आयुक्त(अपील)काकार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय,अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ीअहमदाबाद३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

07926305065- टेलेफैक्स07926305136

DIN :20211064SW000082348D

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/CEXP/203/2020 /3910 To 3914

ख अपील आदेश संख्या Order-In-Appeal Nos.**AHM-EXCUS-003-APP-34/2021-22**
दिनाँक Date : **24-09-2021** जारी करने की तारीख Date of Issue 20.10.2021

आयुक्त (अपील) द्वारापारित
Passed by **ShriAkhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original No.**GNR Comm'rate/ST/AC-MKS/Kadi/01/2020-21** दिनाँक:**30.04.2020** issued by Assistant Commissioner of CGST& Central Excise, HQ, Gandhinagar Commissionerate

ध अपीलकर्त्ता का नाम एवं पताName & Address of the **Appellant / ~~Respondent~~**

M/s Decent Laminates Pvt Ltd
Survey No. 296/1, Nandasan, Kalol
Mehsana Highway, Near Madhu Textile,
Mehsana, Gujarat-382706

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्कअधिनियम, 1994 की धाराअततनीचेबताए गए मामलों के बारेमेंपूवोक्त धाराको उप–धारा के प्रथमपरन्तुक के अंतर्गतपुनरीक्षणआवेदन अधीनसचिव, भारतसरकार, वित्तमंत्रालय, राजस्वविभाग, चौथीमंजिल, जीवन दीपभवन, संसदमार्ग, नईदिल्ली : 110001 को की जानीचाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदिमालकीहानि के मामलेमेंजब ऐसीहानिकारखानेसेकिसीभण्डागार या अन्य कारखानेमें या किसीभण्डागारसेदूसरेभण्डागारमें माललेजातेहुए मार्गमें, या किसीभण्डागार या भण्डारमेंचाहेवहकिसीकारखानेमें या किसीभण्डागारमेंहोमालकीप्रकिया के दौरानहुईहो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जोडयूटीकेडिटमान्य की गईहैऔर ऐसेआदेशजोइस धारा एवंनियम के मुताबिकआयुक्त, अपील के द्वारापारित वो समय पर या बादमेंवित्तअधिनियम (नं.2) 1998 धारा 109 द्वारानियुक्तकिए गए हो।

(c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गतविनिर्दिष्टप्रपत्र संख्या इए–8 मेंदोप्रतियोंमें, प्रेषितआदेश के प्रतिआदेशप्रेषितदिनाँकसेतीनमास के भीतरमूल–आदेश एवंअपीलआदेश की दो–दोप्रतियों के साथउचितआवेदनकियाजानाचाहिए।उसकेसाथ खाता इ.कामुख्यशीर्ष के अंतर्गत धारा 35–इ मेंनिर्धारितफी के भुगतान के सबूत के साथ टीआर–6 चालान की प्रतिभीहोनीचाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजनआवेदन के साथजहाँ संलग्नरकम एक लाख रूपये या उससे कम होतो रूपये 200/–फीसभुगतान की जाए औरजहाँ संलग्नरकम एक लाख सेज्यादाहोतो 1000/– की फीसभुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवंसेवाकरअपीलीय न्यायाधिकरण के प्रतिअपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्कअधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखितपरिच्छेद 2 (1) क मेंबताए अनुसार के अलावा की अपील, अपीलो के मामलेमेंसीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवंसेवाकरअपीलीय न्यायाधिकरण(सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबादमें2nd माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद–380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor,BahumaliBhawan,Asarwa,Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होत हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरणको एक अपील या केन्द्रीय सरकारको एक आवेदन किया जाता हैं।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि–1 के अंतर्गतनिर्धारितकिए अनुसारउक्तआवेदन या मूलआदेश यथास्थितिनिर्णयनप्राधिकारी के आदेशमेंसेप्रत्येक की एक प्रतिपर रू.6.50 पैसेकान्यायालय शुल्कटिकटलगाहोनाचाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इनओरसंबंधितमामलोंकोनियंत्रण करनेवालेनियमों की ओरभी ध्यानआकर्षितकियाजाताहैजोसीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवंसेवाकरअपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 मेंनिहितहै।

Attention in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(9) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवंसेवाकरअपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामलेमेंकर्तव्यमांग(Demand) एवंदंड(Penalty) का10%पूर्वजमाकरनाअनिवार्यहै। हालांकि, अधिकतमपूर्वजमा10 करोड़रुपएहै।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीयउत्पादशुल्कऔरसेवाकरकेअंतर्गत, शामिलहोगा "कर्तव्यकीमांग"(Duty Demanded)-

(i) *(Section)* खंड 11D केतहतनिर्धारितराशि;
(ii) लियागलतसेनवैटक्रेडिटकीराशि;
(iii) सेनवैटक्रेडिटनियमोंकेनियम 6 केतहतदेयराशि.

