आयुक्त(अपील)का कार्यालय,

Office of the Commissioner (Appeal)

केंद्रीय जीएसटी, अपील आयुक्तालय,अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ीअहमदाबाद३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

. ☎ 07926305065- टेलेफैक्स07926305136

DIN : 20220764SW0000520345

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/1653/2021/2287 To 2291

ख अपील आदेश संख्याOrder-In-Appeal Nos.**AHM-EXCUS-001-APP-033/2022-23**
दिनाँक Date : **28-06-2022** जारी करने की तारीख Date of Issue 04-07-2022

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

ग Arising out of Order-in-Original Nos. **31/AC/Div-I/RBB/2020-21** दिनाँक: **23.03.2021** issued by Assistant Commissioner, Central GST, Division –I, Ahmedabad-South

ध अपीलकर्ता का नाम एवं पता Name & Address of the **Appellant/ ~~Respondent~~**

M/s Saral Buildcon
Survey NO. 1140, Alok Plaza,
Vastral, Opp. Reliance Petrol Pump,
Ahmedabad - 382418

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 अधीनसचिव, 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 मे चाहे वह किसी कारखानेमें 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.

अंतिमउत्पादनकीउत्पादन शुल्क के भुगतान के लिए जोडयूटीकेडिटमान्य की गईहैऔर ऐसेआदेशजोइस धारा एवंनियम के मुताबिकआयुक्त, अपील के द्वारापारित वो समय पर या बादमेंवित्तअधिनियम (नं.2) 1998 धारा 109 द्वारानियुक्तकिए 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 अंतर्गतविनिर्दिष्टप्रपत्र संख्या इए–8 मेंदोप्रतियोंमें, प्रेषितआदेश के प्रतिआदेशप्रेषितदिनाँकसेतीनमास के भीतरमूल–आदेश एवंअपीलआदेश की दो–दोप्रतियों के साथउचितआवेदनकियाजानाचाहिए।उसकेसाथ खाता इ.कामुख्यशीर्ष के अंतर्गत धारा 35–इ मेंनिर्धारितफी के भुगतान के सबूत के साथ टीआर–6 चालान की प्रतिभीहोनीचाहिए।

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) रिविजनआवेदन के साथजहाँ संलग्नरकम एक लाख रूपये या उससे कम होतो रूपये 200/–फीसभुगतान की जाए औरजहाँ संलग्नरकम एक लाख सेज्यादाहोतो 1000/– की फीसभुगतान 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 एवंसेवाकरअपीलीय न्यायाधिकरण के प्रतिअपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्कअधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

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

(क) उक्तलिखितपरिच्छेद 2 (1) क मेंबताए अनुसार के अलावा की अपील, अपीलो के मामलेमेंसीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवंसेवाकरअपीलीय न्यायाधिकरण(सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबादमें2nd माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद–380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor,BahumaliBhawan,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) यदिइसआदेशमेंकईमूलआदेशोंकासमावेशहोताहैतोप्रत्येकमूलओदश के लिए फीसकाभुगतानउपर्युक्तढंग सेकियाजानाचाहिए इसतथ्य के होतेहुए भीकिलिखा पढी कार्यसेबचने के लिए यथास्थितिअपीलीय न्यायाधिकरणको एक अपील या केन्द्रीय सरकारको एक आवेदनकियाजाताहैं।

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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि–1 के अंतर्गतनिर्धारितकिए अनुसारउक्तआवेदन या मूलआदेश यथास्थितिनिर्णयनप्राधिकारी के आदेशमेंसेप्रत्येक की एक प्रतिपर रू.6.50 पैसेकान्यायालय शुल्कटिकटलगाहोनाचाहिए।

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) इनओरसंबंधितमामलोंकोनियंत्रण करनेवालेनियमों की ओरभी ध्यानआकर्षितकियाजाताहैजोसीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवंसेवाकरअपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 मेंनिहितहै।

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

(19) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवंसेवाकरअपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामलेमेंकर्तव्यमांग(Demand) एवंदंड(Penalty) का10%पूर्वजमाकरनाअनिवार्यहै। हालांकि, अधिकतमपूर्वजमा10 करोड़रुपएहै ।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीयउत्पादशुल्कऔरसेवाकरकेअंतर्गत, शामिलहोगा "कर्तव्यकीमांग"(Duty Demanded)-

(i) *(Section)* खंड 11D केतहतनिर्धारितराशि;
(ii) लियागलतसेनवैटक्रेडिटकीराशि;
(iii) सेनवैटक्रेडिटनियमोंकेनियम 6 केतहतदेयराशि.

