



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
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DIN-20210964SW0000777E0D

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/CEXP/108/2020-Appeal-O/o Commr-CGST-Appl-Ahmedabad/3251
ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-18/2021-22
दिनांक Date : 21.09.2021 जारी करने की तारीख Date of Issue : 25.09.2021

आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)

ग Arising out of Order-in-Original Nos. 01/DC/D/AKJ/2020-21 dated 28.04.2020, passed by
Assistant/Deputy Commissioner, Central GST & Central Excise, Div-III, Ahmedabad-North.

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Appellant- - M/s Jaint - Gobain Glass India Limited, Khata No. 892, B. K. Logistics Pvt.
Ltd., Survey No. 249+250, Plot No. 32, Village- Vasna Iyava, Sanand, Ahmedabad-382170.

Respondent- Deputy Commissioner, Central GST & Central Excise, Div-III, Ahmedabad-North.

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 शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को
उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन 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 प्रक्रिया 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.



(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 मामलों 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 जो ड्यूटी क्रेडिट 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।

(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 अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक 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 रुपये या उससे कम हो तो रुपये 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 अपील—
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत--

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

(क) 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 2nd माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद --380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, 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. Registrar 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 आदेश 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 है।

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 notwithstanding 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 अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.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 a court fee stamp of Rs.6.50 paise 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 is 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 उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है .

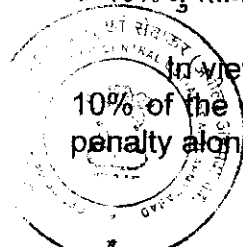
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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:

- (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.

इस 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।

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."



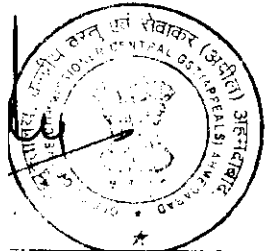
ORDER IN APPEAL

This appeal has been filed by M/s. Saint Gobain Glass India Ltd., Khata No. 892, B. K. Logistics Pvt. Ltd, Survey No: 249+250, Plot No.32, Village: Vasna Iyava, Sanand, Ahmedabad -382170 (in short '*appellant*') against the OIO No: 01/DC/D/AKJ/2020-21 dated 28.04.2020 (in short '*impugned order*') passed by the Deputy Commissioner, Central GST, Ahmedabad North (in short '*the adjudicating authority*').

2. The facts of the case, in brief, are that during the course of audit, on verification of service tax credit register for the period from 08.08.2014 to June, 2017, it was observed that the appellant has taken CENVAT credit of Service Tax paid on outward freight (GTA service) paid by their Chennai Office having Centralized and Input Service Distributor (ISD) registration. As the freight & service tax was not paid by the appellant, audit observed that the credit of Rs.7,42,513/- (outward GTA) was not admissible to them. On further verification, it was also observed that the appellant took CENVAT credit amounting to Rs.16,78,199/- as Service Tax paid during February, 2016 to June,2017 on various Bill /Invoices raised in the name of their Chennai office for Warehousing, Manpower & Sequencing & other services.

2.1 Audit observed that the appellant does not have a Service Tax Registration therefore the Service Tax credit can be availed by them only through the documents issued by ISD as envisaged under Rule 7 and as listed in Rule 9(1) of the CENVAT Credit Rules (CCR), 2004. As the credit availed was on the invoices raised to their Chennai office, which is not a prescribed documents, hence it was observed that the CENVAT credit availed by the appellant was ineligible and in contravention to the provisions of Rule 3(1) read with Rule 9(6) of the CCR, 2004.

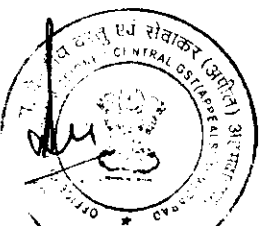
2.2 A Show Cause Notice (SCN for brevity) No: 135/2019 dated 30.09.2019, was therefore issued to the appellant invoking extended period and proposing; recovery of CENVAT credit amounting to Rs.24,20,712/- (**Rs.7,42,513/- Outward GTA + Rs.16,78,199/- Rent, Sequencing & other services**) under Section 11A(4) of the Central Excise Act (CEA), 1944 read with the provisions of Rule 14 (1) (ii) of the CCR, 2004. Imposition of penalty under Section 11A(1)(C) of the CEA,1944 read with Rules 15 (2) of the CCR and interest under Section 11AA of the CEA read with Rules 14 (1) (ii) of the CCR, 2004 was also proposed.



