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
☎ 26305065-079 : **टेलेफैक्स** 26305136 - 079 :
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DIN-20211064SW0000005E7A

स्पीड पोस्ट

क फाइल संख्या · File No : GAPPL/COM/CEXP/223/2020-Appeal-O/o Commr-CGST-Appl-Ahmedabad/ 3H2H TO 3H28

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-19/2021-22**
दिनाँक Date : **24.09.2021** जारी करने की तारीख Date of Issue : **01.10.2021**

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

ग Arising out of Order-in-Original Nos. **09/ADC/2020-21/MSC dated 18.08.2020**, passed by Addiktonal Commissioner, Central GST & Central Excise, Ahmedabad-North.

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

Appellant- M/s. Honda Motorcycle & Scooter India Pvt. Ltd., T. Poddar Industrial Park, Taluka: Mandal, Vithalpur-382120.

Respondent- Additional Commissioner, Central GST & Central Excise, 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 :

(i) 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 मे, 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

(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 मामले 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 तो 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 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 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. 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 आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढ़ी 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 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 a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इस 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 उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण **(सिस्टेट)**, के प्रति अपीलो 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. Honda Motorcycle & Scooter India Pvt. Ltd, T. Poddar Industrial Park, Taluka: Mandal, Vithlapur, Ahmedabad 382120 (in short *'appellant'*) against the OIO No: 09/ADC/2020-21/MSC dated 18.08.2020 (in short *'impugned order'*) passed by the Additional 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 of the records of the appellant by departmental officers, on verification of Central Excise & Service Tax records, it was noticed that the appellant had taken CENVAT credit on capital goods and services used for installation of a 21 km long transmission line from GETCO sub station, Mandal, to their factory located at Vithlapur. The appellant had approached the Uttar Gujarat Vij Company Limited (UGVCL) for the requirement of new 14500 KVA EHT power supply for their proposed unit at Vithlapur. The UGVCL vide letter No: UGVCL/Regd./Com/EHT/New/615 dated 17.03.2015, provided the estimate for the supervision of the work alongwith the terms & conditions of the contract. The contract for erection & civil work of the transmission line was given to M/s. Om Power Transmission Pvt. Ltd. (OPTPL in short) and supply of material used in the installation of said transmission line was received from various suppliers including M/s. Akshar Energy Structures etc.

2.1 Audit observed that the CENVAT credit of Rs.27,21,648/- on capital goods availed during the year 2015-16 for duty paid on various goods used in erection & installation of 21 Km long transmission line is inadmissible as the said transmission line is owned by GETCO and installed outside the factory premises of the appellant, hence cannot be classified as capital goods in terms of Rule 2(a) of CENVAT Credit Rules (CCR), 2004, as they were not used in the manufacture of final product.

2.2 Further, the appellant also availed services (involving liaison with farmers and other agencies for clearance, civil work for foundation, erection of panther tower etc) of M/s. OPTPL, for erection and civil work related to transmission tower from Mandal to Vithlapur, which is owned by GETCO and located outside the appellant's factory, thus the CENVAT credit of Rs.51,41,424/- availed on the said services during the financial year 2016-17, is inadmissible, as they do not qualify as input service in terms of Rule 2(l) of CCR, 2004.

2.3 Audit further observed that during December-2016 and January-2017, the appellant availed CENVAT credit amounting to Rs.9,83,701/- of service tax paid for work contract service received from M/s. SMCC Construction India Ltd. (SMCC in short) for making additional structure either attached to floor or roof so as to provide support to the conveyor used in their factory. The said service used for making additional structure to support their capital goods was not eligible for CENVAT credit in terms of Rule 2(l) of CCR, 2004.

