



सत्यमेव जयते

**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- टेलीफैक्स 07926305136**



**DIN: 20231064SW00004404F2**

**स्पीड पोस्ट**

क फाइल संख्या : File No : GAPPL/COM/CEXP/134 /2023-APPEAL / 2365 - 69

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-116/2023-24  
 दिनांक Date : 16-10-2023 जारी करने की तारीख Date of Issue 19.10.2023

आयुक्त (अपील) द्वारा पारित  
 Passed by **Shri Shiv Pratap Singh**, Commissioner (Appeals)

ग Arising out of Order-in-Original No. 38/AC/D/2022-23/AM दिनांक: 15.12.2022 , issued by  
 The Assistant Commissioner, CGST Division-IV, Ahmedabad North

घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant  
**M/s. Manipal Technologies Limited, 50-B, Changodar Industrial Estate, Changodar Taluka, Sanand, Ahmedabad - 382213**

2. Respondent  
**The Assistant Commissioner, CGST Division-IV, Ahmedabad North, 2nd Floor, Gokuldharm Arcade, Sarkhej-Sanand Road, Ahmedabad-382210**

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, 4<sup>th</sup> 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 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 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.

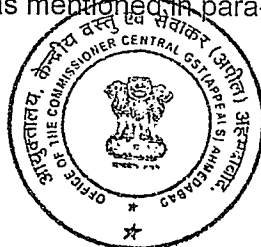
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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 अनुसूचि-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.

- (7) 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) -

- (Section) खंड 11D के तहत निर्धारित राशि;
- लिया गलत सेनवैट क्रेडिट की राशि;
- 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:

- amount determined under Section 11 D;
- amount of erroneous Cenvat Credit taken;
- amount payable under Rule 6 of the Cenvat Credit Rules.

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**

M/s. Manipal Technologies Ltd., 50-B, Changodar Industrial Estate, Changodar Taluka, Sanand, Ahmedabad -382213 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. 38/AC/D/2022-2023 dated 15.12.2022 (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-IV, Ahmedabad North, Ahmedabad (hereinafter referred to as '*the adjudicating authority*'). The appellant The Appellant is engaged in the manufacture of corrugated sheets/boxes falling under heading 48081000, 48191090 & 48192090 of erstwhile Central Excise Tariff Act, 1985.

2. The facts of the case, in brief, are that an audit was conducted by CGST (Audit), Ahmedabad covering period February 2017 to June 2017. Final Audit Report (FAR) bearing No. CE/ST-414/2021-22 dated 07.03.2022 was issued wherein eight (8) revenue paras were raised. Details of the audit paras are listed below;

Audit Para No.	Audit Observation	Amount
1	Short payment of Central Excise duty noticed on reconciliation of sales with ER-1 returns.	1,48,793
2	Excess cenvat credit taken in RG-23 Part II register compared to the invoice amount	51,558
3	Wrongly availed credit pertaining to Cess	2,827
4	Non-payment of late fee/ penalty for late filing of Excise returns	200
5	Non- reversal of Credit on rate difference/ rate discount received from as credit for purchases made	12,801
6	Cenvat credit was availed beyond the period of 1 year.	11,011
7	Service tax credit reversed but interest not paid	5,542
8	Short payment of C. Ex. Duty without charging 110% of Cost of production for sale to related party	37,755
	Total	2,72,943

2.1 Based on the above audit paras a Show Cause Notice (SCN) No. VI/1(b)-169/IA/AP-37/C-VI/19-20 dated 07.03.2022 was issued to the appellant proposing recovery of central excise duty amounting to Rs.1,86,548/-; reversal of cenvat credit amounting to Rs. 67,186/- & Rs.6,501/-. Interest under Section 11AA, penalty under Section 11AC of the Central Excise Act, 1944 and penalty under Rule 25 of the CCR, 2014 were also proposed in the SCN. The payment of central excise duty and Cenvat credit made by appellant was also proposed for appropriation.