2.3 The said SCN was adjudicated by the adjudicating authority vide the impugned orders wherein he disallowed the CENVAT credit of Rs.24,20,712/- and ordered recovery of the wrongly availed CENVAT credit alongwith interest and imposed equivalent penalty of Rs.24,20,712/- under the relevant provisions.

3. Aggrieved with the impugned order, the appellant preferred the present appeal mainly on following grounds:-

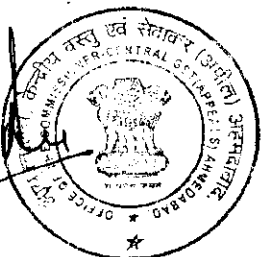
- a) The impugned order is invalid and unsustainable in law being erroneous as the adjudicating authority failed to address their submissions stating that the CENVAT credit on GTA services is permissible on the strength of Service Tax paid under reverse charge through challan though tax was paid by Chennai office having centralized registration; that services were received and utilized in their factory for manufacture of excisable goods and were accounted in the books of accounts; that credit cannot be denied on the ground that the address of the 'finance shared service centre' in the invoice is just a procedural lapse[reliance placed on CBEC circular No:441/7/99-CX dated 23.02.1999; that demand is time barred as no suppression of facts; Interest and penalty not sustainable as the issue involves bonafide interpretation of law; principles of judicial discipline not followed.
- b) Eligibility of the CENVAT credit was never challenged. The credit was availed by the Sanand manufacturing unit and not by any other unit of the appellant and to justify this claim they produced an Affidavit filed by Shri. Manoj Bhatt, duly notarized on 11.03.2020, wherein he deposed that the services in dispute were received, consumed and utilized by their Sanand factory in relation to the manufacturing and clearance of excisable goods and were also accounted for in their books of account. However, the impugned order is silent on the affidavit as no finding on this aspect was recorded. To support their argument they placed reliance on the citation **1974 ICR 120: Alexander Machinery (Dudey) Ltd. Vs Crabtree**. They argued that availing CENVAT credit on the basis of challan is just a procedural lapse and substantive credit cannot be denied merely on this argument. They placed reliance on RMC Ready Mix India-**2019-TIOL-3124-CESTAT-Bang**, Padmini Polymers Ltd. - **2004(163) ELT. 52 (Tri-Del)**. They contested that the adjudicating authority has mis-placed his reliance on the



India- **2009 (239) ELT 323 (Tri-Amd)** where the issue was regarding the admissibility of CENVAT credit as to whether it relates to manufacturing activities and it never dealt with the issue of ISD. The reliance placed on the decision of Tribunal in the case of Khaitan Electricals Ltd. - **2011(21) STR 184(Tr-Kolkata)** is also mis-placed as this decision was in favour of appellant and was also distinguished in the case of Bloom Dekor Ltd – **2012 (28) STR 182 (Tri-Amd)**.

c) M/s. Saint Gobain Glass India Ltd, Plot No. A-1, SIPCOT Industrial Park, Sriperumbudur, Kanchipuram, Chennai is not a registered office as alleged but a "Finance Shared Service Centre" where all bills of the Company are centrally processed. Therefore all bills were addressed to the Finance Shared Service Centre at Chennai but the services were availed by the factory located at Sanand. To justify the same they provided the sector-wise details.

- The factory is a rented premise taken on rent from M/s. B K Logistics Pvt. Ltd., (BKLPL) Pune and for other related facilities like EOT Crane, EOT Crane operators etc for which they have entered into Warehouse Agreement with M/s. BKLPL on 01.07.2014. As per Article-2 of the agreement the owner shall provide the warehouse space of 10000 sq feet at Khata No, 898, Survey/Block No.249+250, Plot No.32, Village :Vasna Iyasa, Sanand, Ahmedabad -382170 for warehousing of goods. A copy of the agreement was annexed with the appeal. As they wanted more space 12900 sqft they amended the agreement vide Addendum dated 24.04.2015, copy of the same was also annexed. Subsequently one more premises for warehouse was required hence they executed another Agreement on 08.09.2015 for additional space of 5000 sq ft. Copy of this agreement was also submitted. Thus all the agreements were for renting the factory premises located at Sanand.
- Manpower services was required for manufacturing activities like assembly of Windshield, Backlite, Inspection, Packaging, Despatch etc for which they entered 'Service Contract' with M/s. BKLPL on 23.01.2015. The sequencing of manpower was for Rs.4320/person (including traveling and canteen charges plus Mobile Bill of Rs.500/person. Thus these services were used in the factory premises for manufacturing & in relation to manufacturing activities. Copy of agreement annexed with appeal memorandum.
- Miscellaneous services like water tanker, mop cleaning, payment of electric bills, electrical material, etc were provided by M/s. BKLPL to the Sanand factory