3. Based on audit observations, a Show Cause Notice (SCN for brevity) No:VI/1(b)CTA/Tech-16/SCN/Honda/2018-19 dated 18.01.2019, was issued to the appellant invoking extended period and proposing; recovery of CENVAT credit amounting to **Rs.27,21,648/-** (wrongly availed on goods procured from various suppliers); **Rs.51,41,424/-** (wrongly availed on services provided by M/s OPTPL) and **Rs.9,83,701/-** (wrongly availed on services provided by M/s. SMCC) under Section 11A(4) of the Central Excise Act (CEA), 1944 read with the provisions of Rule 14 (1) (ii) of the CCR, 2004; recovery of interest on aforesaid demand under Section 11AA of the CEA read with Rules 14 (1) (ii) of the CCR, 2004; and imposition of penalty under Section 11A(1)(c) of the CEA,1944 read with Rules 15 (2) of the CCR was also proposed.

4. The said SCN was adjudicated by the adjudicating authority vide the impugned order, wherein he disallowed the CENVAT credit amount of **Rs.88,46,773/-** (Rs.27,21,648/- + Rs.51,41,424/- +Rs.9,83,701/-) and ordered recovery of the wrongly availed CENVAT credit alongwith interest and imposed equivalent penalty of Rs.88,46,773/- under the relevant provisions.

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

a) In reference to the estimate provided by UGVCL, the appellant carried out the activity of erection of feeder bay and transmission line. UGVCL agreed to supply the electricity only after the transmission line has been laid down. To commercially engage in production of goods, laying of transmission line for electricity was essential. One end of the transmission line is attached to the switchyard located in the factory premises and the other end is attached to the Mandal sub-station hence an integral part of the factory premises. Amendment made in the Capital goods definition by inserting clause 1(A) was to extend the benefit of credit on capital

goods though not used in the factory but were used in relation to electricity used in captive consumption within the factory. As the provisions of Rule 3(1) of the CCR, does not mandate the ownership or possession of the goods & its exclusive use, on which duty has been paid and credit thereof has been availed, on incorrect interpretation is not legal. They placed reliance on array of case laws, few of them are listed below;

- Prism Cement Ltd – 2017 (3) TMI 1283 CESTAT N.Delhi
- Hindustan Coco Cola -2017 -TIOL -2605 CESTAT AHM
- Reliance Inds. 2018 (360) ELT 244 (Bom)

b) 'Technical Testing & Analysis Service' & 'Erection, Commissioning & Installation' services from M/s OPTPL was utilized for laying down a transmission line which was constructed outside the factory in order to connect the sub station with the manufacturing unit. Non-receipt of services within the factory and the fact that the same were being rendered outside the factory premises cannot be a guiding factor to deny the credit when the nexus of the services procures and the manufacturing of final product is established. They placed reliance on case laws some of them are listed below:-

- CCE Vs Ultratech Cement- 2001 (21) STR 297 (Tri-Mumbai)
- Endurance Technologies- 2011(273) ELT 248
- Orient Paper Mills-2017 (6) TMI 106-CESTAT New Delhi

c) CBEC Cir.No: 120/01/2010-ST dated 19.01.2010 clarifies that *"In case the absence of such input/input services adversely impacts the quality & efficiency of the provision of service exported, it should be considered as eligible input or input services".* The services provided by SMCC for building additional structure for the support of elevated conveyor was in relation to modernization of the factory & renovation of factory and dissemination of motor parts within the factory. They relied on following case laws:

- Ion Exchange (I) Ltd- 2018 (12) GSTL 302 (Tri-Ahmd)
- Vimla Infrastructure- 2018 (13) GSTL 57 (Chhatisgarh)

d) Since such charges are directly or indirectly included in the final cost hence CENVAT credit is admissible & correctly availed.

e) All the relevant facts were in knowledge of the department since audit was conducted in January, 2017 and the SCN invoking extended period was issued on 18.01.2019 after a gap of 33 months hence suppression cannot be alleged. Moreover statutory obligation is merely limited to filing complete ER-1 and ST-3

returns when is no obligation to disclose any other information suppression cannot be alleged.

f) There was no intent to evade duty and credit was availed under bonafide belief that the credit was correctly availed. In the absence of *mens rea*, imposition of penalty under Section 11 AC(1)(c), is not imposable. Even if it is applicable, it should not be more than 50% of the demand.

g) When the demand is not sustainable, demand of interest is liable to be set-aside.

h) 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.