2.2 The appellant filed a defence reply dated 27.06.2022 before the adjudicating authority and also informed regarding the payment made in respect of the above paras. The adjudicating authority considering the submissions of the appellant confirmed the central excise duty demand amounting to Rs.1,86,548/- and CENVAT credit recovery of

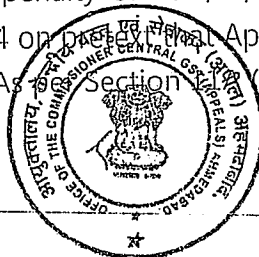




Rs.58,202/- under Section 11A(4). He also confirmed the Cenvat credit demand of Rs.6,501/- under Section 73(1) of the F.A., 1944. The above demands were confirmed alongwith interest. Penalty of Rs.1,86,548/- & Rs.58,202/- was imposed under Section 11AC of the CEA, 1944 and penalty of Rs.6,501/- was imposed under Section 78(1) of the Finance Act.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal on the grounds elaborated below:-

- The impugned OIO has been issued or passed without following principle of natural justice. The Appellant has been requesting to give chance of personal hearing in virtual mode rather than physical mode and also cited reasons for hearing through virtual mode. Further, intimation regarding hearing were received late and the Appellant has brought said facts to the notice of the Adjudicating Authority. But the Adjudicating Authority has asked to appear for the personal hearing in person. As per CBIC instructions issued vide F. No.390/Misc/3/2019-JC dated 21.08.2020 it is mandatory for the Id., Adjudicating Authority to conduct the hearing on virtual mode however, said instructions of CBIC was not followed.
- The impugned order passed is replica of the SCN and therefore it is not a speaking/reasoned order. Hence, the principle of natural justice is violated.
- In respect of Audit Para-1, it is to state that as per the reconciliation statement there is no difference in turnover of Rs.4,38,763/- as mentioned for the year 2016-17 and hence no duty, interest and penalty is payable. As regard to 2017-18 (up to June 2017), the difference is Rs.57,368/- and not Rs.7,51,580/- as quantified in the impugned OIO. They claim they have paid duty alongwith interest on Rs.57,368/- as the amount is insignificant. Further, the demand of Rs.54,845/- covering F.Y. 2016-17 is time barred as the impugned SCN dated 07.03.2022 is issued after expiry of extended period of 5 years. Moreover, the period of audit was for February 2017 to June 2017 considering that same should be within the extended period of 5 years as per Section 11A(4) of the Central Excise Act, 1944. They submitted a reconciliation statement.
- In Audit Para-5, CENVAT credit demand of Rs.12,801/- was noticed. Attention is drawn to Para 12.4 of the impugned order wherein the Adjudicating Authority relied upon CBIC Circular no. 877/15/2008-CX dated 17.11.2008 and based on the said circular arrived at a conclusion that the Appellant is not required to reverse the credit since credit note has been issued post supply of goods. However, Id., Adjudicating Authority while quantifying the demand at Para no.13 (page no.13 of the impugned order) considered the amount of Rs.12,801/- and arrived at liability without taking into consideration Para 12.4 where the demand of Rs.12,801/- with interest and penalty has been dropped. In light of above it is clear that the demand arrived in the impugned OIO is erroneous.
- The impugned order seeks to recover penalty of Rs.2,51,251/- invoking Section 11AC(1)(c) of the Central Excise Act, 1944 on basis of which Appellant has suppressed the material facts from the department As per Section 11(2) of the Central Excise





Act, 1944 no penalty is leviable when duty and interest is paid before issuance of notice. In the instant case appellant has paid the duty/ cenvat credit with interest before issuance of notice and by virtue of Section 11A (2) no penalty is leviable. The imposition of penalty equal to duty/credit amount under Section 11AC(1)(c) of the Central Excise Act, 1944 cannot sustain in law as department has not placed any piece of evidence to demonstrate how the Appellant has suppressed the material facts from the department. Reliance is placed on following decisions;