as per service contract dated 23.01.2015 for which they charged service charges. To justify their claim they obtained a declaration dated 29.01.2020 from M/s. BKLPL, Pune. They also produced certificate dated 23.01.2020 of Chartered Accountant M/s. V. Modi & Associates, Vadodara along with invoice wise details certifying that the invoice issued by M/s. BKLPL were in the name of Chennai office but the services were received & utilized in their Sanand Unit/factory and all these services are accounted in their books of accounts. The appellant has relied on catena of case laws, a few are listed below:-

- Everyday Inds. India Ltd- 2007 (219)ELT 333 (Tri-Del)
- Essar Oil Ltd-2014 (309) ELT 336 (Tr-Ahmd)
- Biotor Industries Ltd- 2018 (10) GSTL 34 (Tri-Ahmd)
- ITW India Ltd- 2010(17) STR 587 (Tri-Ahmd)
- Ace Tyres Ltd- 2017 (348) ELT 466 (Tri-Hyd)
- Mangalore Chemicals & Fertilizers – 1991 (55) ELT 437 (SC)
- Sambhaji & Others – 2009 (240) ELT 161 (SC)

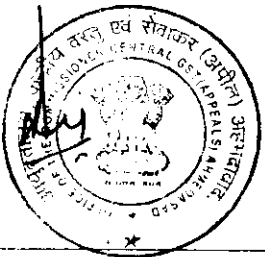
d) CBEC Circular No:441/7/99-CX dated 23.12.1999, provides that the jurisdictional A.C. shall allow the credit of duty paid on inputs/capital goods ignoring minor procedural lapses in filing the declaration or in the invoice/documents based on which credit is taken. SCN has to be issued if the A.C. after making due enquiry is satisfied that the Modvat credit taken by the assessee is incorrect however efforts should be directed towards reduction of litigation. They also relied on various case laws some of them are listed below:-

- Hindustan Zinc Ltd 2019-TIOL-3336-CESTAT-Del
- Goramal HARiram Ltd-2018 (11) TMI 902-CESTAT New Delhi
- Majestic Auto Ltd- 2008 (230) ELT 151 (Tri-Del)
- Godrej & Boyce Mfg Co. Ltd.- 2017 (345) ELT 296 (Tri-Mumbai)Hindalco Industries Ltd – 2017 (48) STR 393 (All.)

e) There is no allegation that the CENVAT credit availed on Repairs & Maintenance services, Technical Testing & Analysis services and Clearing & Forwarding services availed at Sanand unit were not input services nor is there any allegation that the said services were not received and utilized by the Sanand unit or were not accounted for. Thus disallowing the credit of all bills having address of the factory is unsustainable.



- f) The role of ISD is to receive invoices issued u/r 4A of the Service Tax Rules, 1994 towards purchase of input services & distribute the CENVAT credit to eligible branches /units of the service provider or manufacturer. The Chennai office situated at Sigapi Aachi Building, Rukminilakshmi pathy Road, Egmore Chennai is having centralized registration / ISD registration which neither received any services nor received any invoices issued u/r 4A. In fact the services were received at the factory and the invoices were addressed to "Finance Shared Service Centre" at plot No-A-1, SIPCOT Industrial Park, Sriperumbudur, Kanchipuram, Chennai, which is a different premises. In such a scenario the ISD can neither avail the credit nor can issue invoice for distributing the credit u/r 7 of CCR, 2004.
- g) The entire demand is barred by limitation as the details of CENVAT credit availed and utilized for the concerned month were declared at Sr.no.08 of the return. The CENVAT invoices are not required to be submitted to the department for verification unless specifically called for. They relied on CBEC Circular B-4/7/2000-TRU dated 03.04.2000 & CBEC Circular No:818/15/2005-CX dated 15.07.2005 to argue their case on limitation. They also placed reliance on array of case laws, few of them are listed below;
- Personality Ltd 2010 (259) ELT 385 (Tri-Bang)
 - Pahwa Chemical – 2005 (189) ELT 257 (SC)
 - Sarabhai M.Chemicals – 2005 (179) ELT 3 (SC)
 - Pushp enterprises – 2011 (22) STR 299 (T)
 - IOCL – 2015-TIOL-1658-CESTAT-AHM
 - Apex Electricals P. Ltd. – 1992 (61) ELT 413 (Guj)
- h) Principles of judicial discipline require that the orders of the higher appellate authorities should be followed by subordinate authorities. Reliance has been placed on following case laws;
- Kamlakshi Finance Corporation Ltd. – 1991 (55) ELT 433 (SC)
 - E. I. Dupont India Pvt. Ltd. – 2014 (305) ELT 282 (Guj)
 - Ved Prakash – 2014 (306) ELT 429 (P&H)
- i) Demand of Interest and Penalty not sustainable as issue involves bonafide interpretation of law. Demand of interest u/s 11AA not sustainable as the entire demand is not maintainable in law on merits. Similarly penalty u/s 11AC is to be invoked when there is suppression with an intent to evade payment of excise duty, which is not the case here. Mere detection by the department does not



