आयुक्त का कार्यालय, (अपीलस)
Office of the Commissioner,

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय
Central GST, Appeal Commissionerate- Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎: 079-26305065 **टेलेफैक्स** : 079 - 26305136

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ख अपील आदेश संख्या :Order-In-Appeal No.: **AHM-EXCUS-002-APP-015-2020-21**

दिनाँक Date :26.06.2020 जारी करने की तारीख Date of Issue: 13/07/2020

श्री अखिलेश कुमार, आयुक्त (अपील) द्वारा पारित

Passed by **Shri Akhilesh Kumar,** Commissioner (Appeals) Ahmedabad

ग _____आयुक्त, केन्द्रीय GST, अहमदाबाद North आयुक्तालय द्वारा जारी मूल आदेश : दिनाँक : से सृजित

Arising out of Order-in-Original:**01/ADC/2019-20/MSC,** Date: **29/04/2019** Issued by: **Additional** Commissioner ,CGST, Div: III, Ahmedabad North.

ध अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the **Appellant** & Respondent

M/s. Colgate Palmolive (India) Ltd

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।

I. Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944, 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 शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूवोक्त धारा को उप--धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(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) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(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.

(ख) 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।

(b) 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.

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

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

केन्द्रीय वस्तु एवं सेवाकर (अपील), अहमदाबाद. OFFICE OF THE COMMISSIONER CENTRAL GST(APPEALS), AHMEDABAD.

ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) 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 अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक से तीन मास के भीतर मूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35–इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर–6 चालान की प्रति भी होनी चाहिए।

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) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/– फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/– की फीस भुगतान 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 एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपीलः–

Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35– ण्0बी/35–इ के अंतर्गतः–

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

उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में **दूसरा मंजिल, बहूमाली भवन, असारवा, अहमदाबाद, गुजरात** 380016

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए–3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणें की गई अपील के विरूद्व अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/– फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखाकिंत बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

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 होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को 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 शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

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

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

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

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१४(२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल है

(i) धारा 11 डी के अंतर्गत निर्धारित रकम

(ii) सेनवैट जमा की ली गई गलत राशि

(iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगे।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

Under Central Excise and Service Tax, "Duty demanded" shall include:

(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→**Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.**

(6)(i) इस 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।

(6)(i) 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."

II. Any person aggrieved by an Order-in-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/Goods and Services Tax (Compensation to States) Act, 2017, may file an appeal before the appropriate authority.

ORDER-IN-APPEAL

M/s. Colgate Palmolive (India) Ltd., SM-02, GIDC Industrial Estate, Near Bol Village, Sanand-382170 (henceforth referred as "*appellant*") has filed the present appeal against the Order-In-Original No. 01/ADC/2019-20/MSC dated 29.04.2019 (henceforth referred as "*impugned order*") passed by the Additional Commissioner, Central GST & CX, Ahmedabad-North (henceforth, "*adjudicating authority*").

2. The facts of the case, in brief, are that the appellant is a manufacturer of preparations for Oral or Dental Hygiene Paste falling under Chapter Head 33061020 of the schedule to Central Excise Tariff Act, 1985 and availing benefit of CENVAT Credit under provisions of Cenvat Credit Rules, 2004. On scrutiny of records of the appellant by the audit officers of the department, it was observed that Cenvat credit of input service availed by the appellant as detailed below were not admissible to them as the same do not fall under the purview of 'input service' as defined under Rule 2(l) of Cenvat Credit Rules, 2004:

Sr. No.	Name of Service provider	Description of Service	CENVAT credit availed(Rs.)
1	M/s. Anin Consultancy Services Pvt Ltd	Catering Service & House Keeping Service	1,39,656/-
2	M/s Nirvana Consultancy Consultancy Services & Fabricare Laundramates Inc.,	Dry Cleaning Services	69,847/-
3	M/s. Kitchen Solutions.com,	Interior Design Service for Canteen,	15,450/-
4	M/s. Siddhi Constructions	Site Clearance, Site Grading & Excavation	75,57,073/-
5	M/s. Tata Consulting Engineers Ltd,	Construction supervision, project management,	82,91,221/-

