

**F.No.267/11/2010-CX8**

**New Delhi, dated the 8th July, 2010.**

**Subject:** Availability of cenvat credit on inputs used in the manufacture of capital goods-reg.

I am directed to invite your attention to the landmark judgement of the CESTAT Larger Bench in the case of Vandana Global Ltd. V/s CCE, Raipur [2010-TIOL-624-CESTAT-DEL-LB](#) delivered on 30.04.10, on admissibility of credit on capital goods and inputs and to state that the Tribunal has ruled that 'capital goods' defined in the CENVAT Credit Rules, in the context of providing credit of duty paid, have to be excisable goods. Whether a particular plant or structure embedded to earth can be considered as excisable goods or not has to be determined in the light of settled decisions of Supreme Court on the issue. The Tribunal has further ruled that goods like cement and steel items used for laying 'foundation' and for building 'supporting structures' cannot be treated as either inputs for capital goods or as inputs in relation to the final products and therefore, no credit of duty paid on the same can be allowed under the CENVAT Credit Rules. It has also been stated by Tribunal that amendment to Explanation 2 to Rule 2(k) of CENVAT Credit Rules, 2004 inserted vide Notification No. 16/2009-CE (NT) dated 07.07.09, is clarificatory in nature and has retrospective effect.

2. Attention is also drawn to the Tribunal's judgement in the case of Vikram Cement V/s CCE, Indore 2009 (242) ELT 545 (Tri-Del) = ([2009-TIOL-1959-CESTAT-DEL](#)), where the Tribunal held that credit on welding electrodes used for repair and maintenance, is not available as input. It may also be noted that in the case of Vikram Cements V/s CCE, Indore [2005 (187) ELT 145 (SC) = ([2005-TIOL-112-SC-CX](#))], it has been conclusively held by the Apex Court that the definition of capital goods is not inclusive and only the items covered under the definition and used in the factory of the manufacturer can be treated as capital goods.

3. It thus follows from the above judgements that credit on capital goods is available only on items, which are excisable goods covered under the definition of 'capital goods' under CENVAT Credit Rules, 2004 and used in the factory of the manufacturer. As regards 'inputs', they have to be covered under the definition of 'input' under the CENVAT Credit Rules, 2004 and used in or integrally connected with the process of actual manufacture of the final product for admissibility of cenvat credit. The credit on inputs used in the manufacture of capital goods, which are further used in the factory of the manufacturer is also available, except for items like cement, angles, channels, CTD or TMT bars and other items used for construction of factory shed, building or laying of foundation or making of structures for support of capital goods. Further, credit shall also not be admissible on inputs used for repair and maintenance of capital goods.

4. In view of above stated position, necessary action may be taken to safeguard revenue immediately. Pending cases on the issue may also be taken up immediately for finalisation.

5. Receipt of this instruction may kindly be acknowledged.

**(Amish Kumar Gupta)**  
**OSD (CX-8)**