mean there was intent to evade payment of tax. They placed reliance in various decisions which are listed below: -

- Sands Hotel Pvt. Ltd- 2009 TIOL 441 CESTAT – AHM
- NRC Ltd- 2007 (5) STR 308 (Tri-Mumbai)
- Swastik Engineering – 2010 (255) ELT 261 (Tri)
- SDL Auto Pvt. Ltd. – 2013(294) ELT 577 (Tri)
- ITC Ltd – 2013 (291) ELT 377 (Tri)
- P S Auto Pvt. Ltd- 2014-TIOL-95-CESTAT-Mum

j) They requested to set-aside the impugned order and grant personal hearing and pass an order as deemed fit considering the facts of the case.

4. Personal hearing in the matter was therefore held on 27.08.2021 through virtual mode. Shri Yogesh B.Desai, Advocate, and Sh. Manoj Bhatt, Manager Taxation, appeared on behalf of the appellant and reiterated the submissions made in the appeal memorandum.

5. I have carefully gone through the facts and circumstances of the case, the impugned order passed by the adjudicating authority, submissions made in the Appeal Memorandum as well as at the time of personal hearing and evidences available on records. The issue under consideration in the present appeal is whether the credit of **Rs.16,78,199/-** paid as service tax under Warehousing, Manpower, Sequencing & Other services during [February 2016 to June, 2017] and credit of **Rs.7,42,513/-** paid as service tax under GTA service during [April, 2016 to June,2017] is admissible to the appellant though the basis of invoices/bills are raised in the name of their Chennai office.

5.1 M/s. Saint Gobain India Pvt. Ltd, Sigapi Aachi Building, Rukminilakshipathy Road Egmore Chennai has obtained Centralized Registration (AABCS4338MST001) for more than one premises including the premises of M/s. Saint Gobain India Pvt. Ltd., Plot No-A-1, SIPCOT Industrial Park, Sriperumbudur, Kanchipuram, Chennai and M/s. Saint Gobain Glass India Ltd. Khata No. 892, B. K. Logistics Pvt. Ltd, Survey No: 249+250, Plot No.32, Village: Vasna Iyava, Sanand, Ahmedabad -382170. As per ST-2 Certificate, M/s. Saint Gobain India Pvt. Ltd, Sigapi Aachi Building, Rukminilakshipathy

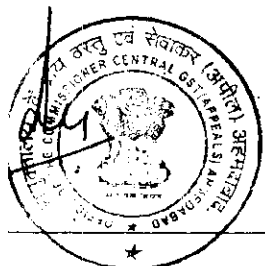


Road Egmore Chennai shall be paying Service Tax under centralized billing or centralized accounting under Rule 4 (2) & (3A) of the Service Tax Rules, 1994.

5.2 I have gone through the Warehousing Agreement dated 01.07.2014, entered between M/s. Saint Gobain Glass India Pvt. Ltd, Sekruit Division having office at Sigapi Aachi Building, Rukminilakshipathy Road Egmore Chennai i.e. their Centralized office (having registered office at Plot No-A-1, SIPCOT Industrial Park, Sriperumbudur, Kanchipuram, Chennai) (referred as 'SGGIPL') and M/s. BKLPL (owner) having warehouse at **Khata No.892, Survey / Block No.249+250, Plot No.32, Village: Vasna Iyava, Sanand, Ahmedabad -382170**. As per the agreement, the owner shall provide the said warehouse facility to SGGIPL, invoices shall be raised in the name of SGGIPL and the charges shall be paid by SGGIPL to the owner as per the cost mentioned in the Annexure to the agreement.