⇨ **यहपूर्वजमा 'लंबितअपील' मेंपहलेपूर्वजमाकीतुलनामें, अपील' दाखिलकरनेकेलिएपूर्वशर्तबनादियागयाहै.**

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:

(xl) amount determined under Section 11 D;
(xli) amount of erroneous Cenvat Credit taken;
(xlii) amount payable under Rule 6 of the Cenvat Credit Rules.

इसइस 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

The present appeal has been filed by M/s. Saral Buildcon, Survey No. 1140, Alok Plaza, Vastral, Opposite Reliance Petrol Pump, Ahmedabad – 382 418 (hereinafter referred to as the appellant) against Order in Original No. 31/AC/Div-I/RBB/2020-21 dated 23.03.2021 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, Division – I, CGST, Commissionerate : Ahmedabad South [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case is that the appellant were holding Service Tax Registration No. ACOFS4773JSD002 and engaged in providing services of Construction of Residential Complex and Construction Services other than Construction of Residential Complex etc. During the course of audit of the financial records of the appellant for the period F.Y.2016-17 to F.Y.2017-18 (upto June) by the officers of CGST Audit Commissionerate, Ahmedabad, it was observed that the appellant had during F.Y. 2017-18 (April to June) not paid service tax on the amount received as Advances on Construction services and filed Nil ST-3 return, except GTA expenses under reverse charge. It was observed that as per the Trial Balance and Account Ledgers of the appellant, they had shown Advance Receipts amounting to Rs.3,43,66,388/- and the taxable value, @ 30%, was amounting to Rs.1,03,09,916/- on which service tax amounting to Rs.15,46,487/- was not paid by the appellant.

2.1 In response to the Query Memos dated 19.11.2019 and 16.12.2019, the appellant informed vide letter dated 12.12.2019 that they forgot to mention the figure of advance receipts in the ST-3 returns, and that while filing ST-3 returns, the amount of taxable service was shown in the returns, however, due to some technical glitches in the system, the value of taxable services was reflected as Nil. They further stated that due to the said mistake they incurred loss by not carrying forward the amount of unutilized cenvat credit in transition return filed for migrating to GST. They submitted that the liability of service tax amounting to Rs.15,46,487/- was adjusted from cenvat

credit account of Rs.15,89,700/-. They requested that the mistake of not mentioning the figure of taxable service in ST-3 return be pardoned. They also submitted soft copy of Cenvat Register for the period 01.04.2017 to 30.06.2017 containing details of 24 invoices.

2.2 The Audit Officers were of the view that merely having invoices does not allow the appellant to avail and adjust the cenvat credit, and that payment of service tax and availment of cenvat credit are governed by different sets of Rules, and therefore, it appeared that cenvat credit, even if available, which is not shown in their ST-3 returns cannot be deducted for the purpose of payment of service tax. Hence, the cenvat credit which the appellant had never availed in the books of accounts and not shown it in the ST-3 returns is not allowed to be adjusted for payment of service tax. Therefore, the service tax amounting to Rs.15,46,487/- was required to be recovered from the appellant along with interest and penalty.

2.3 The appellant was, therefore, issued a Show Cause Notice bearing No. 244 dated 07.02.2020 from F.No. VI/1(b)-47/C-I/AP-I/Audit/Ahd/18-19 wherein it was proposed to :

a) Demand and recover service tax amounting to Rs.15,46,487/- under the proviso to Section 73 (1) of the Finance Act, 1994.
b) Recover Interest under Section 75 of the Finance Act, 1994.
c) Impose penalty under Section 78 (1) of the Finance Act, 1994.

3. The SCN was adjudicated vide the impugned order wherein the demand for service tax was confirmed along with interest. Penalty equivalent to the service tax confirmed was imposed under Section 78 of the Finance Act, 1994.

