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

सत्यमेव जयते

07926305065- टेलेफैक्स07926305136

रजिस्टर्ड डाक ए.डी. द्वारा

DIM-20201064SW0000HVOC39

क फाइल संख्या : File No : V2(84)162/Ahd-South/2019-20/15841 TO 15845

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-46/2020-21**

दिनाँक Date : **22-09-2020** जारी करने की तारीख Date of Issue 09/10/2020

श्री अखिलेश कुमार आयुक्त (अपील) द्वारा पारित

Passed by Shri. Akhilesh Kumar, Commissioner (Appeals)

ग Arising out of Order-in-Original No **MP/08/Dem./2019-20 dated 15/10/2019** issued by Assistant Commissioner, Div-V, Central Tax, Ahmedabad-South.

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

M/s AIA Engineering Limited (Unit-2), Plot No. 235 to 237 to 250-271-276, GVMM, Odhav, Ahmedabad.

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 issued under the Central Excise Act 1944,may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा 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.

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

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

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

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

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

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

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

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक से तीन मास के भीतर मूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35–इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर–6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/– फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/– की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:–

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

(1) **केंद्रीय जीएसटी** अधिनियम, 2017 की धारा 112 के अंतर्गत:–

Under Section 112 of CGST act 2017 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.

(8) सीमा शुल्क, केन्द्रीय उत्पाद्न 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 I(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

(9)

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:

(iv) amount determined under Section 11 D;
(v) amount of erroneous Cenvat Credit taken;
(vi) amount payable under Rule 6 of the Cenvat Credit Rules.

इस इंस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

6(I) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

II. **Any person aggrieved by an Order-In-Appeal issued under** the Central Goods and Services Tax Act,2017/Integrated Goods and Services Tax Act,2017/ Goods and Services Tax(Compensation to states) Act,2017,may file an appeal before the appellate tribunal whenever it is constituted within three months from the president or the state president enter office.

ORDER IN APPEAL

The present appeal has been filed by M/s. AIA Engineering Limited (Unit-2)*[hereinafter referred to as the 'appellant'],* situated at Plot No. 235 to 237 to 250-271-276, GVMM, Odhav, Ahmedabad against Order-in-Original No. MP/08/Dem./2019-20 dated 15/10/2019 (hereinafter referred as "*impugned order*") passed by the Assistant Commissioner, CGST, Division-V, Ahmedabad-South (hereinafter referred to as the "*adjudicating authority*").

2 The facts of the matter in brief, are that the appellant is engaged in the manufacture and clearance of goods viz. Machine Steel Alloy Casting and Cast Articles of Alloy Steel falling under Chapter 84 and 73 of the First Schedule to the Central Excise Tariff Act, 1985. It was having Central Excise Registration No. AABCA2777JXM002. During the course of scrutiny of financial records of the appellant by the CERA Audit for the period 2013-14 to 2015-16, it was observed that the appellant had shown income under the head of miscellaneous income wherein they had received volume discount from CONCOR, Container Corporation etc at the end of each financial year on the basis of the quantum and volume of work and business and have availed and utilized the Cenvat Credit of Service Tax paid on service provided by M/s CONCOR and others. However, they have not reversed the Cenvat Credit of service tax on the amount so refunded during the period from 2013-14 to 2017-18(upto June-2017) amounting to Rs.41,98,504/- under the provisions of Rule 4(7) of the Cenvat Credit Rules, 2004. It was also observed that as per the proviso below Rule 4(7) of the Cenvat Credit Rules, 2004, as amended, if any payment or part thereof, made towards an input services is refunded or a credit note is received by the manufacturer or the service provider who has taken credit of such input service, he shall pay an amount equal to the Cenvat credit availed in respect of amount so refunded. Accordingly, a show cause notice dated 19.09.2018 was issued to the appellant for recovery of Cenvat credit amounting to Rs.41,98,504/- wrongly availed by them under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A(4) of the Central Excise Act,1944 along with interest for the relevant period. The said notice also proposed imposition of penalty under Rule 15(2) of the Cenvat Credit Rules, 2004 on the appellant.

2.1 The adjudicating authority, vide the Order In Original No. MP/08/Dem./2019-20 dated 15/10/2019 issued under F.No. V.84/03-09/AIA/2018-19 has confirmed the entire allegations by way of confirming the wrongly availed cenvat credit demanded along with interest. He also imposed penalty of Rs.41,98,504/- under the provisions of Rule

15(2) of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act,1944 .