Subsequently, an Addendum to the above agreement was signed wherein warehouse space was increased from 10,000 sqft to 12,900 sqft and the all reference to Saint Gobain Glass India Pvt. Ltd, Sekruit Division was replaced by Saint Gobain Glass India Pvt. Ltd, Sekruit Business having office at No. 18/3, 7th Floor, Sigapi Aachi Building, Rukmani Lakshmi pathi Rd, Egmore, Chennai, Tamil Nadu- 600008 (having factory at Plot No-A-1, SIPCOT Industrial Park, Sriperumbudur, Kanchipuram, Chennai-602105 referred as 'SGI').

I have also examined the sub-lease Agreement entered on 08.9.2015, between BKLPL and Saint Gobain Glass India Pvt. Ltd, Sekruit Business having office at No. 18/3, 7th Floor, Sigapi Aachi Building, Rukmani Lakshmi pathi Rd, Egmore, Chennai, Tamil Nadu- 600008. As per the agreement, the sub-lessor i.e. BKLPL shall sub-lease the property measuring 5000 sqft situated at **S.No.249 A, Palli 21, 21, Uma Estate at Vasna Iyava, Sanand, Ahmedabad** for warehousing purpose to M/s. Saint Gobain Glass India Pvt. Ltd -Sekruit Business. The sub-lessee shall pay the rent. Further, the said parties also entered into a Service Contract on 23.01.2015, according to which the M/s. BKLPL (contractor) shall provide manpower for child part assembly, Windshield, backlite, Inspection, packing & dispatch at the factory at **Khata No.892, Survey / Block No.249+250, Plot No.32, Village: Vasna Iyava, Sanand, Ahmedabad -382170**. The invoices related to the services provided under the



contract shall be certified by SGI's Area Manager/Regional Manager, Chennai and all the bills shall be settled by SGI, Chennai which is appellant's centrally registered premises.

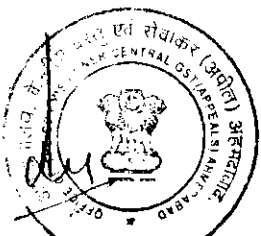
Thus, all the aforementioned contracts were entered with BKLPL with their centrally registered premises which shall be paying Service Tax under centralized billing or centralized accounting under Rule 4(2) & (3A) of STR, 1944 and the services shall be received by their registered unit located at Sanand. So there remains no ambiguity that the above service was provided to the appellant by M/s. BKLPL.

5.3 To examine the first issue regarding admissibility of CENVAT credit of tax paid on Rent of warehouse, Supply of Manpower service, Repair & Maintenance Service, Technical Testing & Analysis Services etc, I find that in the present appeal, the eligibility of input service for CENVAT and remittance of Service Tax by the service provider is not disputed. It is also not in dispute that the relevant input service (Rent, Sequencing & Other services amounting to Rs.16,78,199/-) has been utilized by the appellant in or in relation to manufacture of final products. It is also not the case of the Department that the relevant invoices submitted by the appellant in respect of Rent of warehouse, Supply of Manpower service, Repair & Maintenance Service, Technical Testing & Analysis Services etc were not provided to the appellant. The only argument put forth to deny the credit was that the credit availed was not on the documents prescribed under 9(1) (g) of the CCR, 2004.

5.4 Now the question arises whether the credit taken & utilized by the appellant is as per the documents prescribed in Rule 9 of the CCR, 2004 which provides that a manufacturer shall take CENVAT credit on an invoice, bill or challan issued by ISD u/r 4A of the Service Tax Rules, 1994.

The term Input Service Distributor (ISD) is defined under Rule 2 (m) of the Cenvat Credit Rules, 2004, which is reproduced below:-

2(m) *"input service distributor" means an office of the manufacturer or producer of final products or provider of output service, which receives invoices issued under rule 4A of the Service Tax Rules, 1994 towards purchases of input services and issues invoice, bill or, as the case may be, challan for the purposes of distributing the credit of Service*



Tax paid on the said services to such manufacturer or producer or provider, as the case may be;"

An input service distributor is a head office/intermediary office which controls the business of manufacturer or producer of final products or output service provider and receives invoice issued under Service Tax Rules toward purchase of input services and issues invoice / bill /challan for the purpose of distributing the credit of Service Tax paid on such services to manufacturer/producer or service provider and outsourced manufacturing unit.

Therefore, the law mandates that the manufacturer, who wants to avail the benefit of Service Tax if he has more than one unit, he should also get registered himself as a service provider and then, he would be able to collect all the input Service Tax paid in all its units and accumulate them at its head office and distribute the said credit to its various units.

