आयुक्त (अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

☎ 07926305065- टेलेफैक्स07926305136

DIN: 20220364SW000000FE97

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/CEXP/494/2021-APPEAL / 7180 -7184

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-87/2021-22**
दिनाँक Date : 29.03.2022 जारी करने की तारीख Date of Issue 31.03.2022

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

ग Arising out of Order-in-Original No. **58/ADC/2020-21/MLM** दिनाँक: **11-03-2021**, issued by Additional Commissioner, CGST, Ahmedabad-North

ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

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

2. Respondent

   The Additional Commissioner, CGST & C.Ex, Ahmedabad North
   Custom House, 1st Floor, Navrangpura, Ahmedabad - 380009

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 पूवोक्त 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 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 मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

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

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

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

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए 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।

(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 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.

सोमा 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–बी/35–इ के अंतर्गतः–

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

(12) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलों 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:

(xix) amount determined under Section 11 D;
(xx) amount of erroneous Cenvat Credit taken;
(xxi) 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. Colgate Palmolive India Ltd., SM-02, Sanand–II, GIDC Industrial Estate, Near Bol Village, Sanand, Ahmedabad-382170 (in short '*appellant*') against the OIO No.58/ADC/2020-21/MLM dated 11.03.2021 (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 test check of the records of the appellant for the period F.Y. 2014-15 to F.Y. 2016-17, by the CERA officers, it was observed that during the F.Y. 2016-17 and also during F.Y. 2017-2018 (upto June, 2017), the appellant has wrongly availed the CENVAT credit on various services which are not eligible input services as per the Cenvat Credit Rules, 2004. From the details submitted by the appellant vide letter dated 01.03.2018, it was noticed that they utilized total cenvat credit amounting to Rs.97,94,145/- in respect of following services, which were not used in or in relation to the manufacture of the final product, as per Rule 2(l) of the CCR,2004.

Sr.No	Service provider (M/s.)	Description of Service	Total Cenvat credit availed (in Rs.)
1	Anin Consultancy Services Pvt. Ltd	Catering & Housekeeping	1,98,524/-
2	Nirvana Consultancy Services	Dry Cleaning	1,18,762/-
3	Shivam Enterprises,	Manpower Supply	2,89,500/-
4	Tata Bluescope Steel Ltd	Construction service	7,37,514/-
5	L&T Technology Services	Consulting service	20,58,539/-
6	Jacobs Engineering India Pvt. Ltd	Consulting service	63,21,254/-
7	Xpertz Advertising & Event Promotions	Event management	70,052/-
		TOTAL	**97,94,145/-**

Statement of Shri Mudit Agarwal, Commercial Manager & Authorized Signatory of the Appellant, was also recorded u/s 14 of CEA, 1944 on 13.12.2018, wherein he stated that all the above mentioned services were utilized in relation to the manufacture of the final product hence the credit cannot be considered as inadmissible.

3. Based on the above audit observations, a Show Cause Notice (SCN for brevity) No.V.33/15-02/OA/2019 dated 30.01.2020 was issued to the appellant invoking extended period of limitation and proposing recovery of CENVAT credit amount of Rs.97,94,145/- wrongly availed and utilized during the F.Y. 2016-2017 to F.Y. 2017-18 (upto June,2017) under Section 11A(4) of the CEA, 1944 read with Rules 14(1)(ii) of the CCR, 2004. Interest under Section 11AA & imposition of penalty u/s 11AC of the Act ibid was also proposed. The said SCN was adjudicated vide the impugned order, wherein the adjudicating authority disallowed the credit of Rs.97,94,145/; and appropriated the cenvat credit of Rs.3,44,680/- already paid by the appellant towards the above liability. Recovery of interest on the disallowed credit amount was ordered

and interest of Rs.48,852/- already paid by the appellant was also ordered for appropriation against their interest liability. Equivalent penalty of Rs.97,94,145/- was also imposed on the appellant.