3. Being aggrieved by the impugned order dated 15/10/2019, the appellant has filed the instant appeal on the grounds that:

- Out of the total Misc. Income Shown in the Balance Sheet, Rs. 31,39,451/- pertains to refund claim amount received vide OIO No. 12/Refund/2014 dated 24.02.2014 and Rs. 6,31,091/- pertains to refund claim amount received vide OIO No. MP/168/Refund/2015 dated 21.04.2015 of excise duty and as such the said amount is not cenvat credit of the service tax paid by M/s Concor; that the above amount of refund were erroneously shown under the head of miscellaneous income; that the said amount wrongly recorded in the books of account under the head of " miscellaneous income"; that the amount was refund and not cenvat credit and was not cenvat credit and also not service tax referable to any volume discount allowed by M/s. CONCOR.
- The adjudicating authority has not recorded any finding that the appellants explanation about the amount of Rs. 37,70,541/- being excise refund was incorrect or false.
- The amount of Rs. 4,27,962/-, demand was calculated on the volume discount amounting to Rs.31,78,750/- received and given by M/s CONCOR at the end of the year based on the volume of business and there was no reduction or any variation of whatsoever nature in the amount of service tax already paid by M/s CONCOR on the original value of their service; that the volume discount allowed by M/s CONCOR has not affected the amount of service tax already paid by them for the services rendered in the appellant favour; that the appellant has suffered full incidence of service tax paid by M/s CONCOR which has remained unaffected by volume discount allowed by the service provider at the year end. Also stated that the authority in charge of M/s CONCOR have assessed and collected service tax on the total value of their services without varying or reducing the amount of service tax on account of volume discount.
- The penalty imposed by the adjudicating authority is unreasonable, arbitrary and high-handed in the facts of the case.
- They rely upon judgments i.e Hon'ble Supreme Court in the case of M/s MDS Switchgear Ltd reported at 2008 (229) ELT 485, Hon'ble High Court of Gujarat in the case of M/s Nahar Granites Ltd reported at 2014 (305) ELT 19 and Hon'ble Tribunal Delhi in case M/s U P State Sugar Corporation Ltd reported at 2013 (291) ELT 402, wherein it is stated that when the department has not disputed payment of tax by a supplier, then the department cannot deny credit to

the recipient. He requested to set aside the OIO with consequential relief and benefits.

4. Personal Hearing in the matter was held on 20.08.2020. Shri Amal P. Dave, Advocate, appeared on behalf of the appellant for hearing. He submitted written submission dated 19.08.2020 during hearing and re-iterated the submissions made therein. He further stated that out of total amount, an amount of Rs.37,70,541/- pertained to refund received from the department and same has been erroneously taken into demand. As regards the balance amount, he stated that appellant have paid duty to M/s CONCOR at the time of taking service on the basis of invoice, who has not sought any re-assessment, hence they have correctly availed CENVAT.

5. I have carefully gone through the facts of the case and submissions made by the appellant in Appeal Memorandum as well as at the time of personal hearing. The limited point to be decided in the instant case is whether amount shown in the balance sheet under the head of miscellaneous income were part of cenvat credit or otherwise and whether the miscellaneous income shown in the balance sheet were falling within the purview of provision contained under Rule 4(7) of Cenvat Credit Rule, 2004 or otherwise.

6. I find from the records that the CERA audit party had raised objection relying on the provision of Rule 4(7) of Cenvat Credit Rule, 2004 in respect of miscellaneous income shown in the balance sheet for volume discount received from CONCOR and Excise duty refund received for the department.

7. The provision contained under Rule 4(7) of Cenvat Credit Rule, 2004 is reproduced as under:

[(7) The CENVAT credit in respect of input service shall be allowed, on or after the day on which the invoice, bill or, as the case may be, challan referred to in rule 9 is received :

[Provided that in respect of input service where whole or part of the service tax is liable to be paid by the recipient of service, credit of service tax payable by the service recipient shall be allowed after such service tax is paid :

Provided further that in case the payment of the value of input service and the service tax paid or payable as indicated in the invoice, bill or, as the case may be, challan referred to in rule 9 is not made within three months of the date of the invoice, bill or, as the case may be, challan, the manufacturer or the service provider who has taken credit on such input service, shall pay an amount equal to the CENVAT credit availed on such input service, except an amount equal to the CENVAT credit of the tax that is paid by the manufacturer or the service provider as recipient of service, and in case the said payment is made, the manufacturer or output service provider, as the case may be, shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to the other provisions of these rules :]