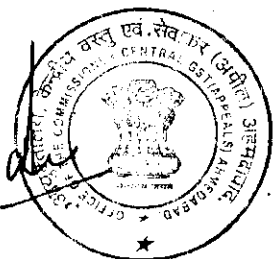
5.5 The manner of distribution is provided in Rule 7 which reads as under :-

"Rule 7. Manner of distribution of credit by input service distributor. — The input service distributor may distribute the CENVAT credit in respect of the service tax paid on the input service to its manufacturing units or units providing output service, subject to the following conditions, namely :-

- (a) the credit distributed against a document referred to in rule 9 does not exceed the amount of Service Tax paid thereon, or*
- (b) credit of service tax attributable to service use in a unit exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be distributed."*

Therefore, only two limitations are put for the distribution of credit by an input service distributor. Firstly, it cannot exceed the amount of Service Tax paid and secondly, the credit of service tax attributable to service used shall not be distributed in a unit exclusively engaged in the manufacture of exempted goods or providing of exempted services.

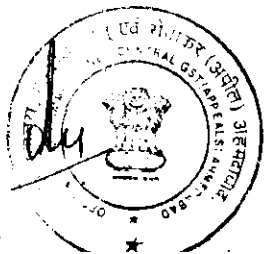
5.6 Further, Rule 9(1) of the CCR, 2004 prescribes the documents on the basis of which CENVAT can be availed. In terms of Rule 9(2), no CENVAT credit under sub-rule(1) shall be taken unless all the particulars as prescribed under the Central Excise



Rules, 2002 or the Service Tax Rules, 1994, as the case may be, are contained in the said document; **provided that** if the said document does not contain all the particulars but contains the details of duty or service tax payable, description of the goods or taxable service, assessable value, Central Excise or Service Tax Registration number of the person issuing the invoice, as the case may be], name and address of the factory or warehouse or premises of first or second stage dealers or provider of output service, and the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, is satisfied that the goods or services covered by the said document have been received and accounted for in the books of the account of the receiver, he may allow the CENVAT credit.

5.7 On examining the agreement and the invoices submitted by the appellant in respect of various disputed services, I find that the invoices were addressed to M/s. Saint Gobain India Pvt. Ltd., Plot No-A-1, SIPCOT Industrial Park, Sriperumbudur, Kanchipuram, Chennai having Service Tax Registration [AABCS4338MXM001] and as it is also a 'Finance Shared Service Centre', it receives bills of entire Company or all their registered unit for centralized processing but is not having ISD registration. Though it does not have a centralized registration or ISD registration but this does not dispute the facts that the invoices raised were in respect of the warehousing services provided at Sanand unit i.e the appellant. The invoices of Technical Testing & Certification submitted are found to be raised in the name of the appellant so there is no ambiguity that the invoices raised were for the services received by the appellant.

Further, the invoices contain the details of service tax payable, description of the taxable service, service tax registration number of the person issuing the invoice, name and address of the provider of output service. As the invoices, issued by M/s. BKLPL & other service providers contains all the relevant details as required in any invoice, the genuineness regarding payment of service tax by the service provider satisfy the conditions laid down in Rule 9(2) of CCR, 2004 for allowing Cenvat credit. The jurisdictional Deputy Commissioner could have satisfied himself whether the services covered under said invoices have been received and accounted for in the books of the account of the receiver, before denying such credit.



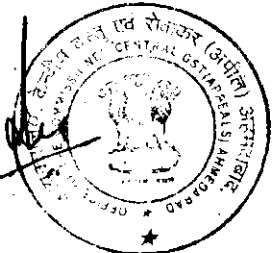
5.8 I place reliance on decision of Principal Bench, New Delhi passed in the case of Hindustan Zinc Ltd. Vs Commr. of Customs & C.Ex, Jaipur-II [2013 (291) E.L.T. 464 (Tri. - Del.)] where in hon'ble Principal Bench allowed the appeal on the argument that

"Identity of the head office and Smelter unit remained unquestioned. So also the service received by the Debari Smelter unit under invoices showing the head office address remained unquestioned. Only because the invoice carry name of the head office, denial of Cenvat credit shall defeat the object of avoiding cascading affect. No doubt, input service distribution scheme was introduced to enable central agencies to distribute credit available to its units under certain procedures. But at the initial stage of implementation of law, difficulties were experienced because of the Registration procedure and certain technical procedures involved. When the identity of service recipient and provider as well as genuinity of transaction is not in doubt there may not be difficulty to allow Cenvat credit of Rs. 2,88,062/-. Accordingly, appeal is allowed."