6. Personal hearing in the matter was held on 18.06.2021 through virtual mode. Ms. Sukriti Das, Advocate, appeared on behalf of the appellant and reiterated the submissions made in the appeal memorandum and relied upon various case laws submitted during hearing.

7. 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 issues to be decided under the present appeal are as under;

- Whether CENVAT credit to the tune of Rs.27,21,648/- taken by the appellant on capital goods procured for installation of a 21 km long transmission line from GETCO sub-station Mandal to their factory located at Vithapur, is admissible;

- Whether CENVAT credit to the tune of Rs.51,41,424/- taken by the appellant on the services received from M/s. OPTPL for civil work and erection of transmission lines in the year 2016-17, is admissible;

- Whether CENVAT credit to the tune of Rs.9,83,701/- taken by the appellant on works contract service received from M/s. SMCC for making additional structure for support of the conveyor, is admissible.

7.1 I have gone through the letter dated 18.12.2014 addressed to the UGVCL and the contract entered between the appellant and UGVCL. It is observed that the UGVCL vide letter No: UGVCL/Regd./Com/EHT/New/615 dated 17.03.2015, agreed to provide new 14500 KVA EHT power supply on 66 KV system for the proposed unit at Vithlapur, provided the estimate for the supervision of the work alongwith the terms & conditions are fulfilled. The permission / clearance for laying erection of said 66 KV line shall be obtained by the appellant; 18 mtrs wide power corridor for laying the 66KV line from

non agricultural/industrial land and agricultural land falling along the cable route shall be arranged by the appellant; during execution of line, any way leave problem, compensation, legal dispute, statutory permissions, if any raised from Government/GIDC, private land owners, farmers, other agency shall have be resolved by the appellant. The service line, notwithstanding that the portion of it would have been paid by the appellant, shall remain the property of GETCO, by whom it is maintained therefore GETCO has the right to tap the service line for giving power to any other consumer. Further, the appellant shall provide, install & maintain a circuit breaker at receiving end for receiving EHT supply and before release of power supply, shall provide a separate circuit for lightning meter at their cost to record consumption of non industrial load.

7.2 GETCO is engaged in the business of transmission of electricity whereas the UGVCL are engaged in the business of sub-transmission, distribution of electricity in the northern areas of Gujarat and supply power system network, supply lines and sub-stations. From the terms & conditions of the said agreement, it is apparent that being the state distribution company, the ownership of the 66 KV system is with GETCO, as it is their responsibility to supply electricity to consumers in any particular region though the cost and all legal fees shall be borne by the customer. To fulfill the terms and conditions, the appellant got the erection & civil work done by M/s. OPTPL and material like G.I. Structure material, LAMCO Make 60 KV 10 KA CL-3 Station Class, Transmission H/W & Accessories, Nut bolts, CT to Panther Conductor, etc used in installation of transmission line were received from various suppliers including M/s. Akshar Energy Structures etc.

7.3 To decide whether duty paid on various goods used in erection & installation of transmission lines, installed outside the factory premises, involving credit of Rs.27,21,648/- is admissible or not, it is essential to examine whether the transmission line for which these goods were used, merits to be classified as capital goods. The term 'capital goods' defined under Rule 2(a) of CCR, 2004, amended vide Notification No. 3/2011-Central Excise (N.T.) dated 01.03.2011, effective from 01.04.2011, is reproduced below. As per the amended definition of capital goods:

*(a) "**capital goods**" means :-*

(A) the following goods, namely :-

(i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, [heading 6805, grinding wheels and the like, and parts thereof falling under [heading 6804 and wagons of sub-heading 860692]] of the First Schedule to the Excise Tariff Act;

(ii) pollution control equipment;

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

(iv) moulds and dies, jigs and fixtures;
(v) refractories and refractory materials;
(vi) tubes and pipes and fittings thereof; [* *]*
(vii) storage tank, [and]
[(viii) motor vehicles other than those falling under tariff headings 8702, 8703, 8704, 8711 and their chassis [but including dumpers and tippers],]
used –

(1) in the factory of the manufacturer of the final products, [* *]; or*

[(1A) outside the factory of the manufacturer of the final products for generation of electricity [or for pumping of water] for captive use within the factory; or]