4. Aggrieved by the impugned order, the appellant preferred the present appeal against the confirmed demand, primarily on following grounds:-

- The impugned order passed is non-speaking order as the adjudicating authority has not given any findings on their submissions or reasons rebutting case law relied by them. They relied on the judgment passed in the case of Anil Products [2010-(257) ELT 523] and also argued that the judgment relied by the adjudicating authority in the case of Gwalior Rayon Mfg is misplaced as the same is regarding quantification of demand.
- They entered into an agreement with M/s. Anin Consultancy Services Pvt. Ltd for upkeep of the company owned Guest House which included cleaning, cooking and caretaking, security, laundry etc. The Guest House is exclusively available for the employees who travel for official purpose and is not used for accommodation for personal use or consumption. In terms of decision passed in the case of M/s ACG Associated Capsules P. Ltd- 2019 (20) GSTL 346–Bom, the credit is admissible.
- They entered into an agreement with M/s. Nirvana Consultancy Services wherein the service provider provides laundry services for washing and ironing of employee uniform, T-shirts, apron, jeans, linens etc at regular interval of 24 hrs. In the manufacturing of oral hygiene product like toothpaste, sterile and hygienic conditions are required, therefore, the employees are required to wear clean uniform provided by the appellant to maintain the hygiene level in the factory. Moreover, in their own case, the credit taken on above service was held as admissible vide OIA No.AHM-EXCUS-002-APP-015-20202-2021 dated 13.07.2020. Reliance also placed on decisions passed in the case of Zensar Technologies Ltd-2016 (42) STR-570; Hindustan Coca-Cola Beverages Pvt. Ltd. -2015 (38) STR 129; Novapan Industries-2007(209) ELT 161 (SC).
- There is no contract with M/s. Shivam Enterprises but the provision of Manpower Supply services was assigned on work to work basis. Removal of sludge is an essential activity carried out in the manufacturing activity thus credit should be admissible.
- Services provided by Tata Bluescope Steel Ltd is for erection of steel structures supplied and not for construction of a building or civil structure, hence credit is rightly availed. Reliance placed on Vimla Infrastructure India (P) Ltd- 2018(13) GSTL 57. They had reversed the service tax credit of Rs.3,44,680/- alongwith interest amounting to Rs.48,852/- vide Challan dated 13.12.2017 and claimed that no penalty should be levied since the amount was paid prior to issuance of SCN. However, since SCN was issued, they are now disputing the eligibility of said credit on merits.
- M/s. L&T Technology Services was engaged to carry out engineering and CAPEX management for an ongoing 'Project Globe' for the existing facility at Sanand. The said area was required to be modified for facilitating the installation of additional equipment for which techno-commercial proposal was provided by L&T. They provided all designs, drawing and layout for the proposed 'Project Globe' and assisted in construction management and

support. The main intent was to procure consultancy service in relation to 'Project Globe'. Similarly, the services of M/s. Jacobs Engineering India Pvt. Ltd ('JEIPL' in short) were procured for residual engineering, procurement and construction management service for 'Project Globe'. The scope of service includes civil and architecture, mechanical, HVAC, fire fighting, piping, Electrical, I&C and BMS utilites, adherence of project time lines, quality management and minimizing work etc. Thus, they did overall planning, scheduling and controlling of project and no actual construction service provided. When there is no transfer of property in goods involved in execution of such contract, when there is no erection, commissioning or installation of plant machinery, equipment or structure, or any construction activity, the said service shall remain outside the purview of works contract excluded under input service.