Provided also that if any payment or part thereof, made towards an input service is refunded or a credit note is received by the manufacturer or the service provider who has taken credit on such input service, he shall pay an amount equal to the CENVAT credit availed in respect of the amount so refunded or credited :

Provided also that CENVAT credit in respect of an invoice, bill or, as the case may be, challan referred to in rule 9. issued before the 1st day of April, 2011 shall be allowed, on or after the day on which payment is made of the value of input service and the service tax paid or payable as indicated in invoice, bill or, as the case may be, challan referred to in rule 9 :

[Provided also that the manufacturer or the provider of output service shall not take CENVAT credit after [one year] of the date of issue of any of the documents specified in sub-rule (1)of rule 9[except in case of services provided by Government, local authority or any other person, by way of assignment of right to use any natural resource :]]

[Provided also that CENVAT Credit of Service Tax paid in a financial year, on the one-time charges payable in full upfront or in installments, for the service of assignment of the right to use any natural resource by the Government, local authority or any other person, shall be spread evenly over a period of three years :

Provided also that where the manufacturer of goods or provider of output service, as the case may be, further assigns such right assigned to him by the Government or any other person, in any financial year, to another person against consideration, such amount of balance CENVAT credit as does not exceed the service tax payable on the consideration charged by him for such further assignment, shall be allowed in the same financial year].

Explanation I. - The amount mentioned in this [Rule], unless specified otherwise, shall be paid by the manufacturer of goods or the provider of output service by debiting the CENVAT credit or otherwise on or before the 5th day of the following month except for the month of March, when such payment shall be made on or before the 31st day of the month of March.

Explanation II. - If the manufacturer of goods or the provider of output service fails to pay the amount payable under this [Rule], it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken.

Explanation III. - In case of a manufacturer who avails the exemption under a notification based on the value of clearances in a financial year and a service provider who is an individual or proprietary firm or partnership firm, the expressions, —following month‖ and —month of March‖ occurring in sub-rule (7) shall be read respectively as —following quarter‖ and —quarter ending with the month of March.]

8. The quantification of demand as contained in para 5 of the SCN are as per table given below:

YEAR	TYPE OF INCOME UDER 'MISC. RECEIPT OF A/C' HEAD	INCOME RECEIVED FROM	INCOME RECEIVED RS.	RATE OF SERVICE TAX	CENVAT CREDIT TO BE REVERSED
2013-14	Volume discount received from CONCOR	CONCOR, Suraj Freight Forwarders	937600	12.36%	115887
2013-14	Excise duty refund received from M/s AGS	AGS	3139451		3139451
2014-15	Volume discount received from CONCOR	CONCOR	833100	12.36%	102971

2015-16	Volume discount received from CONCOR	CONCOR	411750	14.50%	59704
2015-16	Excise duty refund received from GCFW	GCFW	631091		631091
2016-17	Volume discount received from CONCOR	CONCOR	723000	15%	108450
2017-18 (Upto June-2017)	Volume discount received from CONCOR	CONCOR	273000	15%	40950
		TOTAL	6948992		4198504

It is observed that, out of the total demand amounting to Rs.41,98,504/-, the demand raised in respect of Rs. 31,39,451/- and Rs. 6,31,091/- pertains to the refund granted to the appellant by the department vide OIO No. 12/REFUND/2014 dated 24-2-2014, which was pertaining to payment made by appellant under protest against Education Cess and Higher and Secondary Education Cess in pursuance of Commissioner (Appeals) OIA No. AHM-EXCUS-002-APP-225-2013-14 dated 17-11-2013, and OIO No. MP/168/Ref/2015 dated 21-4-2015, which was pertaining to wrong availment of cenvat credit in pursuance of CESTAT's order No. A/11866/2014 dated 19.09.2014 respectively. It has been contended by the appellant that they had wrongly shown the said refund amount received from the department in their books of accounts under head of "Miscellaneous Income" and department has wrongly interpreted the provisions of Rule 4(7) of Cenvat Credit Rule, 2004 and demanded cenvat credit wrongly on such amount. I have perused the Order-in-Original No. 12/Refund/2014 dated 24.02.2014 wherein the refund pertained to payment of Education Cess and Secondary Higher Education Cess amounting to Rs. 31,39,451/-. The refund was sanctioned as re-credit in CENVAT Register. Further, Order-in-Original No. MP/168/Ref/2015 dated 21.4.2015 pertained to payment of Rs. 6,31,091/- on account of department case of wrong availment and utilization of CENVAT booked against them. The appellant won the case in CESTAT. Hence, the amount was refunded. I find that the said amount is nothing but a refund granted by the Department to the appellant and not a cenvat credit as alleged by the Department. I also find that the said income cannot be booked as miscellaneous income in books of account. However, the demand cannot be made against them merely on wrong entry in books of account. Thus, I find from the above facts that demand raised by the department amounting to Rs. 37,70,542/- is not sustainable and order passed by the adjudicating authority is required to be set aside and appeal is allowable to that extent.