		Detailed Engineering, Inspection and Expediting(for setting up of unit at Sanand)	
	Total		1,60,73,247/-

Based on the audit objection, a show cause notice dated 09.02.2018 was issued to the appellant for recovery of Cenvat credit amounting to Rs.1,60,73,247/- as detailed above which were availed by them during the period from 2013 to 2016 along with interest and penalty. The show cause notice was decided under impugned order disallowing the same and imposing penalty under Rule 15(1) and/or15 ((2) of Cenvat Credit Rules,2004 read with Section 11AC(1)(A) and/or 11AC(1)(c) of the Central Excise Act,1944.

3. Being aggrieved, the appellant preferred this appeal, contesting *inter-alia,* that the adjudicating authority had erred in holding that the services are not input service. Their contentions with respect to each allegation are dealt separately in the subsequent paragraphs.

3.1 **In respect of Cenvat credit availed in respect of M/s. Anin and M/s Nirvana Consultancy,** it was contested that the adjudicating authority erred in holding that Dry cleaning and catering services availed from these units are for personal use of employee; that as per rule 2(l) (c) of Cenvat Credit Rules, 2004 services provided in relation to outdoor catering, beauty treatment, health service, cosmetics and plastic surgery, membership of club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as leave or Home travel Concession, when such services are used primarily for personal use or consumption of any employee. However, in this case said services are used directly or indirectly in relation to business and not used for personal use and consumption of the employee, the said services can be termed input service and Cenvat credit can be availed; that invoices are raised in the name of the appellant and cost of the same has been borne by the appellant; that as per Boards Circular No. 943/4/2011-CX dated 29.04.2011, credit on goods or service used primarily for personal use of employee are ineligible. However, said

services are used for the employee/official of the appellant in the guest house they occupy during the official business visits; that dry cleaning and laundry service availed from Nirvan Consultancy and Fabricare Laundramates Inc. is for dry cleaning of the uniform of employees in order to maintain standard hygiene as prescribed by BIS. They cited various case laws in support of their claim and stated that services provided are not for personal use and consumption of the employee and as such falls under the category of input service; that the adjudicating authority erred in relying upon the decision of the Tribunal in the matter of Empire Industries Ltd v/s CCE -2018 (15) GSTL (Tri. Mum) and Wipro Ltd v/s CCE 2018 (363) ELT 1111 (Tri.LB) in as much as the same was contrary to decision of Hon'ble High Court in CCE v/s Ultra Tech Cement Ltd-2010(20)STR (Bom) & Manglam Cement -2018(9)GSTL 17(Raj) which was upheld by Hon'ble Supreme Court in Commr v/s Manglam Ltd-2018(16) GSTL J168(SC) wherein it was held that outdoor catering service are required to be carried out for delivering or manufacturing; that dry cleaning were used in the course of manufacturing and not for personal use of the employee; that adjudicating authority erred in relying upon the decision of Hon'ble Supreme court in case of Royal Hatcheries P ltd v/s State of AP 1994 Sup(1)429 in as much as said case is under the law of Andhra Pradesh General Sales Tax Act and failed to appreciate decision in case of Commr v/s UltraTech Cement Ld-2014 (36) STRJ70(SC), etc.

3.2 **In respect of Cenvat credit availed on services received from M/s. Kitchen Solutions.com,** it has been contested that it is a canteen kitchen for which maintenance is mandatory as per Section 46 of the Factory Act,1948; they cited case law of MMR Khan v/s UOI-1990 (77) AIR 937(SC) wherein Hon'ble Apex Court observed that there is no difficulty in holding that canteen are incidental to or connected with manufacturing process and Commr C.Ex Mumbai v/s GTL Ind-2008 (12) STR 468(Tri.LB) in support of their claim; that in case of Commr. C.Ex. Bhavnagar v/s Nirma ltd-2012(277)ELT207(Tri.Ahd) it was held that interior decorator service used for garden developing is eligible input service; they cited case law CCE v/s Bajaj auto Ltd-2011(272)ELT 308 (Tri. Mum); that in the present case maintaining of canteen was mandatory and interior decorator service was availed which is a valid input service, etc.