⇨ **यहपूर्वजमा 'लंबितअपील' मेंपहलेपूर्वजमाकीतुलनामें, अपील' दाखिलकरनेकेलिएपूर्वशर्तबनादियागयाहै.**

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:
(x) amount determined under Section 11 D;
(xi) amount of erroneous Cenvat Credit taken;
(xii) amount payable under Rule 6 of the Cenvat Credit Rules.

इसइस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

ORDER-IN-APPEAL

The present appeal has been filed by M/s. Decent Laminates Pvt Ltd, Survey No.1, 296/1, Kalol Mehesana Highway, Taluka: Kadi, Village : Nandasan, Gujarat State Highway 41, Kadi, Mehesana, Gujarat (hereinafter referred to as the appellant) against Order in Original No. GNR Comm'ate/ST/AC-MKS/Kadi/01/2020-21 dated 30-04-2020 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner (Hqrs.), CGST, Commissionerate Gandhinagar [hereinafter referred to as "*adjudicating authority*"].

2. The facts of the case, in brief, is that the appellant was having Central Excise Registration No. AAACD5487DXM001 for manufacturing of Paper Based Laminate Sheets & Ele. Ins. Sheet and was also having Service Tax Registration No. AAACD5487DST001 for receiving Transport of Goods Road Service, Manpower Recruitment/Supply Agency Service, Business Support Services, Security Service under RCM. Audit on the records of the appellant was conducted on 15.12.2017 & 28.12.2017 by officers of CGST, Audit Commissionerate, Ahmedabad for the period from February, 2016 to March, 2017. In the course of the audit, discrepancies were noticed and raised vide Final Audit Report No. 1293/2017-18 dated 30.5.2018. The appellant agreed with the objection but did not pay the Govt. dues.

2.1 As per Revenue Para No.2 of the Final Audit Report (FAR), the appellant had taken Cenvat credit on capital goods amounting to Rs.20,22,250/- in the F.Y. 2015-16 and Rs.2,87,500/- in the year 2016-17, the total Cenvat credit amounted to Rs.23,09,750/-. It was found that the appellant had also claimed Depreciation under Section 32 of the Income Tax Ac, 1961 on the amount of excise duty paid on the capital goods. Therefore, as per Rule 4 (4) of the Cenvat Credit Rules, 2004, the appellant was liable to pay Central Excise duty amounting to Rs.23,09,750/- along with interest and penalty thereon. The appellant paid Central Excise duty of Rs.23,09,750/- vide Challan No. 00003 dated 08.03.2018.

2.2 As per Revenue Para No. 6 of the FAR the appellant had received Manpower Recruitment Agency Service and had short paid Service Tax of Rs.5,55,535/- during the period from March, 2017 to June, 2017 and the same was liable to be recovered from the appellant as they had filed Nil return for the said period. As per the provision

of Section 66 of the Finance Act, 1995 and Sr.no.8 of Notification No. 30/2012-ST dated 20.6.2012, the appellant was liable to pay service tax on the expense incurred and amount paid to their Labour Contractors against Manpower Supply service under the reverse charge mechanism (RCM). The appellant paid the amount of Rs.5,55,535/- vide challan No. 000 1 dated 16.03.2018.

2.3 As per Revenue Para No.7 of the FAR, the appellant had provided Business Support Service of Rs.4,50,000/- during the period April, 2017 to June, 2017 and had not paid Service Tax amount of Rs.67,500/- on it. The appellant paid the Service Tax of Rs.67,500/- vide challan no.00011 dated 16.03.2018.