4. Being aggrieved with the impugned order, the appellant have filed the present appeal on the following grounds :

1. For the disputed period, the amount of taxable services, service tax and cenvat credit in relation to the aforesaid services were

inadvertently not uploaded on the ACES portal while filing ST-3 for the period from April to June, 2017.

ii. They were under the impression that the data uploaded on the computer software used for filing ST-3 was successfully uploaded on the ACES portal. During the Audit, they learned about the said mistake. They could not rectify the mistake by filing revised returns since the time limit was over when they realized the mistake.

iii. The adjudicating authority ought to have considered that there was some technical error while uploading the data. It is pertinent to note that data in respect of only GTA services were only uploaded and data in respect of Construction services and Cenvat credit availed was not uploaded on the ACES portal.

iv. The adjudicating authority ought to have appreciated that they availed various input services to the tune of Rs.16.22 lakhs for rendering taxable output services. They were having balance of cenvat credit amounting to Rs.8,581/- as on 01.04.2017. Accordingly, there was adequate cenvat credit of Rs.16.30 lakhs to discharge the output service tax of Rs.14.50 lakhs and no cash outflow was required for the same.

v. The adjudicating authority erred in not allowing adjustment of cenvat credit toward the liability of service tax on the premise that one page of the Trial Balance submitted by them was not signed or approved or certified by Chartered Accountant. He ought to have appreciated that the Audit Team sought to demand service ax on advance receipt on the said Trial Balance. Stand of the Revenue to accept Trial Balance for demanding service tax and not accepting the same for allowing adjustment of cenvat credit is self-contradictory.

vi. The adjudicating authority erred in holding that they failed to discharge the burden by not showing documents like cenvat credit register or Ledger of input service providers or Ledgers of Cenvat credit receivers etc. for availment of cenvat credit. They had submitted all the requisite documents to the Audit team at the time of audit who did not doubt the authenticity or eligibility of cenvat

credit. They submit copies of the Cenvat Credit Register, Ledger Accounts.

vii. The adjudicating authority erred in holding that their plea regarding accounting of input services was after thought since the books of accounts maintained by them were finalized after carrying out internal audit and after adjusting errors and omissions at the end of the financial year. He ought to have appreciated that they accounted for input services in the books of accounts on receipt of input services. The audit team never doubted eligibility of input services. The impugned order has been passed beyond the scope of the SCN since the SCN neither alleged about authenticity of input services not accounting of it in their books of accounts.

viii. They were eligible for cenvat credit availed in the books of accounts and the said point was never disputed at the time of audit. All the documents were shown to the department at the time of audit along with the fact that they had wrongly filed the returns and had inadvertently not shown the cenvat credit and tax liability in ST-3 for the disputed period. If they were ineligible for any of the cenvat credit, the audit must have pointed out in the Audit Report, which is not done in the present case.

ix. There was a technical glitch due to which the service tax return was not uploaded on the ACES portal and it appeared to the department that they had not paid service tax on the taxable services. It is not the case of non-payment of service tax, it is the issue of wrong filing of periodical return due to technical error beyond their control.

x. The adjudicating authority has demanded output tax on services while ignoring the issue of Cenvat credit on input services for rendering the taxable services. Had both the facts been considered, it was clear that the service tax liability was discharged against the cenvat credit availed for the disputed period.

xi. The adjudicating authority has not considered the documents submitted by them at the time of hearing as the same were not certified by Chartered Accountant. If certified documents were sought from them, they would have provided the same. Cenvat credit register

along with a certificate from Chartered Accountant to the effect that they were eligible for cenvat credit and had utilized it against the disputed tax liability is submitted.

xii. In the case of Jagdamba Polymers Ltd. Vs. Commissioner of Central Excise, Ahmedabad – 2010 (253) ELT 626 (Tri.- Ahmd), it was held that failure to reflect cenvat credit balance in ER-1 is only a procedural omission and in the normal course credit could not have been denied on this ground. Accordingly, they are eligible for cenvat credit which would have adjusted against their output tax liability and resulting in non-payment of cash outflow. In fact, they are at loss owing to the technical error, the cenvat credit balance as on 30.06.2017 was not updated on the ACES portal due to which they are not eligible to claim transitional credit under GST regime.

xiii. There was no undue benefit accrued to them by not disclosing the details of tax liability and cenvat credit in ST-3 returns. Therefore, there was no intention for wrong disclosure of information, it was purely technical error.