- Services of M/s. Xpertz Advertising & Event Promotions were procured to plan and organize inauguration ceremony of expansion of plant. This ceremony was intended for sale promotion for various vendors and business associates of the appellant, hence credit cannot be denied merely on conjectures. Reliance placed on Castrol India Ltd.-2013 (291) ELT 469 (Tri-Ahm), Mundra International Container Terminal-2012 (37) STR 264.
- The demand is time barred as SCN was issued post audit. During internal audit of EA-2000, similar objection was raised upto March, 2016 and CERA quantified similar objection in 2016-17, thus, the matter was already in the knowledge of the department, hence suppression cannot be alleged to invoked limitation. Reliance placed on decisions of Nizam Sugar Factory [2006(197) ELT 465 (SC)]
- The appellant has not deliberately evaded taxes and since the information was known to the department, extended period cannot be invoked.
- Penalty u/s 11AC is not sustainable as there was no suppression and cenvat was not fraudulently availed to evade payment of duty. They placed reliance on decision passed in the case of HMM Ltd. -1995 (76) ELT 497 (SC); Coolade Beverages Ltd. – 2004 (172) ELT 451 (All). Also interest is not recoverable as there is no liability to pay duty. They also placed reliance on judgment passed in the case of Pratibha Processors- 196 (88) ELT 12 (SC).

6. Personal hearing in the matter was held on 22.02.2022, through virtual mode. Ms. Rinkey Jassuja and Shri Rizwan Khatri, both Advocates, appeared on behalf of the appellant. They reiterated the submissions made in the appeal memorandum.

7. The appellant, vide letter dated 24.02.2022, also submitted additional submission wherein they reiterated the submissions made in their appeal memorandum and also relied on the decision passed in the case of Shriuguppi Sugar Works Ltd -2019 (3) TMI 667-CESTAT; BMM Ispat – 2019 (12) TMI 614-CESTAT, in support of their argument that the service of L&T and M/s. JEIPL availed by appellant are not excluded from the definition of input service.

8. 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, in the additional written submissions as well as the submissions made at the time of personal hearing and also the records submitted by

the appellant. The issue to be decided under the present appeal is whether the service tax credit of Rs.97,94,145/- availed by the appellant during F.Y. 2016-17 to F.Y. 2017-18 (upto June,2017) in respect of Catering & Housekeeping service, Dry Cleaning service, Manpower Supply service, Construction service, Consulting service & Event Management service is admissible or otherwise?

9. The credit on above services was denied by the adjudicating authority on the sole argument that these services were used at faraway places from the factory location and some of these services were used before commencement of production and even for inaugural ceremonies of the plant, hence, cannot be considered as input service.

9.1 To examine the admissibility of each service as input service, the definition of term '*input service*' defined under Rule 2(l) of the CCR, 2004, during relevant period, is reproduced below:

*[(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 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,

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.]*

From the above definition, 'input service' would mean any service used by a provider of taxable service for providing an output service or 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, including services used in relation to modernization, renovation or repairs of a factory, premises of provider of output services or an office relating to such factory or premises, and many more inclusive services are treated to be 'Input Service'.

9.1.1 The Hon'ble High Court of Bombay in the case of *CCE* v. *Ultratech Cement Ltd.* -TIOL-2010-745-HC-MUM- 2010 (260) E.L.T. 369 (Bom.) considered the issue at length and held that the definition of input service under Rule 2(l) of the Cenvat Credit Rules is very wide, and covers not only services, which are directly or indirectly used in or in relation to the manufacturing of final product, but also services used in the business of manufacture of the final product.

9.2 It is observed that the appellant had taken total cenvat credit amounting to **Rs.1,98,524/-** in respect of the services provided by M/s. Anin Consultancy Services Pvt. Ltd, which they claim were availed for maintenance of the company owned Guest House wherein contract for cleaning, cooking and caretaking, security, laundry etc was provided. It is observed that the Guest House is in Ahmedabad situated 40 kms away from Sanand (where the factory is located). As this Guest House was exclusively available for the employees of the company who travel for official purpose to the factory premises at Sanand, though not situated next to the manufacturing unit of the appellant, I find that the services provided in the Guest House can be considered to have been rendered in relation to the manufacturing activity. The appellant have placed reliance of the judgment passed in the case of M/s ACG Associated Capsules P. Ltd- 2019 (20) GSTL 346–Bom, wherein Hon'ble High Court held that;

*" **6.** Even in relation to a guest house which may not have been situated close to the manufacturing unit of the Assessee, if it is pointed out that the use thereof was not for the personal use or consumption of the employees, exclusion clause in the definition of input service, may not apply."*

I find that the Guest House is used for official visit of the employee and not for personal use. This facility is provided purely when the employees are on official visit, and were used and maintained in relation to various business activities. In similar case of Mahindra & Mahindra Ltd - 2016 (46) S.T.R. 51 (Tri. - Mumbai), Hon'ble Tribunal allowed the credit of services utilized in Guest House. In light of above decision, I find that the cenvat credit of Rs.1,98,524/-, is admissible to the appellant.