2.4 As per Revenue para no. 8 of the FAR, the appellant had received Security Service of Rs.2,77,500/- during the period April, 2017 to June, 2017 and had short paid Service Tax amount of Rs.41,625/-. As per the provision of Section 66 of the Finance Act, 1995 and Sr.no.8 of Notification No. 30/2012-ST dated 20.6.2012, the appellant was liable to pay service tax on the expense incurred and amount paid to their Security Service Provider against the Security Service under the reverse charge mechanism (RCM). The appellant paid the amount of Rs.41,625/- vide challan No. 00011 dated 16.03.2018.

2.5 As per Revenue Para No. 9 of the FAR, the appellant had received Goods Transport Agency Service and short paid service tax amount of Rs.9,427/- for the period from April, 2017 to June, 2017. As per the provision of Section 66 of the Finance Act, 1995 and Sr.no.2 of Notification No. 30/2012-ST dated 20.6.2012, the appellant was liable to pay service tax on the expense incurred and amount paid to their transporters against the Goods Transport Agency Service under the reverse charge mechanism (RCM). The appellant paid the amount of Rs.9,427- vide challan No. 00011 dated 16.03.2018.

3. The appellant was issued Notice No. VI/1(b)-21/AP-70/Cir-X/2017-18 dated 13.07.2018 calling upon them to show cause as to why :

i. The wrongly availed Cenvat Credit of Rs.23,09,750/- should not be demanded and recovered from them under the proviso to Section 11A of the Central Excise Act, 1944 read with Rule 4 of the

Cenvat Credit Rules, 2004 along with interest under Section 11AA and penalty under Section 11AC of the Central Excise Act, 1944. The amount of Rs.23,09,750/- paid by them should not be appropriated against their duty liabilities;

ii. Service Tax amounting to Rs.6,74,087/- should not be demanded and recovered from them under the proviso to Section 73 (1) of the Finance Act, 1994. The amount of Rs.6,74,087/- paid by them should not be appropriated against their Service Tax liabilities;

iii. Interest should not be recovered from them under Section 75 of the Finance Act, 1994;

iv. Penalty should not be imposed on them under Section 78 of the Finance Act, 1994.

4. The said Show Cause Notice was adjudicated vide the impugned order wherein :

I. The demand of Rs.23,09,750/- was confirmed under Section 11A (10) of the Central Excise Act, 1994 and the amount paid by the appellant was appropriated;

II. Interest was ordered to be paid under Section 11AA of the Central Excise Act, 1944;

III. Penalty of Rs.23,09,750/- was imposed under Section 11AC of the Central Excise Act, 1944;

IV. The Service Tax demand of Rs.6,74,087/- was confirmed under Section 73 (2) of the Finance Act, 1994 and the amount paid by the appellant was appropriated;

V. Interest was ordered to be paid under Section 75 of the Finance Act, 1994. The amount of Rs.1,00,000/- deposited by the appellant was ordered to be appropriated;

VI. Penalty of Rs.6,74,087/- was imposed under Section 78 of the Finance Act, 1994.

5. Being aggrieved with the impugned order, the appellant firm has filed the instant appeal on the following grounds:

A. It is an admitted fact that simultaneous availment of Cenvat Credit and claim of depreciation was an inadvertent error and not with any malafide intent to evade payment of duty. The adjudicating authority has failed to consider that the Cenvat Credit could not have been denied once they had requested for reversing the calculation of depreciation under Section 32 of the Income Tax Act, 1961. They had already initiated the process of re-calculations on the depreciation claimed by them. It is settled law that initially claimed depreciation can later be surrendered and once surrendered it would not amount to double benefit.

B. They rely on the decision in the following cases :- (1) Shri Ghanshyam Auto Parts Pvt Ltd reported at 2004 (178) ELT 163 (Tri.-Mumbai); (2) Abhishek Synthetics Pvt Ltd reported at 2005 (182) ELT 339 (Tri.-Bang); (3) Utsav Silk Mills reported at 2009 (245) ELT 246 (Tri.-Ahmd); (4) Fitcast Founders & Engineers Ltd reported at 2009 (247) ELT 728 (Tri.-Ahmd); (5) Nish Fibres reported at 2010 (257) ELT 81 (Guj); (6) Multichem reported at 2012 (282) ELT 110 (Tri.-Ahmd); (7) Anant Enterprises reported at 2014 (310) ELT 561 (Tri.-Mumbai); (8) Jay Precision Products India Pvt Ltd reported at 2014 (312) ELT 696 (Tri.-Mumbai); and Multichem reported at 2017 (357) ELT 1123 (Tri.-Ahmd).