As regards the remaining amount of Rs. 4,27,962/-, the appellant has contended that M/s CONCOR, a service provider, had given volume based discount to them at the

year end which has not affected the amount of service tax already paid by them to M/s CONCOR for the services rendered and the authority in charge of M/s CONCOR have assessed and collected service tax on the total value of their services without varying or reducing the amount of service tax on account of volume discount. The appellant has relied upon a judgement pronounced by the Hon'ble Tribunal Delhi in the case of M/s U P State Sugar Corporation Ltd reported at 2013 (291) ELT 402 at para-4 of its judgment has stated as under :

> *4. The Cenvat credit, in question, had been taken by the respondent on the basis of an invoice issued by M/s. Jyoti Ltd. for repair of the rotor assembly. It is well settled that repair activity does not amount of manufacture and, as such, no duty should have been charged from M/s. Jyoti Ltd. on the repair of rotor assembly. But still when the department has collected duty from M/s. Jyoti Ltd. on the repair of rotor assembly and the payment of duty is evidenced by the invoice issued by M/s. Jyoti Ltd., its Cenvat credit cannot be denied to the respondent. The only way to deny the Cenvat credit in this case would be to revise the assessment at the end of M/s. Jyoti Ltd., refund the duty paid by them and only in that case the Cenvat credit could have been denied to the respondent, but this has not been done. Without revising the assessment at the end of manufacture of some inputs, the Cenvat credit cannot be denied at the end of the receiver of those inputs. This is the view which has been taken by the Apex Court in the case of CCE & C v. MDS Switchgear Ltd. (supra) and also by the Tribunal in the case of Owens Bilt Ltd. v. CCE, Pune (supra). Therefore, notwithstanding the fact that the repair activity of M/s. Jyoti Ltd. does not amount of manufacture, since the payment of duty by M/s. Jyoti Ltd. on this repair has not been reviewed by the department, the Cenvat credit cannot be denied to the respondent. In view of this, I do not find any infirmity in the impugned order. Revenue's appeal is dismissed.*

10. From the reading of above decision, I find that the identical issue has been considered by the Hon'ble Tribunal wherein the Hon'ble Tribunal Delhi has taken a view that when the department has collected the duty and the payment of duty is evidenced by the invoice issued by the manufacturer/supplier, its cenvat credit cannot be denied to the receiver; that only way to deny the cenvat credit would be to revise the assessment at the end of manufacturer/supplier. I have also gone through the Circular No.122/03/2010- ST dated 30.04.2010 wherein CBEC has issued a clarification regarding availment of credit on input services. In the said circular issued by the Board, it was clarified that:

> 2. *As per Rule 4 (7) of the CENVAT Credit Rules, 2004, the CENVAT credit on input services is available only on or after the day on which payment of the value of input service and service tax is made. The section 67 (4) of the Finance Act, 1994, provides that gross amount charged includes payment made by issue of credit / debit notes or by entries in the books of account, where the transaction is with any associated enterprise. A doubt has arisen as to whether CENVAT credit can be taken by "Associate Enterprises" when debit is made in book of accounts or when book adjustments/ debit or credit in accounts is made, or if the CENVAT credit of the service tax paid on input service is available only after the actual payment of the value of input service has been made in money terms.*
>
> 3. *As per sub-rule (7) of Rule 4 of the CENVAT Credit Rules, 2004.*
> *"Credit in respect of input service shall be allowed, on or after the day on which payment is made of the value of input service and the service tax paid or payable as is indicated in invoice, bill or as the case may be, challan referred to in Rule 9".*

A doubt raised is as to whether the receiver of input service can take credit only after the full value that is indicated in the invoice, bill or challan raised by the service provider, and also the service tax payable thereon, has been paid. It has been represented that in many cases, after the invoice is issued by the service provider, the service receiver does not make the full payment of the invoiced amount on account of discount agreed upon after issuance of invoice; or deducts certain amount due to unsatisfactory service; or withholds some amount as security to be held during contract period. Due to these reasons the value paid may not tally with the amount indicated in the invoice, bill or challan. In such cases the department has raised objections to the taking of credit as it does not meet the requirement of the said sub-rule (7).