5.9 Further, in the case of *Pharmalab Process - 2009 (16) S.T.R. 94 (T-Ahd.) = 2009 (242) E.L.T. 467 (Tribunal)*, the matter was remanded holding that if details required under Rule 9(2) of CCR 2004 is satisfied, then the appellant is entitled for credit based on debit notes.

5.10 I find that the appellant to support their argument also submitted a Declaration dated 29.01.2020 by M/s. BKLPL wherein they declared to have issued invoices in the name of M/s. Saint Gobain India Pvt. Ltd., Plot No-A-1, SIPCOT Industrial Park, Sriperumbudur, Kanchipuram, Chennai for the services of warehousing & other related services, supply of manpower services & other miscellaneous services provided to the appellant. The appellant also produced certificate dated 23.01.2020 of Chartered Accountant M/s. V. Modi & Associates, Vadodara along with invoice wise details certifying that the invoice issued by M/s. BKLPL were in the name of Chennai office but the services were actually received & utilized in their Sanand Unit/factory and all these services are accounted in their books of accounts.

5.11 In view of above discussion, I find though the credit availed was not on the document prescribed under Rule 9(1) of the CCR, 2004, but this shall not construe



that the credit availed was inadmissible due to non-issuance of invoice by ISD, which is merely a procedural lapse. The invoices issued in the name of the Chennai office contained all the relevant details as prescribed; Agreements entered between the service provider and appellant's centralized office clearly indicated that the services were to be rendered for the Sanand unit as the address mentioned in the agreement and that of the appellant are same; Undertaking by M/s. BKLPL (service provider) that the services rendered were to the appellant and the certificate of the Chartered Accountant confirming that the invoice issued by M/s. BKLPL were in respect of the services received & utilized by the appellant and were accounted in their books of accounts, I find are sufficient proof evidencing the receipt and utilization of disputed services by the appellant.

6. Coming to the issue of credit of Rs.7,42,513/- availed on Service Taxpaid under RCM on GTA service, I find that the appellant produced copies of bank challan evidencing payment of service tax made by their Chennai office which has obtained centralized registration. Now, the dispute arises whether the said GTA service was actually received and utilized by the appellant. To support their contention, the appellant produced an Affidavit filed by Shri. Manoj Bhatt duly notarized on 11.03.2020 to the jurisdictional D.C., wherein Shri. Manoj Bhatt deposed that the GTA service in dispute were received, consumed and utilized by their Sanand factory in relation to the manufacturing and clearance of excisable goods and were also accounted for in their books of account.

6.1 I find that an affidavit requires an oath or affirmation and such oath or affirmation is the requirement of Section 139 of the Code of Civil Procedure read with the Orders made there under. Verification of an affidavit enables a court to find out which facts can be said to be proved on the affidavit evidence of parties. The fact may be borne by record or knowledge or information. Importance of verification in an affidavit is to test genuineness and authenticity of averments therein. Verification makes the deponent responsible for the averments made. In essence, verification is required to find out as to whether it will be safe to act on such affidavit evidence. If an affidavit suffers from mischief to lack of verification then that renders the same inadmissible in evidence. This flows from the judicial pronouncement of the Apex Court in *A.K.K. Nambiar v. UOI & Ors.* - 1969 (3) SCC 864. The appellant could have

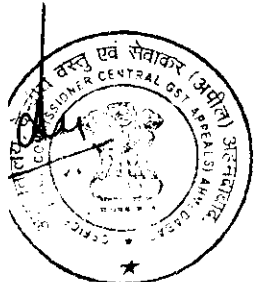


produced invoices to authenticate their claim made in the affidavit that the GTA service was actually received, utilized and accounted for in their unit, in the absence of the same it would be difficult at this stage to grant the benefit to the appellant purely on the basis of the challan evidencing payment of service tax made by their centrally registered Chennai office which even otherwise is liable to discharge the tax liability of all other units/branches.

6.2 Hon'ble Supreme Court has held in the case of *Viswanathan v. Wajid*, A.I.R. 1963 SC 1, that when the court has not ordered the proof of a fact by an affidavit it is no evidence nor an affidavit can be used as evidence under the Evidence Act. Besides, it cannot be laid down as a general proposition that irrespective of circumstance/circumstances affidavits should as a rule be relied upon as representing the truth. Much depends upon the facts and circumstances of each case.

6.3 I find that the appellant has failed to produce the GTA invoices / documents to correlate their claim that the challan evidencing service tax paid by their head office for outward GTA services were actually availed and utilized by them. As the invoices satisfying the conditions laid down in Rule 9(2) of CCR, 2004, were not produced, as was done in the first issue, the CENVAT credit of GTA service cannot be permitted merely on the basis of an affidavit.