C. The adjudicating authority has erred in imposing 100% penalty under Section 11AC of the Central Excise Act, 1944. All information about Cenvat Credit as well as depreciation was duly recorded in the books of accounts and there was no suppression of facts in this regard.

D. In terms of the proviso to Section 11AC (1) (c) the adjudicating authority ought not have imposed penalty more than 50% of the duty. They had paid the entire amount of Cenvat Credit before issuance of SCN. There was no malafide on their part and therefore no penalty should have been imposed on them. They rely upon the decision in the case of (I) Alcobex Metals Ltd reported at 2003 (161) ELT 350 (Tri.-Del); (II) Hemnil Metal Processors Pvt Ltd reported at 2010 (261) ELT 429 (Tri.-Mumbai) and (III) Hodex Vibration Technologies P. Ltd reported at 2016 (339) ELT 92 (Tri.-Mumbai).

E. The adjudicating authority has failed to understand that they had paid the entire service tax along with interest before issuance of SCN. The

service tax short paid by them was for a single quarter just before the beginning of the new regime of GST taxation and on account of financial problems. Non payment –Short Payment and malafide intent are totally different. The amount of service tax not paid/short paid is available to them as Cenvat Credit and in terms of revenue neutrality also there cannot be alleged any malafide on their part.

F. In a catena of decisions it has been held that adjudicating authority has to establish that non-payment of service tax was as a result of conscious and/or deliberate act of wrong doing and deception on part of the appellant.

G. They have always assessed and paid the duty payable by them correctly and the same were reflected in their returns. There has never been any contravention of the provisions of the Act/Rules attracting any penalty. Since no amount is required to be recovered, proposal of interest also does not hold well. When there is no justification in demand of duty/interest the proposal to impose penalty is also not sustainable.

H. They have provided all details as and when desired by the audit officers/department and at no they had any intention to evade payment of service tax. They had never suppresses any fact/information from the department. The true and complete details of all transaction were duly recorded in the books of accounts and therefore, extended period of limitation under Section 73 and simultaneous proposal of imposition of penalty under Section 78 is totally baseless.

6. The appellant were given opportunities for Personal Hearing through virtual mode on 29.04.2021, 23.06.2021 and 26.08.2021. However, nobody appeared and neither was any request for adjournment received. The appellant were granted another opportunity of Personal Hearing through virtual mode on 16.09.2021. By email dated 10/9/2021 from the Consultant of the appellant, it was informed that they would be appearing for the personal hearing and authorization in their favour from the appellant was submitted. However, nobody appeared for the personal hearing through virtual mode. In terms of the provisions of Section 35(1A) of the Central Excise Act, 1994, hearing of the appeal can be adjourned on sufficient cause being shown. However, as per the proviso to the said Section 35 (1A) no adjournment shall be granted more than three times to a party during hearing of the appeal. In the present appeals the

appellant were called for a personal hearing on four different dates, however, they neither attended the hearing nor sought any adjournment. I am, therefore, satisfied that the appellant have been granted ample opportunities to be heard, which they have not availed. I therefore, proceed to decide the case, ex-parte, on the basis of the material on available on record.

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum and evidences available on records. I find that appeal is against the impugned order confirming demand in respect of Cenvat Credit on Capital Goods, where Depreciation under Income Tax Act has also been claimed; and Non payment/short payment of Service Tax in respect of services availed/provided by the appellant.

7.1 I find that the appellant have not disputed the fact of their having simultaneously availed Cenvat Credit on Capital Goods as well as claiming depreciation under Income Tax Act. I find that even in their submissions before the adjudicating authority they have not disputed the issue and on the contrary had submitted that due to financial problem they could not pay the duty as well as interest at the time of Audit and that they had subsequently paid the Central Excise duty as well as Service Tax. They had also part paid the interest and had requested the jurisdictional Superintendent to give them time for payment of interest and penalty. The SCN was received by them on 20.08.2018 and they assured that they would pay the pending interest and penalty before 19.09.2018.

7.2 I find that the appellant have in their appeal memorandum contended that if the depreciation is reversed under Income Tax Act, there would be no double benefit and consequently, Cenvat Credit could not be denied. They have also referred to decisions of the Hon'ble Tribunal and High Court in support of their contention. The appellant have submitted in their Appeal Memorandum that " *The Appellant has already initiated the process of re-calculations on the amounts of depreciation claimed by them*". Therefore, it is evident that the appellant are yet to surrender/reverse the depreciation claimed by them under Income Tax Act, 1961. In such a scenario the contention of the appellant that there is no double benefit is devoid of any merit and is rejected.