- o Padmini Products • Collector of C.Ex., -1989 (43) ELT 195(S.C.)
- o ZYG PHARMA PVT. LTD - 2017 (358) E.L.T. 101 (M.P.).
- o TALLY SOLUTIONS PVT. LTD. - (2020 (41) G.S.T.L. 520 (Tri. - Bang.)
- o PERFECT CIRCLE INDIA LTD. - (2010 (261) E.L.T. 910 (Tri. - Mumbai)

➤ Penalty under Section 11AC of the Central Excise Act, 1944 cannot be invoked in each and every case and it is important on part of the Department to show/prove the existence of the element of *mens rea* on part of the Noticee while adopting the above said tax position. The department in the impugned SCN has failed to do so. The total duty/reversal of credit involved in the impugned SCN is Rs.2,60,235/- and considering the amount involved it cannot be held or alleged that the Noticee has suppressed the facts with intent to evade tax/duty. Hon'ble Supreme Court in case of Pepsi Foods Ltd., 2010 (260) E.L.T. 481 (S.C.), held that in order to attract penalty provision under Section 11AC, criminal intent or *mens rea* is a necessary constituent. The similar view was taken by Hon'ble Supreme Court in the case of CCE, Vapi Vs. Kisan Mouldings Ltd., 2010 (260) E.L.T. 167 (S.C.).

➤ The appellant request to set-aside the impugned order on above grounds.

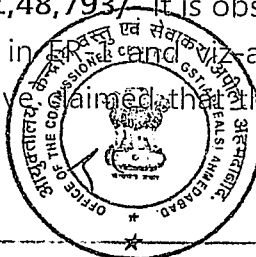
4. Personal hearing in the matter was held on 06.10.2023. Shri Venkatraman Prabhu, Manager Taxation, appeared on behalf of the appellant. He reiterated the submissions made in the Appeal Memorandum and requested to allow the appeal.

5. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made by the appellant in the appeal memorandum, as well as those made during personal hearing. The appellant is in appeal on limited issues and the issues which need to be decided in the present case are whether;

- a) the recovery of Central Excise duty of **Rs.1,48,793/-** pertaining of Para-1 confirmed alongwith interest and penalty is legally sustainable?
- b) Recovery of wrongly availed Cenvat Credit amounting to **Rs.12,801** pertaining to Para-5 confirmed alongwith interest and penalty is legally sustainable ?

The demand pertains to the period February 2017 to June, 2017.

6. On the first issue involving demand of **Rs.1,48,793/-** it is observed that in terms of Para-1, on reconciliation of sales figures shown in ~~Form~~ and ~~financial~~ records, difference in sales was noticed. The appellant has ~~claimed~~ that the reconciliation done





by the department is incorrect. They contended that in the F.Y. 2016-17 the value in respect of 'removal as such' is actually Rs.26,752,292/- and not Rs.2,66,22,464/-. Further, the turnover as per ER-1 is Rs. 1,87,491,352/- and not Rs.1,87,159,604/-. It is observed that the above claim of the appellant is not supported by any documentary evidences. Further, the appellant also contended that the demand of Rs.54,845/- for the F.Y. 2016-17 is time barred. The demand in the SCN pertains to period (February, 2017 to June, 2017). The due date for filing the ER-1 Return is 10<sup>th</sup> of consequent month, so considering the 5yrs period, I find that the demand for February should have been issued by 9<sup>th</sup> February, 2022. I find that the demand notice was issued on 07.03.2022 hence is well within the period of limitation.