6.4 The appellant has relied on various case laws, which I find are distinguishable. The decision of M/s. RMC Ready Mix India is not squarely applicable to the present case as there the CENVAT was allowed, as payment of Service Tax & utilization of GTA service by the appellant was not disputed moreover the appellant therein submitted certain invoices which were raised in their name. Further the appellant placed reliance on the citation **1974 ICR 120: Alexander Machinery (Dudey) Ltd. Vs Crabtree** which is also not relevant as proper reasoning has been given for not admitting the affidavit. Similarly, the reliance placed at Tribunal's decision in the case of **Padmini Polymers Ltd. - 2004(163) ELT. 52 (Tri-Del)** is mis-placed as there the issue dealt was of refund arising consequent to dropped demand which is not the case here hence distinguishable.



7. On the issue of time bar, I find that the demand was raised based on detection noticed during scrutiny of documents by audit. In the era of self assessment the assessment will be made on the basis of information furnished in the return and no invoices or bills were required to be submitted along with return and the verification of invoices or bills if any was to be done by the audit only as has also been done by audit in the present case. It is not the appellant's case that they have furnished the invoices but department has chosen not to verify them. The principle of self assessment and submission of only the results of self assessment in the form of return would show that it is the responsibility of the assessee to assess the goods correctly and pay the taxes correctly. In this case it cannot be said that appellant was not aware that the credit has to be taken on prescribed documents and this statutory obligation cannot be escaped on the argument of bonafide interpretation of law. Once the assessee is considered to be aware of statutory provisions relating to availment of credit and his activities, the normal conclusion of a ordinary prudent person is that the assessee had deliberately took inadmissible credit and thereby suppressing/mis-declaring the fact of availment of credit to the department. Therefore the conclusions of the lower authorities to disallow the credit of GTA and order recovery of Rs.7,42,513/- with interest and imposition of penalty has to be upheld. When the demand sustains there is no escape from interest hence the same is therefore recoverable under Section 11A (4) with applicable rate of interest under Section 11(AA) of the CEA, 1944.

8. The issue of mandatory penalty is also settled by Hon'ble Supreme Court in the case of UOI vs Dharmendra Textile Processors [2008(231) ELT3 (SC)] and in the case of UOI Vs Rajasthan Spinning & Weaving Mills [2009 (238) E.L.T. 3 (S.C.)] wherein it is held that penalty under Section 11AC, as the word suggests, is punishment for an act of deliberate deception by the assessee with an intent to evade duty by adopting any of the means mentioned in the section. In the present case wrong and inadmissible CENVAT credit of GTA was taken and utilized in contravention to Rule 9 of the CCR, 2004 with an intent to evade payment of tax by utilizing the inadmissible credit, the same is therefore recoverable under Section 11A(4) of the CEA, 1944 with applicable rate of interest and penalty u/s 11AA & 11AC respectively.

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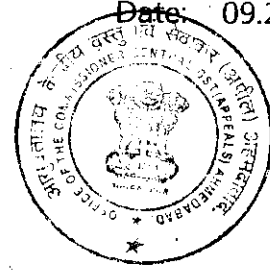
9. In view of the above discussions, I pass the following order :

- (i) I set aside the impugned Order-in-Original to the extent of allowing the credit of **Rs.16,78,199/-** as Service Taxpaid under Warehousing, Manpower, Sequencing & Other services during the disputed period.
- (ii) I uphold the impugned Order-in-Original to the extent it relates to demand of Cenvat credit of **Rs.7,42,513/-** availed by the appellant on the Service Tax paid under GTA service during the disputed period, alongwith interest and penalty.

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

Akhil Kumar
9th September, 2021
(Akhil Kumar)
Commissioner (Appeals)

Date: 09.2021



Attested

Rekha Nair
(Rekha A. Nair)
Superintendent (Appeals)
CGST, Ahmedabad

By RPAD/SPEED POST

To,

M/s. Saint Gobain Glass India Ltd.
Khata No. 892, B. K. Logistics Pvt. Ltd
Survey No: 249+250, Plot No.32
Village: Vasna Iyava, Sanand
Ahmedabad -382170

Appellant

The Deputy Commissioner
CGST, Division-III
Ahmedabad North
Ahmedabad

Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Deputy Commissioner, CGST, Division-III, Ahmedabad North
4. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North.
(For uploading the OIA)
- ✓ 5. Guard File.
6. P.A. File