7.3 The Cenvat Credit availed pertains to the F.Y. 2015-16 and 2016-17 and the issue was raised in the course of the Audit in December, 2017 and brought to the notice of the appellant. The appellant was also issued the Final Audit Report dated 30.05.2018. However, despite considerable time having passed since the issue of wrong availment of Cenvat Credit was brought to their notice, the appellant do not appear to have surrendered the depreciation benefits under Income Tax Act so as to be eligible for Cenvat Credit on the capital goods. Mere intent of surrendering the depreciation under Income Tax Act is not suffice to establish their claim for Cenvat Credit. In these circumstances, I find that the contention and claim of the appellant is premature and hence, not sustainable. The judgements cited by the appellant too do not help their cause for the reason that in the cases cited by them the parties had surrendered/reversed the depreciation under Income Tax Act. I am, therefore, of the view that the adjudicating authority has rightly confirmed the demand in this regard and appropriated the amount already paid by the appellant.

8. Coming to the other issue involved in the present appeal, I find that the appellant have not disputed the Non payment/short payment of Service Tax and have in fact paid the amount of Service Tax not paid upon being pointed out by the Audit. They have contended that the non payment was only for a single quarter just before the beginning of the GST regime and was on account of financial problems and that there was no malafide intent to evade payment of service tax. I find that that the non payment of Service Tax pertained to the period from March, 2017 to June, 2017. However, I do not find any merit in the contention that there was no malafide intent to evade payment of Service Tax. The value of the Service availed by the appellant was apparently not declared in the returns filed by them with the Department. The non payment was detected only during the course of the audit of the records of the appellant during December, 2017. In the absence of their declaring the services availed by them in the Returns filed with the department, their claim for there being no malafide intent to evade payment of Service Tax is not tenable.

9. The appellant have also contended that before imposition of penalty, it would have to be established that the non-payment was as a result of conscious and/or deliberate act of wrong doing and deception on part of the appellant. They have also relied upon a number of decisions in their support. I find that the decisions cited by the appellant are not applicable to the facts in the present appeal

9.1 The decisions cited by the appellant pertain to interpretational issues or issues where there was a doubt regarding taxability. In the present case, there is no doubt or dispute regarding the taxability of the services availed by the appellant and their liability to pay Service Tax on RCM basis. In fact the appellant are registered under Service Tax for availing these services and paying Service Tax. The Service Tax not paid by the appellant is also not a new levy and neither is the services availed by the appellant newly brought under the ambit of Service Tax. The appellant is a registered Central Excise Manufacturer as well as a Service Tax assessee since many years. They were, therefore, well aware of the taxability of the services availed by them and also aware of their liability to pay service tax thereon. However, they have neither declared value of these services availed by them in the returns filed with the department and nor have they discharged their service tax liability.

10. It is also observed that the appellant have raised the issue of limitation. I find that the value of the Service availed by the appellant was apparently not declared in the returns filed by them with the Department. Non furnishing of the details/information in the statutory returns filed with the department is clearly suppression of material facts from the department. In this regard I find it relevant to refer to the decision of the Hon'ble Tribunal in the case of L. & T. Grahak Sahakari Sansthan Maryadit Vs. C.S.T., Mumbai-II reported at 2017 (49) S.T.R. 561 (Tri. - Mumbai). In the said case it was held by the Hon'ble Tribunal at para 14 that :

> "Appellant claims that the demand is barred by limitation of time because there was a *bona fide* belief of non-taxability. Reliance was placed on the decision in *Larsen & Toubro Ltd* v. *Commissioner of Central Excise, Pune*-II [2007 (211) E.L.T. 513 (S.C.)]. We do not believe that the circumstances present in the case decided upon by the Hon'ble Supreme Court is relevant to the present proceedings because the appellant has been rendering the service for long and also happens to be a co-operative society which could not have been unaware of the legal provisions of taxation."