xiv. Even assuming all data was uploaded on the ACES portal, they were not liable to pay any service tax in cash as they were having sufficient cenvat credit balance to discharge their liability. The adjudicating authority has erred by not considering the fact that they had paid the actual amount of service tax as therefore, the finding of the impugned order is completely baseless. They rely upon the decision in the case of Commissioner of Central Excise & Customs, Vadodara Vs. Ineos Abs Limited -2010 (254) ELT 628 (Guj.).

xv. The issue of revenue neutrality is no more res-integra and stand settled by the decision of the Hon'ble Supreme Court in the following cases : Commissioner of Central Excise (A) Vs. Narayan Polyplast – 2005 (179) ELT 20 (SC); Commissiner of Central Excise Vs. Narmada Chematur Pharmaceuticals Ltd. – 2005 (179) ELT 276 (SC).

xvi. For the reasons set out hereinabove, the entire demand itself is unsustainable as there was no contravention of the provisions of the Finance Act, 1994. Hence the imposition of penalty and interest cannot be sustained. They rely upon the decision in the case of CCE

Vs. HMM Ltd. -1995 (76) ELT 497 (SC); CCE, Aurangabad Vs. Balakrishna Industries -–2006 (201) ELT 325 (SC); Hyva India Pvt. Ltd. Vs. CCE – 2008 (226) ELT 264 and Godrej Soaps Vs. CCE – 2004 (174) ELT 25 (Tri.-LB).

xvii. Penalty should not have been imposed as there was an inadvertent mistake done by them. It is not the issue of non-payment/short payment. Penalty under Section 78 can be invoked only if there is a malafide intention of omission. There is no malafide intention of omission of the disclosure of invoices in the services rendered column and in cenvat credit column in the service tax return. It was only an inadvertent mistake. No statement has been recorded by the Revenue that the mistake was done deliberately by them.

xviii. It is settled position that penalty cannot be imposed where the appellant has not acted contumaciously or in conscious disregard of his obligation under the law. They rely upon the decision in the case of CCE Vs. Sandeep Bobbin Co. Pvt. Ltd – 2011 (21) STR 194 (Tri.-Del.); Kesarwani Zarda Bhandar Vs. CCE, Allahabad – 2013 (289) ELT 331 (Tri.-Del.) and Waterbase Ltd. Vs. CCE, Guntur – 2005 (187) ELT 346 (Tri.-Bang.).

xix. There was no intention on their behalf to evade payment of tax. In such circumstances, levy of penalty is unsustainable. They rely upon the decision in the case of Tamil Nadu Housing Board Vs. CCE – 1994 (74) ELT 9 (SC) and Hindustan Steel Ltd. Vs. State of Orissa – 1978 (2) ELT 159 (SC).

xx. The onus is on the department to prove that omission of the disclosure was with malafide intention. They rely upon the decision in the case of Thai Airways International Public Co. Ltd. Vs. CST (Adjn.), New Delhi – 2015 (38) STR 999 (Tri.-Del.)

5. Personal Hearing in the case was held on 21.06.2022 through virtual mode. Shri Ashish Agarwal, Chartered Accountant, appeared on behalf of appellant for the hearing. He reiterated the submissions made in appeal memorandum.

6. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the submissions made at the time of personal hearing as well as the material available on records. I find that the issue to be decided in the case is whether the appellant is liable to pay the service tax confirmed vide the impugned order or otherwise. The demand pertains to the period F.Y.2017-18 (April to June, 2017).

7. I find that the appellant have not disputed the fact that they were liable to pay the service tax as demanded in the SCN issued to them. It is their contention that the taxable value of Construction services as well cenvat credit pertaining to the said services were inadvertently not uploaded to the ACES portal while filing the ST-3 return for the impugned period. The appellant has further contended that the non uploading of the data to the ACES portal was on account of technical glitch. However, they have not submitted any evidence to indicate that the data of taxable services in their ST-3 return was submitted by them in the ACES portal. I find that the contention of the appellant as regards technical glitch in non-uploading of the ST-3 data in the ACES portal is without any merit. The very fact that the data in respect of GTA services was reported in their ST-3 returns for the same period goes to show that the appellant are not being truthful in their submissions regarding non filing of the ST-3 returns in respect of Construction services.