(2) for providing output service;

(B) motor vehicle designed for transportation of goods including their chassis registered in the name of the service provider, when used for –

(i) providing an output service of renting of such motor vehicle; or
(ii) transportation of inputs and capital goods used for providing an output service; or
(iii) providing an output service of courier agency;]

In terms of the above definition, goods listed under 2(a)(A) are capital goods, if used within the factory for manufacturing final product 'or' used for providing output service 'or' used outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory. The goods listed in para-3 of the SCN, shall be covered under capital goods, only if the above condition is satisfied.

7.4 I find that the disputed goods were used in erection & installation of transmission lines, located outside the factory premises, which is not disputed by the appellant. In as much as the goods were used for laying of the transmission lines installed outside the factory, the next argument would be whether the transmission lines was used for generation of electricity for captive use within the factory. The transmission line located outside the factory was for distribution of electricity and not for generation of electricity, as is evident from the contract which clearly states that the electricity shall be provided by laying 66LV line from GETCO 66 KV Mandal sub-station to the premises of the appellant. Also, as the entire structure (transmission line) would be the property of the GETCO by whom it is maintained and GETCO shall have the right to tap the service line (i.e. draw any subsequent service line to other customer for providing power), clearly establish that the transmission line was not owned by the appellant and the electricity distributed through this line is not for the exclusive or captive consumption of the appellant, as GETCO retains the right of further distribution of electricity to other customers from the same transmission line. As long as the criteria mandated in Rule 2 (a) of CCR, is not fulfilled, the goods used in erection of transmission line, cannot be considered as capital goods..

7.5 In view of the above discussion, I find that the credit of **Rs.27,21,648/-** as duty paid on goods received from various suppliers used for building the transmission line is not admissible to the appellant. The argument of the appellant that one end of the transmission line is attached to the switchyard located in the factory premises and the other end is attached to the Mandal sub-station, hence forms an integral part of the factory premises, will also not sustain as long as the transmission line is not used for generation of electricity and the line attached to switchyard is just an arrangement to ensure proper distribution of electricity from sub station to the transmission line up to the factory.

7.6 Coming to the issue, regarding the admissibility of input service credit of Rs.51,41,424/-, I find, that as per the purchase order dated 04.03.2015, M/s OPTPL supplied goods (66 KV Feeder Bay at GETCO S/S end switch yard at Kanz sub station, 66 KV Single CKT O/H Dog Conductor line on Panther Tower line & UG cable) for laying down the transmission line and raised invoices for the same. They also raised invoices, charging for installation of 66KV Feeder Bay, Conductor Line, ROW, liasioning & Row Farmers charges, Testing charges of metering CT/PT at Honda Bay. Thus, services of 'Erection, Commissioning & Installation' & 'Technical Testing ' were utilized for laying down the transmission line from 66 KV Feeder Bay at GETCO Mandal sub station till appellant's proposed factory and for testing of metering CT/PT at Honda Bay, respectively.

7.7 To examine whether the services received from M/s OPTPL would qualify as input service, the definition of input service defined under Rule 2(l) of the CCR, 2004, is reproduced below;

*(l) **input service** " means any service*

(i) used by a provider of taxable 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 upto 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,

To qualify the test of input services, the nexus between the services procured and the manufacturing has to be established. The appellant is registered manufacturer of scooters and motorcycles and the services like erection, commissioning, installation and technical testing rendered by M/s OPTPL were in relation to the civil work carried out for constructing the towers outside the appellant's factory. While these structures were owned by GETCO and were not exclusively used by the appellant, therefore, under any stretch of imagination these services cannot be considered as input service, used in or in relation to their manufacturing activities. I, therefore, find that the service tax credit of **Rs.51,41,424/-** paid on 'Erection, Commissioning & Installation' and 'Technical Testing' is not admissible to the appellant.

7.8 Further, the credit of Rs.9,83,701/- paid as service tax on work contract service, received from M/s. SMCC Construction India Ltd. was denied on the ground that laying of foundation or making of structure for support of capital goods, is excluded under clause (b) of Rule 2(l)(A) of the CCR,2004. It is argued that the said service was provided to erect structures either at the floor or roof to provide support to the conveyor.