3.3 **In respect of Cenvat credit availed on services received from M/s. Siddhi Constructions,** it was contended that adjudicating authority erred in not considering the submissions of the appellant, for this argument they cited case law Rajasthan Explosive & Chemical ltd v/s CCE-2017 (357)ELT 269(Tri. Del) and Videocon International ltd-2010(250)ELT 553 (Tribunal); that services availed were excavation and leveling of land and there is no construction element involved and hence are not excluded from 'input service'; that the adjudicating authority erred in not appreciating decision of Hon'ble Tribunal in case of Adani Port & Special Economic Zone v/s Commissioner-2016(42)STR1010(Tri), etc.

3.4 **In respect of Cenvat credit availed on services received from M/s. Tata Consultancy Services,** it was contested that adjudicating authority erred in not considering the submissions of the appellant and not providing independent findings, for this argument they cited case law Rajasthan Explosive & Chemical ltd v/s CCE-2017 (357)ELT 269 (Tri. Del) and Videocon International ltd-2010(250) ELT 553(Tribunal); that to fall in the exclusion category under sub clause (A) of the definition of 'input service', the service have to be service portion in execution of 'works contract' and construction service. However, perusal of entire scope of work in the agreement, it is clear that Tata has not performed any constriction nor has it sold any goods under contract. The said agreement only provide for provision of consultancy service and submitting layouts, design, drawings and plans etc, thus there is no transfer of property of goods involved in the execution of such contract nor there is any execution work done by appellant in relation to erection, commissioning or installation of plant, machinery, equipment or structure and hence said agreement cannot be categorized as 'works contract'. Thus services provided by Tata Consultancy Services do not fall under exclusion clause of the definition of 'input service' and hence Cenvat credit is available to them.

3.5 They further argued that adjudicating authority erred in confirming demand invoking extended period of limitation for the reasons that the appellant has neither made any misstatement, suppressed any fact nor did it have any intention to evade tax; that when the department has knowledge of relevant facts of availing cenvat credit, extended period cannot be invoked; they cited various case laws in support of this argument.

4. In the Personal hearing held on 13.02.2020, Shri Jitendra Motwani, Advocate, appeared on behalf of the appellant. He reiterated the submissions made in appeal memo. He filed additional written submission on 27.02.2020 stating, *inter alia,* in respect of each vendors which are detailed below.

4.1 In respect of **M/s. Anin Consultancy Service,** it was stated that factory is situated in an industrial area where residential premises are not available, hence guest house 40 km from factory at which is nearest area where person can reside; that the appellant has agreed to avail professional guest house management service from M/s. Anin Consultancy Service Ahmedabad.

4.2 In respect of **M/s. Nirvana Consultancy Service and Fabricare Laundramates Incorporation,** it was argued that laundry services was provided for washing and ironing of employee uniform, linens etc. Additionally, the laundry service of M/s. Fabricare Laundramates Incorporation was engaged on a one time basis with respect to Invoice No. 296/14 dated 31.03.2015 for an amount of Rs. 19,623.67 on which service tax paid was Rs. 2158.67.

4.3 In respect of **M/s. Kitchen Solutions.Com,** it was argued that the appellant sought services of a professional interior decorator and designer for designing the kitchen of the canteen at factory at Sanand where manufacturing occurs.

4.4 In respect of **M/s. Siddhi Construction,** it was argued that the appellant engaged them for providing services of Excavation and leveling of the ground.

4.5 In respect of **M/s. Tata Consulting Engineers Ltd,** it was argued that the appellant had set up a unit at Sanand and for the same availed consulting engineering services for 'Project Atlas'; that heading speaks on 'Consulting engineering Services for Atlas Project'; that scope of service was overall planning, scheduling and controlling of the project, coordination, status report etc.