8. The appellant have contended that they were having cenvat credit which was more than the service tax payable by them during the impugned period and that the same by adjusted towards their service tax liability. However, the contention of the appellant was not accepted by the Audit officers as well as the adjudicating authority on the grounds that the appellant had not shown the cenvat credit in their ST-3 returns as well as in their books of accounts.

8.1 In this regard, I find that admittedly, the appellant had not shown the cenvat credit in the ST-3 returns for the impugned period. However, the appellant have contended that they had claimed the cenvat credit in their

books of accounts. The appellant had submitted a statement showing the details of the cenvat credit, which was rejected by the adjudicating authority on the grounds that the said statement was not in chronological order and was not signed by either the appellant or their Chartered Accountant. The appellant had also submitted the Trial Balance of the impugned period, which too was rejected by the adjudicating authority as it was not signed by the appellant or their Chartered Accountant. The adjudicating authority has rejected the claim of the appellant for cenvat credit primarily on the grounds that it was not shown in the ST-3 returns filed by them and that the plea of the appellant regarding accounting the cenvat in their books of accounts was an afterthought.

8.2 The appellant have in their appeal memorandum submitted copies of the invoices, which they claim are in respect of the Cenvat credit available to them during the impugned period. They have also submitted a Certificate dated 17.05.2021 of the Chartered Accountant to the effect that the appellant was eligible to claim cenvat credit of Rs.16.22 lakhs during April to June, 2017 and that the same was accounted in their books of accounts. Further, the appellant have claimed to have submitted copies of the Cenvat Credit Register, Ledger Account of Input service providers and Ledger of input service receivables. However, they have only submitted copies of the Service Tax Ledger, Trial Balance and some invoices, the appellant have not submitted the documents, as claimed in their appeal memorandum. The appellant had also not submitted their documents before the adjudicating authority as seen from Para 18.7 of the impugned order.

8.3 I am of the considered view that the appellant cannot seek to establish their eligibility to cenvat credit at the appellate stage by bypassing the adjudicating authority. They should have submitted the relevant records and documents before the adjudicating authority, who is best placed to verify the authenticity of the documents as well as their eligibility to cenvat credit. Even at the appellate stage, the appellant have not submitted the record and documents, though claiming to have done so in their appeal memorandum. Accordingly, even at this stage, it is not possible for this

authority to verify the claim of the appellant to cenvat credit. The liability of the appellant to pay the service tax, confirmed vide the impugned order, also hinges upon the determination of their eligibility to cenvat credit. If it is found that the appellant are eligible to avail cenvat credit, as claimed by them, it could cover their liability to pay service tax as demanded by the department vide the impugned SCN.

8.4 Considering the facts of the case as discussed hereinabove and in the interest of justice, I am of the considered view that the case is required to be remanded back to the adjudicating authority to consider the claim of the appellant for cenvat credit and decide the case accordingly. The appellant is directed to submit all the records and documents in support of their claim for cenvat credit before the adjudicating authority within 15 days of the receipt of this order. The adjudicating authority shall after considering the records and documents submitted by the appellant decide the case afresh by following the principles of natural justice.

9. In view of the facts as discussed hereinabove, I allow the appeal filed by the appellant by way of remand in terms of the directions at Para 8.4 above.

10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

28th June, 2022.

(Akhilesh Kumar)
Commissioner (Appeals)
Date: 28.06.2022.

Attested:

(N.Suryanarayanan. Iyer)
Superintendent(Appeals),
CGST, Ahmedabad.

OFFICE OF THE COMMISSIONER CENTRAL GST (APPEALS), AHMEDABAD. केन्द्रीय वस्तु एवं सेवाकर (अपील) आयुक्तालय

BY RPAD / SPEED POST

To

M/s. Saral Buildcon,
Survey No. 1140, Alok Plaza,

Appellant

Vastral,
Opposite Reliance Petroleum Pump,
Ahmedabad – 382 418

The Assistant Commissioner,
CGST, Division- I,
Commissionerate : Ahmedabad South. Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Ahmedabad South.
3. The Assistant Commissioner (HQ System), CGST, Ahmedabad South. (for uploading the OIA)
4. Guard File.
5. P.A. File.