9.3 It is further observed that the appellant had availed cenvat credit amounting to **Rs.1,18,762/-** in respect of dry cleaning service provided by M/s. Nirvana Consultancy Services. They had engaged the service provider for laundry services like

washing and ironing of employee uniform, T-shirts, apron, jeans, linens etc at regular interval of 24 hrs to maintain standard protocol of hygiene level in the factory. The appellant is engaged in the manufacture of oral hygiene products therefore wearing of clean uniforms/clothing is mandatory. The dry cleaning service was utilized for cleaning the uniform of their staff working in the factory therefore it forms part of business of manufacturing. Earlier vide OIA No.AHM-EXCUS-002-APP-015-2020-2021 dated 13.07.2020, the credit on said service was allowed to the appellant by relying the decision passed in the case of FOURRTS (I) LABORATORIES PVT. LTD.- 2012 (277) E.L.T. 202 (Tri. - Chennai). On same analogy, I find that the cenvat credit of **Rs.1,18,762/-** pertaining to dry cleaning service is admissible to the appellant.

9.4 Further, I also find that the admissibility of service tax credit, in respect of Catering and House Keeping services availed and utilized at Guest House and Dry Cleaning service utilized for cleaning the uniform of their staff working in the factory, was examined in the earlier vide OIA No.AHM-EXCUS-002-APP-015-2020-2021 dated 13.07.2020. Since all the relevant facts were in the knowledge of the authorities while issuing the second show cause notice covering same/similar facts, allegation of suppression of facts against the appellant shall not sustain. I, therefore, hold that there is no suppression of facts on the part of the appellant and hence, the demand of Rs.3,17,286/- is also not sustainable even on limitation.

9.5 In respect of Manpower Supply services provided by M/s. Shivam Enterprises, the appellant had availed cenvat credit amounting to **Rs.2,89,500/-** claiming that the said service was used for removal of sludge, which is an essential activity carried out in the manufacturing process. I find that in the SCN, no specific grounds have been mentioned proposing ineligibility of aforesaid manpower service as input service. The adjudicating authority has also failed to record specific findings while denying the above credit. It is observed that sludge is an industrial waste material arising during the course of manufacture. The toothpaste industry produces huge amount of dry toothpaste sludge on daily basis, which needs to be disposed off. Since these activity is being carried out in relation to the manufacturing activity, the credit of Rs.2,89,500/- availed on such services cannot be denied merely on hypothesis, when no specific grounds and findings denying the same is recorded. I, therefore, hold the said credit as admissible to the appellant.

9.6 It is further observed that the appellant had purchased parts of steel structures from M/s. Tata Bluescope Steel Ltd for construction activity and also availed their services for erection of said steel structures. These services were utilized in relation to construction activity which clearly falls in the exclusion clause of the definition of input service, therefore, the credit of the said service cannot be allowed. It is also observed that the appellant have reversed the service tax credit of Rs.3,44,680/- alongwith interest amounting to Rs.48,852/- vide Challan dated 13.12.2017 and claimed that no penalty should be levied and are now disputing the eligibility of said credit on merits. I find that the argument claiming waiver from penalty cannot be entertained when they have failed to pay the remaining amount of tax liability arising for the F.Y.2017-18 (up to June, 2017). Further, their reliance placed on Vimla Infrastructure India (P) Ltd- 2018(13) GSTL 57, is misplaced as there the activity carried on by the respondent company was for construction & erection of Railway siding which was considered as 'input' for providing "Cargo Handling Services". In the

instant case, the appellant has not provided any contract to establish that the construction services availed by them was not in respect of construction of a building or a civil structure or for laying of foundation or making structures for support of capital goods, covered under the exclusion clause. I, therefore, hold the cenvat credit of Rs.7,37,514/- is not admissible to them.