4.6 In respect of **M/s. Siddhi Construction and M/s. Tata Consulting Engineers Ltd,** it was further argued that services provided by M/s. Siddhi

Construction were classified under the category of 'Site Clearance, Site grading & excavation and the services provided by M/s. Tata Consulting Engineers Ltd were classified under Construction Supervision, Project Management, Detailed Engineering, Inspection and Expediting which were erroneously reclassified at the recipient(appellants)) end in the Show cause notice under "Construction Service" which is not permissible; that they cited various case law for this arguments; that department with view to erroneously deny credit has re-classified under "Construction Service"; that agreement with Tata Consulting Engineering Ltd and bills of Siddhi Construction shows that scope of work has nothing to do with construction; that the department has denied Cenvat credit holding erroneously the services under 'construction service' which falls under exclusion clause i.e. clause (A) of Rule 2(l) of CCR Rules, 2004, this action of the department disproportionately widened said exclusion clause, by doing so department has gone beyond the legislative intent of CCR Rules, 2004; that the services provided by M/s. Siddhi Construction of excavation and leveling of the land falls under specific category "Site formation and clearance excavation and earth moving and demolition" under Section 65(97a) and 'construction service' falls under Section 65(25b) of the Finance Act, 2004, this proves beyond doubt that services provided is not excluded in Rule 2(l) of CCR rules,2004; that similarly service provided by Tata Consulting Engineering ltd falls under Section 65(31) of the Finance Act, 2004 which cannot be considered as part of construction of building or civil structure. They placed reliance on case law Rastriya Ispat Nigam Ltd v/s CCE, Cus & ST, Vishakhapattanam-2016(44)STR 136(Tri. Hyd) and Adani Port & SEZ Ltd v/s Commr-2016 (42) STR 1010(Tri)

4.7 They further argued that the department had rightly accepted appellants submission in case of L&T Technology service who provided engineering consultancy service for modification, CAPEX management and construction management support for modification in existing building, thus department cannot blow hot and cold in same breath by taking diametrically opposite stand in respect of identical issue; they cited various case law in support of their arguments; that in respect of extended period invoked, they argued that department failed to examine record in depth and in detail, then at a later stage of time, they should not be allowed to burden the assessee by slapping the charge of suppression of facts or mis-declaration. They placed reliance on CCE v/s

Southern Structure Ltd-2008 (229) ELT 487(SC) and Trans Engineers India Pvt Ltd v/s Commr C. Ex. Pune-2015(40)STR 490.

5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum as well as oral and written submissions made at the time of personal hearing. I find that the issue requiring determination in this case is whether cenvat credit of input services availed by the appellant as detailed below are admissible or not to them. The period involved in dispute is 2013-14 to 2015-16.

Sr. No.	Name of Service Provider	Description of Service	CENVAT credit availed (Rs.)
1	M/s. Anin Consultancy Services Pvt Ltd	Catering Service & House Keeping Service	1,39,656/-
2	M/s Nirvana Consultancy Consultancy Services & Fabricare Laundramates Inc.,	Dry Cleaning Services	69,847/-
3	M/s. Kitchen Solutions.com,	Interior Design Service for Canteen,	15,450/-
4	M/s. Siddhi Constructions	Site Clearance, Site Grading & Excavation	75,57,073/-
5	M/s. Tata Consulting Engineers Ltd,	Construction supervision, project management, Detailed Engineering, Inspection and Expediting(for setting up of unit at Sanand)	82,91,221/-

5.1 It is further observed that the adjudicating authority has not allowed CENVAT credit on catering and housekeeping services on the grounds that they were used for personal consumption and were

specifically excluded from input service defined under the Cenvat Credit Rules. He has not allowed CENVAT credit on interior design of kitchen on the ground that it was not used in relation to manufacture. Further, he did not allow CENVAT credit on site clearance & excavation as well as on consulting engineering service on ground that it was not covered under the definition of input service.