7.9 The definition of capital goods includes spares/components/ accessories of capital goods specified under Chapter 82, 84, 85 or 90 of Central Excise Tariff Act, 1985. Raw materials like motor parts are carried with the help of conveyor belt at various locations in the plants hence the conveyor belt forms as part of the equipment/machinery. Since the receipt and classification of said service is not disputed, the only dispute remains to be examined is whether the said works contract service received from M/s. SMCC (for construction of additional support structure in enhancing or modernizing of the existing manufacturing facility) can be treated as input service for the appellant's manufacturing process. The definition of input service though includes services used in relation to modernization, renovation or repairs of a factory but categorically **excludes** the works contract as input service, if used for laying of foundation or making of structures for support of capital goods. The conveyor belt being part of the plant & machinery, any construction under works contract service done for laying of foundation or making of structures for support of capital goods (conveyor belt) shall not be covered under input service. I, therefore, find that the service tax credit of **Rs.9,83,701/-** paid on work contract service, received from M/s.

SMCC Construction India Ltd. has to be denied as the said construction falls under exclusion clause of input service definition.

8. I place reliance of the decision passed by the *Principal Bench of Tribunal, New Delhi, in the case of Shree Cement Ltd* ***(2017 (358) E.L.T. 535 (Tri. - Del.)***, wherein it was held that credit on cement and TOR steel availed by the appellant is not justifiable under Cenvat Credit Rules, 2004, as the cement is mainly used in the construction of kiln piers raft/footing, columns, slabs for foundation, foundation for raw mill hoper below the ground, columns in the hoper building, RCC columns, retaining wall in cold dump, columns and wall in cooler building, etc. which are all civil constructions, though with reference to the overall expansion of production capacity but such structures cannot be considered as used cenvatable inputs in the fabrication or manufacture of any capital goods.

I also find that the case laws relied by the appellant are distinguishable as the issue regarding installation / construction of transmission tower not owned by the manufacturer is not involved therein. Further, Board's Circular No: 120/01/2010 ST dated 19.01.2010, is also not relevant to the present appeal, as the clarification provided therein was in respect of refund of excess credit availed by exporters.

9. 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 records were required to be submitted along with return and the verification of such records was done by the audit. It is the responsibility of the assessee to assess the goods correctly and pay the taxes correctly. 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. The charges incurred by the appellant though directly or indirectly are included in the final cost does not grant the admissibility of CENVAT credit unless clearly covered under the definition of capital goods or input goods or input services. I, therefore, find that the credit availed by the appellant is not admissible to them and the demand is sustainable. The arguments that all the relevant facts were in knowledge of the department is also baseless as the same were disclosed only during audit. In terms of Rule 9(5) & 9(6) of CCR, 2004, the burden of proof regarding the

admissibility of the CENVAT credit on capital goods, inputs & input services (including classification of goods under capital goods or inputs & input services) lies with them. The appellant willfully misclassified the impugned goods under capital goods and impugned services under 'input services' to avail inadmissible credit, therefore, the conclusions of the lower authority to disallow the credit and order recovery of Rs.27,21,648/-; Rs. 51,41,424/- and Rs.9,83,701/- along with interest and 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.

10. 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 capital goods and input services taken and utilized in contravention to Rule 3 & 9 of the CCR, 2004, with intent to evade payment of tax by utilizing the inadmissible credit is therefore recoverable with applicable rate of interest and penalty u/s 11AA & 11AC respectively.

11. In view of the above discussions and findings, the appeal filed by the appellant stands rejected in above terms.

Kumar 24th September 2021.

(**Akhilesh Kumar**)
Commissioner (Appeals)

Date: 09.2021

Attested

Rekha Nair

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

By RPAD/SPEED POST

To,
M/s. Honda Motorcycle & Scooter India Pvt. Ltd. (**Appellant**)
T. Poddar Industrial Park
Taluka: Mandal
Vithlapur-382120

Copy to:

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