11. As regards the penalties imposed, I find it relevant to refer to the decision of the Hon'ble High Court, Delhi in the case of Meinhardt Singapore Pte Ltd Vs

Commissioner of S.T, New Delhi reported at 2019 (25) GSTL 535 (Del.). In their judgement, the Hon'ble High Court had held that :

> **6.** This Court is of the opinion that the impugned order is justified and warranted in the circumstances. Whatever be the constraint, the assessee was faced with, it was duty bound to remit amounts collected by it towards service tax, in a planned manner, and as required by law. The deposit belatedly, by it, on the ground that the amounts were deposited on *ad hoc* basis due to operation of a centralised system, cannot be a legitimate excuse. What is evident is that the assessee/appellant withheld the amounts collected from the service recipient as tax liability. As the remitter, assessee/appellant was duty bound to comply with the terms of the Finance Act and Rules, which prescribed not only filing of returns but also periodic deposit of these amounts. The delay in deposit of these amounts spanned over a period of two and half years and therefore, amounted to misreporting of true and correct facts. To that extent, the Show Cause Notice was justified. The finding of misreporting too was warranted.
>
> **7.** As far as the penalty goes, the provision under Section 78 of the Act, and also even Section 73(4), leave no manner of choice; it is a matter of course. The only mitigating circumstances whereby the penalty could be reduced might have been if the assessee had deposited the reduced amounts within 15 or 30 days of receipt of the Show Cause Notice as indicated in proviso 1 and 2 to Section 78, which reads as follows :-
>
> > "78. (1) Where any service tax has not been levied or paid, or has been short levied or short-paid, or erroneously refunded, by reason of fraud or collusion or wilful misstatement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax, the person who has been served notice under the proviso to sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty which shall be equal to hundred per cent. of the amount of such service tax :
> >
> > Provided that in respect of the cases where the details relating to such transactions are recorded in the specified record for the period beginning with the 8th April, 2011 up to the date on which the Finance Bill, 2015 receives the assent of the President (both Days inclusive), the penalty shall be fifty per cent of the service tax so determined :
> >
> > Provided further that where service tax and interest is paid within a period of thirty days of -
> >
> > (i) the date of service of notice under the proviso to sub-section (1) of section 73, the penalty payable shall be fifteen per cent. of such service tax and proceedings in respect of such service tax, interest and penalty shall be deemed to be concluded;
> >
> > (ii) the date of receipt of the order of the Central Excise Officer determining the amount of service tax under sub-section (2) of section 73, the penalty payable shall be twenty-five per cent. of the service tax so determined

> Provided also that the benefit of reduced penalty under the second proviso shall be available only if the amount of such reduced penalty is also paid within such period."
>
> **8.** In the present case, concededly, reduced penalty amounts were not deposited by the assessee, which is a statutory mandate. No doubt they were paid in the interregnum, at a later stage, pursuant to the permission granted by this Court on account of pre-deposit order made by the CESTAT [after 3-10-12, having regard to the order in CEAC 8/2012], however, that did not in any manner mitigate the appellant's liability; it ought to have deposited the reduced penalty amounts within the time stipulated by law.
>
> **9.** For the above reasons, the Court holds that there is no merit in the appeal and no substantial question of law arises. The appeal is accordingly dismissed.

11.1 In the light of the judgement of the Hon'ble High Court, I find that the penalty imposed upon the appellant is justified and does not call for any interference.

12. In view of the above discussions and the above decisions of the Hon'ble Tribunal, I reject the appeal filed by the appellant and uphold the impugned order.

13. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant stands disposed off in above terms.

24th September, 2021.

(Akhilesh Kumar)
Commissioner (Appeals)

Attested:

(N.Suryanarayanan. Iyer)
Superintendent(Appeals),
CGST, Ahmedabad.

Date: .09.2021.

BY RPAD / SPEED POST

To
M/s. Decent Laminates Pvt Ltd,
Survey No.1, 296/1,
Kalol Mehesana Highway,
Taluka: Kadi, Village : Nandasan, (Kadi, mehsana)

Appellant

Gujarat State Highway 41,
Kadi, Mehesana, Gujarat

The Assistant Commissioner,
Hqrs., CGST,
Gandhinagar Commissionerate

Respondent

Copy to:

1) The Chief Commissioner, Central GST, Ahmedabad Zone.
2) The Commissioner, CGST, Gandhinagar.
3) The Assistant Commissioner (HQ System), CGST, Gandhinagar.
(for uploading the OIA)
4) Guard File.
5) P.A. File.