6. It is observed that the definition of 'input service' contained under Rule 2 (l) of the Cenvat Credit Rules, 2004 was amended vide Notification No. 3/2011 – CE (NT) dated 1.03.2011 and subsequently vide Notification No. 28/2012 – CE (NT) dated 20.06.2012 and at relevant time, reads as under:

> [(l) "input service" means any service, -
>
> (i) used by a provider of [output service] for providing an output service; or
>
> (ii) **used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products up to the place of removal,**
>
> and includes services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal;
>
> [but excludes], -
>
> [(A) service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for -
>
> (a) construction or execution of works contract of a building or a civil structure or a part thereof; or
>
> (b) laying of foundation or making of structures for support of capital goods,
>
> except for the provision of one or more of the specified services; or]
>
> [(B) [services provided by way of renting of a motor vehicle], in so far as they relate to a motor vehicle which is not a capital goods; or
>
> [(BA) service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods, except when used by -

(a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or

(b) an insurance company in respect of a motor vehicle insured or reinsured by such person; or]

(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;]

[Explanation. - For the purpose of this clause, sales promotion includes services by way of sale of dutiable goods on commission basis.]

7. In light of above definition, I take up admissibility of Cenvat credit in respect of each service provider.

7.1. The appellant has availed services of **M/s. Anin Consultancy Service for providing catering services and housekeeping services** for their guest house which were used for their employees/officials during the official business visits, etc. It is observed that the facility of the guest house created for stay of the employee/official of the appellant firm, 40 Km from factory premise at Ahmedabad, cannot be considered as used directly or indirectly in or in relation to manufacturing of finished goods and in clearance up to the place of removal. They are more in nature of personal consumption and have no relation with manufacturing or clearance of finished goods and hence the same does not fall under the definition of input service. The Hon'ble Tribunal, Mumbai has in case of Mahindra & Mahindra Ltd v/s Commissioner of Central Excise, Nashik 2015 (39) STR 298 (Tri-Mumbai) held that guest house service is not an eligible input service. Hence, I disallow CENVAT credit amounting to Rs.1,39,656/- availed for services for maintenance of guest house.

7.2. The appellant has contested that the dry cleaning and laundry service availed from **Nirvan Consultancy and Fabricare Laundramates Inc.** is for dry cleaning of the uniform of employees in order to maintain standard hygiene as prescribed by BIS. They have also relied upon judgement of Hon'ble CESTAT, Chennai in case of Fourrts (I) Laboratories Pvt. Ltd 2012 (277) ELT 202 (Tri.-Chennai). I find that the case law squarely applies to present case and hence I allow CENVAT credit amounting to Rs. 69,847/- on Dry Cleaning Service availed from the above said firms.

7.3. In respect **of M/s. Kitchen Solutions.Com** wherein the appellant sought services of a professional interior decorator and designer for

designing the kitchen of the canteen at factory, it is argued that maintenance of kitchen canteen is mandatory as per Section 46 of the Factory Act, 1948. In this context, I observe that since it is mandatory for the appellant to provide food for workers in the manufacturing unit as per the Factory Act, 1948, canteen is incidental to or connected with manufacturing process and hence cenvat credit on the same are eligible. The decision of Hon'ble CESTAT, West Zone, Mumbai in case of Commr, C. Ex, Mumbai v/s GTC Ind - 2008 (12) STR 468 (Tri.LB) is squarely applicable to the service in question. The relevant part of which is reproduced below:

> " The above paras of CAS-4 clearly shows that cost of subsidised food is included in the cost of production. We further note that in case of a factory having more than 250 workers under Section 46 of the Factories Act, 1948, it is mandatory on the part of the factories to provide a canteen facility within the factory premises and failure to comply with the provisions of Section 46 attracts prosecution and penalty under Section 92 of the Factories Act, 1948. A service tax on outdoor catering services is paid by the manufacturer for running the canteen, irrespective of the fact that a subsidised food is provided or not. Whether the cost of food is borne by the worker or by the factory, the same will form part of expenditure incurred by the manufacturer and will have a bearing on the cost of production. In view of the same, employment of outdoor caterer for providing catering services has to be considered as an input service relating to the business and Cenvat credit in respect of the same will be admissible. We, therefore, concur with the views of the tribunal expressed in the case of *Victor Gaskets India Ltd. and Others* - 2008 (10) S.T.R. 369 (Tri. - Mumbai). The reference is answered accordingly and the matter is sent back to referral Bench for passing appropriate orders."