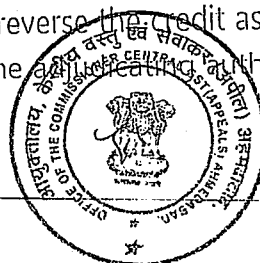
6.1 Similarly, for the year 2017-18, they claim that the Sales Value was considered as Rs.6,67,97,991/- which actually should be Rs.6,61,18,185/- (Difference of Rs.6,79,806/- pertains to trading of printed products which is not forming part of turnover under the registration subject to audit). It is observed that the Sales Value of Rs.6,67,97,991/- was taken by the auditors from their Balance Sheet of F.Y 2017-18, hence it is very much the sales of the appellant unit. Further, the contention that Rs.6,79,806/- pertains to trading of printed products is also not supported by any documentary evidences hence cannot be considered.

6.2 In view of the above finding, I find that the demand of differential central excise duty of Rs.1,48,793/- is sustainable on merits.

6.3 When the demand sustains there is no escape from interest, the same is therefore recoverable with applicable rate of interest on the duty held sustainable in the para supra.

6.4 As regards the imposition of penalty of Rs.1,48,793/- under Section 11AC, I find that the same is also justifiable as it provides penalty for suppressing the value of goods. This penalty is levied for short payment, non-payment by reason of fraud or collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty. Hon'ble Supreme Court in case of *Union of India v/s Dharamendra Textile Processors* reported in [2008 (231) E.L.T. 3 (S.C.)], concluded that the section provides for a mandatory penalty and leaves no scope of discretion for imposing lesser penalty. I find that the appellant have not disclosed actual sales in their ER-1 returns and thereby short paid the duty. This act thereby led to suppression of sale value and non-payment of central excise duty on such sales, which undoubtedly brings out the willful mis-statement and fraud with intent to evade payment of duty. If any of the circumstances referred to in Section 11AC are established, the person liable to pay duty would also be liable to pay a penalty equal to the duty so determined.

7. On the second issue, the recovery of wrongly availed Cenvat Credit amounting to Rs.12,801/- was raised on the rate difference received for purchases made by the appellant. The appellant have claimed that the discount/ rate difference given on supply of goods does not mandate credit reversal. They have claimed that the adjudicating authority by relying on CBIC Circular no. 877/15/2008-CX dated 17.11.2008, arrived at a conclusion that the appellant is not required to reverse the credit as credit note has been issued post supply of goods. On the contrary, the adjudicating authority at Para no.13 of





the impugned order confirmed the demand of Rs.12,801/- without taking into consideration findings recorded at Para 12.4 where the demand of Rs.12,801/- with interest and penalty has been dropped. In light of above it is clear that the demand arrived in the impugned OIO is erroneous. To examine the issue Board's Circular No. 877/15/2008-CX dated 17.11.2008 is reproduced below;

***Circular No. 877/15/2008-CX., dated 17-11-2008***

**Subject : - Clarification regarding reversal of Cenvat credit in case of trade discount - Regarding.**

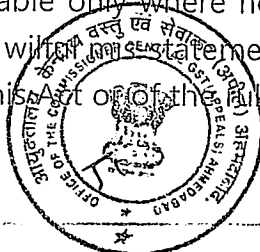
*Representations have been received from trade and industry seeking clarification on the issue whether proportionate credit should be reversed in cases where a manufacturer avails credit of the amount of duty paid by supplier as reflected in the excise invoice, but subsequently the supplier allows some trade discount or reduces the price, without reducing the duty paid by him.*

*2. The issue has been examined. Since, the discount in such cases are given in respect of the value of inputs and not in respect of the duty paid by the supplier, the effect of reduction of value of inputs may be that the duty required to be paid on the inputs was less than what has been actually paid by the inputs manufacturer. However, the fact remains that the inputs manufacturer had paid the higher duty. Rule 3 of Cenvat Credit Rules, 2004 allows credit of duty "paid" by the inputs manufacturer and not duty "payable" by the said manufacturer. There are many judgments of Hon'ble Tribunal in this regard which have confirmed this view.*