9.7 The appellant have claimed that the services of M/s. L&T Technology Services (M/s. L&T for short) were availed to carry out engineering and CAPEX management for an ongoing 'Project Globe' at the existing facility at Sanand. The appellant also required existing 'Project Atlas' to be modified to facilitate installation of additional equipment, therefore, M/s. L&T provided a techno-commercial proposal for modification of the existing facility 'Project Atlas' at Sanand. They also provided services for 'Project Globe' which included engineering & construction management. The appellant claim L&T provided all designs, drawing and layout for the proposed 'Project Globe' and assisted in construction management and support. They facilitated installation of new equipments, some makeshift arrangements limited to piping network. Similarly, the service of M/s. Jacobs Engineering India Pvt. Ltd ('JEIPL' in short) was procured for residual engineering, procurement and construction management service for 'Project Globe'. The scope of service included civil and architecture including pre-engineering building, mechanical including HVAC, fire fighting, piping, Electrical, I&C and BMS utilities, construction management, which included organization, safety management, support from home office for construction & safety, adherence of project time lines, quality management and minimizing rework etc. Thus, they did overall planning, scheduling and controlling of project and no actual construction service provided. From the scope of the above services, it appears that the service provider was providing CAPEX management and Construction Management Support service to the appellant as to how to acquire, upgrade, and maintain physical assets such as property, plants, buildings, technology, or equipment to increase the scope of their operations or add some economic benefit to the operation or grow the business. Such engineering, CAPEX management and construction management service cannot be classified either as 'works contract' or as 'construction service'.

9.7.1 Under works contract service, there should be necessarily involvement of sale of goods. The contract for carrying out the erection, commission or installation, commercial or industrial construction, residential construction service, contract for turnkey projects including engineering, procurement and construction or commission should invariable include transfer of property in goods, involved in execution of such contracts, which are leviable to Sales Tax/VAT. Thus, works contract includes sale of goods as well as provision of work or service. I also find that the appellant has also not undertaken any construction activity either as they have not constructed any new building or civil structure, pipeline or conduit or provided any repair and finishing services, repair, alteration renovation of any new building or civil structure. In fact they were providing engineering, CAPEX management and construction management service in relation to 'Project Atlas' & 'Project Globe'. Further, in the SCN also, there is no allegation to establish that sale of goods was involved while rendering the above service. Neither any finding was given in the impugned OIO, refuting this aspect. I, therefore, find that the demand of Rs.20,58,539/- is legally not sustainable.

9.7.2 The SCN also alleges that the services provided by M/s. L&T Technology Service Pvt. Ltd & M/s. Jacob Engineering are construction services which are specifically excluded from the scope of the input service defined under Rule 2(l) of the CCR, 2004. It is also stated that all ancillary activities/services including but not restricting to designing / drawing plans, structural engineering, supervision over the contractors etc, would be covered under the scope of construction service. Such an interpretation is not acceptable, because any of the above service description does not fit under the scope of construction service. The intention of the statute is to exclude only construction of a building or a civil structure or a part thereof or laying of foundation or making of structures for support of capital goods. There is no scope to include ancillary activities as envisaged in the SCN. Thus, going by the nature of these services, it is observed that the service provided were consultancy service in relation to 'Project Globe' & 'Project Atlas' as the service providers have not undertaken any construction activity. In light of above discussion, I find that the credit of Rs.20,58,539/- & Rs.63,21,254/- availed on the consulting service provided by M/s. L&T Technology Service Pvt. Ltd & M/s. Jacob Engineering, is also legally not sustainable.