As observed by the Hon'ble CESTAT, expenses made in respect of the mandatory requirement under Factory Act, 1948, will have bearing on the cost of production and hence I observe that service provided in respect of interior decorator and designing the kitchen of the canteen in factory has to be considered as an input service on which Cenvat credit is admissible. In another case law cited by the appellant i.e. Commr. C. Ex. Bhavnagar v/s Nirma Ltd- 2012 (277) ELT 207 (Tri. Ahd), it was held that interior decorator service used for garden developing is eligible input service. Besides that, the Hon'ble CESTAT in CCE v/s Bajaj Auto Ltd. 2011 (272) ELT 308 (Tri. Mumbai) and in Indian Oil Corporation v/s CCE, 2017(50) STR 294 (Tri.-Chennai) had allowed CENVAT on LPG used for providing kitchen service and cleaning service for upkeep of kitchen. Following the judgments of Hon'ble Tribunal, I find that Cenvat credit is available to the appellant on services provided by M/s. Kitchen Solutions.Com. Hence, I allow CENVAT credit of Rs.15,450/- for interior Design Service for kitchen.

7.4. In respect of **M/s. Siddhi Construction**, it is observed that appellant engaged them for providing services of site construction and grading, excavation and leveling of the ground. Cenvat credit is held inadmissible by the adjudicating authority holding that the service provided by them was in nature of construction service which falls under exclusion part of the definition. He relied upon the definition of 'construction' available in the business dictionary to arrive at the conclusion. He further relied upon the judgment of Hon'ble CESTAT, West Zonal Bench, Mumbai in Appeal No. E/87200/17, Order No. A/91827/17 dated 22.12.2017 in case of M/s. JSW Coated Products Ltd v/s Commissioner of Central Excise Nagpur for arriving at his conclusion.

7.5. As regards the services availed from **M/s. Tata Consulting Engineering Limited**, the adjudicating authority has held that the services availed were related to construction and set up activities of their tooth paste manufacturing plant at Sanand and input service defined under Rule 2(l) of the CENVAT Credit Rules, 2004 specifically excludes the service portion of construction services in so far as it is used for construction of building or a civil structure or part thereof. He has also relied upon the judgement of Hon'ble Tribunal, Mumbai in Appeal No. E/87200/17, Order No. A/91827/17 dated 22.12.2017 in case of M/s. JSW Coated Products Ltd v/s Commissioner of Central Excise Nagpur for arriving at his conclusion.

7.6. It is observed from the agreement made between the appellant and M/s. Tata Consulting Engineering Limited that the scope of service mainly states as under:

> "Detail Engineering, Project management including co-ordination, scheduling and planning, procurement assistance, Cost estimate, Cost control, Inspection, Construction supervision.

The said services were further bifurcated into Project management, procurement assistance, cost estimates, process engineering, civil/structure engineering, Piping Engineering, Mechanical engineering, Electrical engineering, Vessel engineering, inspection, Construction supervision and store management etc.

Structures/Building considered in the scope were:

- Main Plant Building including manufacturing, RM and Finished Store, Packing Lines, Admin Block and workers amenities,

- Utility Block consisting of Boiler Room, Compressor Room, DG Substation etc.,
- Raw water/Fire Water Tank and Pump House,
- Tank Farm for liquid Raw Material,
- Gate House/Security/Weighbridge Cabin,
- Pipe Rack/Cabin/ sleepers,
- Road and drains,
- Compound wall.

From the scope of services as mentioned above, it is observed that the same are provided to set up a tooth paste manufacturing plant named "Project Atlas' wherein all the activities carried out in terms of scope of service mentioned at Annexure-I relates to construction.