*3. In view of above, it is clarified that in such cases, the entire amount of duty paid by the manufacturer, as shown in the invoice would be available as credit irrespective of the fact that subsequent to clearance of the goods, the price is reduced by way of discount or otherwise. However, if the duty paid is also reduced, along with the reduction in price, the reduced excise duty would only be available as credit. It may however be confirmed that the supplier, who has paid duty, has not filed/claimed the refund on account of reduction in price.*

7.1 I find that in terms of above Circular, the appellant shall not be required to reverse the CENVAT credit of Rs.12,801/- on account of the credit notes issued. Similar view was also taken by the adjudicating authority at Para-12.4. However, subsequently in the Order portion (at para-13) he wrongly confirmed the above amount. I, therefore, fully agree with the contention of the appellant that they are not required to reverse the cenvat credit in light of above circular. Hence, I, set-aside the CENVAT reversal of Rs.12,801/-. When the demand does not sustain, question of interest and penalties also does not arise.

8. Another contention raised by the appellant is that no penalty can be levied as the duty and interest is paid before issuance of notice. They claim to have paid duty/Cenvat credit with interest before issuance of notice hence by virtue of Section 11(A)(2) no penalty is leviable. It is observed that in terms of Section 11A (2) the person who has paid the duty alongwith interest under clause (b) of sub-section (1) of Section 11A, shall not be served any notice under clause (a) of that sub-section in respect of the duty so paid or any penalty leviable under the provisions of this Act or the rules made thereunder. However, I find that the above provision is applicable only where non-payment of duty for the reason, other than fraud or collusion or any wilful misstatement or suppression of facts or contravention of any of the provisions of this Act or of the rules made thereunder





with intent to evade payment of duty. In the instant case the non-payment of duty came to the notice of the department during the course of audit and therefore it can be attributed that the non-payment was with an intent to evade the duty as they suppressed the clearance of excisable goods in their ER-1 Return and also failed to discharge central excise duty on differential amount. I, therefore, find that where suppression is invoked with intent to evade duty the appellant shall be liable to penalty equivalent to duty.


8.1 The appellant has relied on few case laws. I find that their reliance in the case of M/s. Padmini Products reported at 1898 (43) ELT 195 (SC) is misplaced as therein it was noted about a scope for confusion suggested by the materials in the case, and in absence of contrary evidence to show that the manufacturer knew that the articles were excisable or required to be licensed, Section 11A could not get attracted. However, in the instant case there is no such confusion. The appellant is a registered manufacturer and as the goods cleared were excisable goods they were liable to pay duty.

8.2 Similarly, in the case of ZYG PHARMA PVT. LTD- 2017 (358) E.L.T. 101 (M.P.) also it was not in dispute that the respondent had been submitting its monthly returns clearly showing avilment of the impugned credit. Hence both the above decisions are distinguishable on merits and not applicable to the present case as the facts were not disclosed by the appellant in the ER-1 Return.

8.3 The issue of mandatory penalty is also settled by Hon'ble Supreme Court in the case of UOI vs Dharmendra Textile Processors [2008(231) ELT 3 (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. Thus, I find that the appellant shall be liable to penalty under section 11AC.

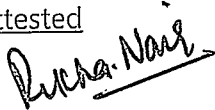
9. In view of the above discussion, I uphold the impugned order confirming the service tax demand of Rs.1,48,793/- alongwith interest and penalties.

अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
The appeal filed by the appellant stands disposed off in above terms.

  
(जी. सी. जैन)  
आयुक्त (अपील)

Date: 16.10.2023

Attested



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

By RPAD/SPEED POST

To,  
M/s. Manipal Technologies Ltd.,



Appellant



50-B, Changodar Industrial Estate,  
Changodar Taluka, Sanand,  
Ahmedabad -382213

The Assistant Commissioner  
CGST, Division-IV,  
Ahmedabad North.

- Respondent

**Copy to:**

1. The Principal 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.

