also completely different and distinguishable from those involved in the case before us. Therefore, the ratio of the said decision also has no application.

6. In view of the above, we are of the considered view that the appellants are rightly entitled for capital goods credit on various machinery, equipment, appliances and parts and components thereof used in the setting up of oxygen plant within the factory premises. Thus the order denying the capital goods credit is unsustainable in law. Accordingly, we set aside the same. Since the impugned order is set aside, the appeal filed by the Revenue against the corrigendum issued becomes infructuous and therefore, the Revenue's appeal is liable to be dismissed."

21. The ratio of the above decision applies in toto to the present case.

22. The CENVAT Credit Rules emphasize receipt and use of goods in the factory and nowhere prescribe ownership as a pre-condition. In Pepsi Foods

Ltd., supra, the Punjab and Haryana High Court held that ownership is not a criterion for availment of CENVAT Credit on Capital goods. Hon'ble High Court of Bombay in the case of M/s Modernova Plastyles, supra, observed as follows:

"21. It is also to be noticed that independent of our findings as rendered above, we find that on an identical issue arose before the Tribunal in JSW Ispat (supra). In the aforesaid case also (as here), the machines/equipments were used to set up/ assemble an oxygen plant i.e. immovable property in the factory of the assessee. This oxygen plant was issued to manufacture the excisable goods i.e. manufacture ingots falling under Chapter 72 of the Excise and Tariff Act, 1985. Nevertheless, the Tribunal allowed of CENVAT Credit of duty paid on machines / equipments used in setting up a plant, to be utilised on payments of duty on the final products viz: iron and steel ingots cleared by the assessee, therein. This decision of the Tribunal is on all fours in the present facts and was accepted by the Central Board of Indirect Taxes & Customs on the ground that the same is legal and proper. This as was shown to us by the Respondent and not denied by the appellants. Moreover, no distinction in facts and law, is pointed out by the Revenue, which would justify its inapplicability to the present facts. In the face of the aforesaid decision taken by the Central Board of Indirect Taxes & Customs, we are unable to understand why the Revenue is agitating this issue before us when in another case, decided by the Tribunal, raising an identical issue, the decision of the Tribunal has been accepted.

22. We are of the view that Rule of law prevailing in this country is one of the key elements to determine ease of doing business. The Rule of law inter alia ensures absence of arbitrariness in taking decisions, which would mean equal applicability of law to all concerned. Therefore, an issue as raised herein (being a pure question of law), would have all India implication not only before the court but at various levels of adjudication under the Act. Therefore, where at the highest level i.e. at the level of the Central Board of Indirect Taxes and Customs, the Revenue has accepted a particular view on a pure question of law, then in all such cases, the Revenue should withdraw the show cause notices and / or pending proceedings. This would bring certainty in the minds of the trade as well as the Department and leading to reduction of litigation. We would direct the Counsel for the Revenue / Appellant before us to forward a copy of this order to the CBIC to issue appropriate directions in the above regard."

23. Similar views was expressed in Rajaram Babu Sahakari, supra, accordingly, denial of credit solely because ownership remained with Inox is legally not sustainable.

24. Rule 4(3) of the CENVAT Credit Rules provides that credit shall be allowed even if capital goods are acquired on lease, hire purchase or loan agreement from a Financing Company. The explanation "even if" is enlarging in nature. It does not imply that the lessor must necessarily be a Financing Company. This issue stands settled by *LeaMak Healthcare Pvt Ltd.*, *supra* and *Kaylani Seamless Tubes Ltd.*, wherein it was held that Rule 4(3) extends the benefit and does not restrict it. The relevant para of above *LeaMak Healthcare*, *supra*, as follows:

"11. We note that in all the judgments discussed above, the suppliers are importer of the capital goods which were installed in the premises of the assessee under an agreement with the importer was not a financing company. In any case, as already discussed, Rule 4(3) does not require procurement of capital goods from the financing company but is enabling and enlarging sub-rule allowing Modvat Credit even in those cases where the capital goods have been procured from a financing company."

25. Therefore, the finding that *Inox* is not a Financing Company and hence credit is not admissible is contrary to settled law.

26. The Law is well settled that even if individual machinery and components are assembled into a larger plant that becomes attached to earth, credit on the duty-paid capital goods remains admissible.

27. In *KCP Ltd.*, *supra*, and *Indian Oil Corporation Ltd.*, *supra*, wherein, it has been held that immovability of the integrated plant does not affect entitlement to credit on the individual Capital goods. The purpose of fastening machinery to the earth by nuts and bolts is only to ensure operational stability and vibration-free functioning. Such attachment does not destroy the identity of the constituent machines. Hence, the conclusion that the Air Separation Plant is immovable and therefore, credit is inadmissible is wholly mis-conceived.

28. The Show Cause Notice did not allege that ownership of the goods remaining with Inox itself disentitle the appellant from availing credit. However, the Adjudicating Authority confirmed the demand substantially on this new ground. It is settled law that Adjudicating Authority cannot travel beyond the allegations contained in the Show Cause Notice. Any order founded upon a new ground violates the principles of natural justice and is liable to be set aside.

29. The disputed period is October, 2007 to April, 2009 i.e., entirely prior to the amendment made on 07.07.2009. The amendment is prospective and cannot be applied retrospectively to deny credit for earlier periods. Consequently, reliance on the post 07.07.2009 amendment is legally impermissible.

30. The entire demand pertains to a period beyond the normal limitation period. The appellant had availed credit under cover of valid invoices and disclosed the same in monthly statutory returns. All the relevant facts were within the knowledge of the Department. The issue is purely interpretational and involves substantial judicial debate. In these circumstances, there is no suppression, misstatement, or intent to evade duty, and the extended period under the proviso to Section 11A (1) is not invocable. On this ground alone, the demands are not sustainable.

31. Since, the credit is admissible on merits and demand is also barred by limitation, the question of interest and penalty does not arise.

32. Upon careful consideration of the facts, statutory provisions and judicial precedents, we hold that:

i) The duty-paid goods used for setting up the Air Separation Plant are eligible for CENVAT Credit as Capital goods and / or inputs.

- ii) Ownership of the goods by Inox is irrelevant.
- iii) Rule 4(3) of CENVAT Credit Rules does not restrict credit to cases where the lessor is a Financing Company.
- iv) Operational immovability of the integrated plant does in the given factual matrix does disentitle the appellant from taking credit on the said capital goods.
- v) The impugned order travels beyond the Show Cause Notice.
- vi) The amendment to Rule 2 (k) w.e.f. 07.07.2009 is prospective.
- vii) The entire demand is barred by limitation.

33. In view of the above discussions, the impugned order is not sustainable and liable to be set aside.

34. Therefore, appeal is allowed with consequential relief, if any, in accordance with law.

(Pronounced in the open court on 12.06.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)