9.8 It is further observed that the services of M/s. Xpertz Advertising & Event Promotions were procured to plan and organize inauguration ceremony of expansion of plant. This ceremony was intended for sale promotion for various vendors and business associates of the appellant. The celebration of expansion of plant is mere entertainment and cannot be treated as "activities relating to business". "Event Management Service" is provided in relation to planning, promotion, organizing or presentation of any art, entertainment, business, sports or any other event. It appears that in the present case Event Management Service was provided for inauguration of Sanand plant expansion. Any expenses incurred by the appellant cannot be activities relating to business unless it is established by evidence that the service was rendered for the purpose of business including advertisement or sales promotion, as claimed by the appellant, such events cannot be said to be organized for sales promotion. I, therefore, find that the cenvat credit of Rs.70,052/- is also not admissible to the appellant.

9.8.1 Further, the appellant has placed reliance on Hon'ble Tribunal, Ahmedabad Bench passed in the case of Castrol India Ltd.-2013 (291) ELT 469 (Tri-Ahm), which I find is distinguishable on facts as there the event management service was provide to companies to undertake promotional activities for their products in various places. In the present case, the event management service was availed for inauguration ceremony of plant expansion. I however place reliance on the decision of Hon'ble Principal Bench, New Delhi, passed in the case of Hindustan Zinc Ltd -2010 (18) S.T.R. 33 (Tri. -Del.), wherein service credit availed on input service credit on Event Management service in connection with celebration by employees on expansion of plant was held not eligible as the event was not organized for sales promotion/advertisement.

9.9 In view of the above discussion, I find that the service tax credit of **Rs.89,86,579/-** availed in respect of catering & housekeeping service, dry cleaning service, manpower supply service and consulting services is admissible as these

services were used either directly or indirectly, in or in relation to the manufacture of final products. The service tax credit of **Rs.8,07,566/-** is held as inadmissible as the Construction service falls under exclusion clause of definition of 'input service' defined under Rule 2(l) of the CCR,2004 and the Event Management service availed was not in relation to business activity, hence, not covered within the scope of definition of input service.

10. Another contention raised by the appellant is that in view of Hon'ble Supreme Court's decision in *Nizam Sugars Ltd.* v. *CCE*-2006(197) ELT 465 (SC)], suppression cannot be invoked, as the matter was already in the knowledge of the department. They claim that on similar issue, similar objection was raised up to March, 2016 during internal audit under EA-2000, and in the present appeal, the demand has been raised for the subsequent F.Y. 2016-17, as quantified by CERA. I do not find merit in the above contention, particularly, because in the present case, the fact, that the appellant was availing the inadmissible credit of different services was not in the knowledge of authorities, as the appellant was not in correspondence with the Department. In fact the details were submitted by the appellant vide letter dated 01.03.2018, when called for during the audit, it, therefore, appear that the extended period of limitation was rightly invoked and the decision of Hon'ble Supreme Court in *Nizam Sugar Factory* (supra) cannot assist the appellant at this stage. I, therefore, find that the extended period of limitation has rightly been invoked in the facts of the present case.

11. 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 demand to the tune of **Rs.8,07,566/-** has to be upheld. When the above 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.

12. 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 on construction service and event management services was taken and utilized in contravention to Rule 9 of the CCR, 2004 with an intent to evade payment of duty 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.

13. 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 cenvat credit amounting to **Rs.89,86,579/-** in respect of catering & housekeeping

service, dry cleaning service, manpower supply service and consulting services availed during the disputed period.

(ii) I uphold the impugned Order-in-Original to the extent it relates to demand of cenvat credit amounting to **Rs.8,07,566/-** in respect of construction service and event management services availed during the disputed period, alongwith interest and penalty, subject to the appropriation of the amount already paid.

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

29th March, 2022

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

Date: 29.03.2021

Attested

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

By RPAD/SPEED POST

To,

M/s. Colgate Palmolive India Ltd., - **Appellant**
SM-02, Sanand–II, GIDC Industrial Estate,
Near Bol Village, Sanand,
Ahmedabad-382170

The Additional Commissioner, - **Respondent**
Central GST,
Ahmedabad North

Copy to:

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