7.7. It is observed from the definition of input service contained under Rule 2 (l) of the Cenvat Credit Rules, 2004 that it was amended w.e.f. 1.4.2011 when, inter-alia, services used by manufacturer for setting up of plant was excluded from the definition of input service. Subsequently, the definition was further amended and during relevant time also excluded service portion in the execution of works contract and construction service including services listed under clause (b) of Section 66E in so far as they are used for construction or execution of works contract of a building or a civil structure or a part thereof. Hence, the ambit of exclusion clause after amendment since 1.4.2011 and at the relevant time has been large enough to include various construction related activities which were defined under various sub clauses of Section 65 of the Finance Act, 1994 in pre-negative list regime. The adjudicating authority has relied upon the definition of construction in the business dictionary, which has not been challenged by the appellant. Since, in the negative list regime, the net of service tax was widened to include all services excluding those in negative list under Section 66D of the Act, the appellant's reliance on definition of various services in pre-negative list regime is erroneous and misplaced as the services in dispute were provided in negative list regime. Their reliance on judgment of Hon'ble Tribunal in case of M/s. Adani Port & Special Economic Zone Ltd v/s Commissioner 2016 (42) STR 1010 (Tri-Ahmd) is not relevant as the matter involved in said case was prior to 1.4.2011. I have gone through judgment of Hon'ble CESTAT, Mumbai in Appeal No. No. E/ 87200/17, Order No. A/91827/17 dated 22.12.2017 in case of M/s. JSW Coated

Products Ltd v/s Commissioner of Central Excise Nagpur and find that it is similar to the facts of instant case. The Hon'ble Tribunal in para 3 of the judgment observed as under:

> *" I find that the expression used in the exclusion clause is those services, in so far as they are used for, construction or execution of works contract of a building or a civil structure. As expression used is " in so far as they are used for " the said exclusion clause read with section 66E makes it very clear that the exclusion does not stand restricted only to work contract service or construction service, but the same relates to services which are used for execution of civil construction. The language use I the said exclusion clause clearly indicates that any service used for execution of works contract or construction service would also get ousted from the definition of input service. Admittedly, the consulting engineering stands used by the appellant for the purpose of execution of construction of a structural design and drawing of cellar foundation of 6 High Mill Project. As the exclusion is not only in respect of the actual services mentioned in the exclusion clause, but also refers to services used for execution of such construction, I am of the view that the lower authorities have rightly denied the credit of the service tax paid on consulting engineer service"*
>
> *It may be clarified here that in as much as the exclusion is only in respect of works contract or construction services and the renovation or repair or modernization of factory continues to be covered by the main definition of input service and if such consulting engineer are used for said purpose of repair or renovation they would not get excluded, in as much as he exclusion would only be limited to such services used for the works contract or construction service. In the present case it is not the applicant's case that such consulting engineers service were used for renovation or repairs, but admittedly used or construction purpose, I find no infirmity in the views of the lower authorities. It is accordingly held that the denial of credit to the appellant is justified and is in accordance with law.*

7.8. It is further observed that similar interpretation has been given by Hon'ble Tribunal, Hyderabad in case of Orient Cement Ltd. Vs. CC, C. Ex and Service Tax, Hyderabad-I [2017(51) STR 459 (Tri.-Hyd)], Hon'ble Tribunal, Ahmedabad in Ion Exchange (I) Ltd. Vs. Commissioner of Central Excise, Customs and Service Tax, Surat- II [2018(12) GSTL 302 (Tri. – Ahmd.)]. It is further observed that the Hon'ble Tribunal, Ahmedabad has in Order No. A/10021/2018 dated 04.01.2018 passed in case of M/s Grindwell Norton Ltd. Vs. CST & ST, Vadodara – I held that they do not find any valid reason to hold that cenvat credit availed on various

services used for setting up of industry other than construction service would be admissible to the credit.