4. *Thus the following issues relating to availment of CENVAT credit need clarification,- Whether CENVAT credit can be claimed*

(a)when payments are made through debit/credit notes and debit/credit entries in books of account or by any other mode as mentioned in section 67 Explanation (c) for transactions between associate enterprises; or

(b) where a service receiver does not pay the full invoice value and the service tax indicated thereon due to some reasons.

5. *Matter has been examined and clarification in respect of each of the above mentioned issues is as under,-*

(a) When the substantive law i.e. section 67 of the Finance Act, 1994 treats such book adjustments etc., as deemed payment, there is no reason for denying such extended meaning to the word 'payment' for availment of credit. As far as the provisions of Rule 4 (7) are concerned, it only provides that the CENVAT credit shall be allowed, on or after the date on which payment is made of the value of the input service and of service tax. The form of payment is not indicated in the same and the rule does not place restriction on payment through debit in the books of accounts. Therefore, if the service charges as well as the service tax have been paid in any prescribed manner which is entitled to be called 'gross amount charged' then credit should be allowed under said rule 4 (7). Thus, in the case of "Associate Enterprises", credit of service tax can be availed of when the payment has been made to the service provider in terms of section 67 (4) (c) of Finance Act, 1994 and the service tax has been paid to the Government Account.

*(b) **In the cases where the receiver of service reduces the amount mentioned in the invoice/bill/challan and makes discounted payment, then it should be taken as final payment towards the provision of service. The mere fact that finally settled amount is less than the amount shown in the invoice does not alter the fact that service charges have been paid and thus the service receiver is entitled to take credit provided he has also paid the amount of service tax, (whether proportionately reduced or the original amount) to the service provider. The invoice would in fact stand amended to that extent. The credit taken would be equivalent to the amount that is paid as service tax. However, in case of subsequent refund or extra payment of service tax, the credit would also be altered accordingly***

11. I have gone thorugh the facts of the case in respect of demand of Rs. 4,27,962/- on account of credit notes raised by M/s CONCOR, aforesaid circular and judgment of Hon'ble Tribunal Delhi in the case of M/s U P State Sugar Corporation Ltd reported at 2013 (291) ELT 402 referred by the appellant and find that the appellant had paid the service charges along with service tax to service provider and taken credit on the basis of valid duty paying documents at the time of receipt of service and end of the year received credit note on account of volume discount. The appellant have received credit note amounting to Rs. 31,78,450/- during the year 2014-15 to 2017-18 (upto June-

2017) towards year end as volume discount from their Service Provider and thereby the service recipient i.e appellant, have reduced the amount payable to the extent of Credit note issued by the service provider and there is nothing on record that the amount of service tax paid initially by the service provider was subsequently reduced by him on account of volume discount passed on by him to the appellant. The mere fact that finally settled amount is less than the amount shown in the invoice does not alter the fact that service charges have been paid and thus the appellant is entitled to take credit as the appelalnt has paid the amount of service tax to the service provider. I also find that there is nothing on record that the amount of service tax paid initially by the service provider was subsequently reduced on account of volume discount passed on to the appellant. It is a settled law that without challenging/disputing the assessment and payment of tax at the service provider's end, it is not open for the department to question the amount of duty/tax paid by the service provider in the hands of the service receiver so as to decide the eligibility of credit. Thus, I find that the demand raised by the department for Rs. 4,27,962/- is not sustainable on merits and order passed by the adjudicating authority is required to be set aside and appeal is allowable to that extent.

12. In view of above discussion, I find that the impugned order is not sustainable on merits and accordingly, I set aside the same and allow the appeal filed by the appellant. The appeal stands disposed of in above terms.

22nd September, 2020.

(Akhilesh Kumar)
Commissioner (Appeals)
/09 /2020

Attested

(Atul B Amin)
Superintendent (Appeals),
CGST, Ahmedabad.

By R.P.A.D

To,
M/s. AIA Engineering Limited(Unit-2),
Plot No. 235 to 237 to 250-271-276, GVMM,
Odhav, Ahmedabad.

Copy To:-

1. The Principal Chief Commissioner, CGST, Ahmedabad Zone .
2. The Commissioner, CGST, Ahmedabad-South
3. The Deputy/Assistant Commissioner, CGST, Division-V, Ahmedabad-South.
4. The Assistant Commissioner, System-Ahmedabad South
5. Guard File.
6. P.A. File.