7.9. I find that the services availed by the appellant from M/s Sidhi Construction as well as from M/s Tata Consulting Engineers Ltd. was used for construction purposes of their plant in Sanand. In view of the above decision of the Hon'ble CESTAT, Mumbai and of other Tribunals, I hold that the services used in relation to construction as well as consulting engineer service used for setting up of plant are covered under the exclusion clause of definition of input service and hence Cenvat credit is held not admissible in respect of services availed from these units. Respectfully following said judgment of Hon'ble CESTAT, Mumbai, I observe that order for denial of Cenvat credit availed on the services provided by **M/s. Siddhi Construction and M/s. Tata Consulting Engineers Ltd** to the appellant by the adjudicating authority is correct and do not require interference.

8. It is also argued by the appellant that the services provided by M/s. Siddhi Construction were classified under the category of 'Site Clearance, Site grading & excavation and the services provided by M/s. Tata Consulting Engineers Ltd were classified under Construction Supervision, Project Management, Detailed Engineering, Inspection and Expediting, which were reclassified at the recipient (appellants) end in the Show cause notice under "Construction Service" which is not permissible. In this context, I observe that for the purpose of availing Cenvat credit, it is essential for any service to fall under the ambit of 'input service' as defined under Rule 2(l) of Cenvat Credit Rules, 2004. Besides that, these arguments in the negative list regime is not relevant. This argument of the appellant is, therefore, liable for rejection.

9. It is further observed that the appellant has also challenged invocation of extended period in the SCN. They argued that department failed to examine record in depth and in detail, then at a later stage of time, they should not be allowed to burden the assessee by slapping the charge of suppression of facts or mis-declaration. I find that the adjudicating authority has examined the issue in Para 31.1. of the impugned order and held that the claim of conduction of 2nd audit by the noticee is false. I also find from the relevant FAR that it was the first

audit of the appellant. Hence, the contention of the appellant is found to be factually incorrect. It is apparent from the case records that the issue of wrong availment/utilization of Cenvat credit was detected during audit of the record of the appellant. The same would have remained undetected if audit has not taken place. In the era of self assessment, it is duty of the assessee to correctly assess tax liability or avail Cenvat credit properly and any such short payment or irregularity in availment of Cenvat credit, detected at later stage but within limitation of period cannot be termed as burden on assessee. The appellant has placed reliance on case law CCE v/s Southern Structure Ltd-2008 (229) ELT 487(SC) and Trans Engineers India Pvt Ltd v/s Commr C. Ex. Pune-2015(40)STR 490. However, it is observed that in case of CCE v/s Southern Structure Ltd, department had initiated similar proceedings earlier and in case of M/s. Trans Engineers Pvt v/s CCE Pune, second audit party done audit of same period or overlapping period. These decisions are distinguishable with the facts of present case and are not applicable to the case on hand.

10. In view of the discussions made above, I allow the CENVAT Credit availed in case of services availed from M/s Nirvana Consultancy Consultancy Services & Fabricare Laundramates Inc and M/s. Kitchen Solutions.com discussed at 7.2 & 7.3 above.

11. Further, I reject the appeal in respect of services availed from M/s. Anin Consultancy Services Pvt Ltd, M/s. Siddhi Construction and M/s. Tata Consulting Engineers Ltd. and disallow the CENVAT Credit availed by the appellant from these firms. The amount of interest and penalty shall be quantified accordingly.

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

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

(Akhilesh Kumar)
Commissioner, CGST (Appeals)
Date: 26.06.2020

Attested

(D.A.Parmar)
Superintendent
Central Tax (Appeals)
Ahmedabad

By R.P.A.D.

To,
M/s. Colgate Palmolive (India) Ltd.,
SM-02,GIDC Industrial Estate,
Near Bol Village,Sanand-382170

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner of Central Tax, Ahmedabad-North.
3. The Additional Commissioner, Central Tax (System), Ahmedabad-North.
4. The Asstt./Deputy Commissioner, CGST Division-III, Ahmedabad-North.
5. Guard File.
6. P.A. File