



आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ी अहमदाबाद ३८००१५,
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065 - टेलिफैक्स 07926305136



DIN: 20231064SW000000E8D6

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/CEXP/180/2023 / ६५५४ - ६३
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-141/2023-24
दिनांक Date : 25-09-2023 जारी करने की तारीख Date of Issue 03.10.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)
- ग Arising out of OIO No. 74/CGST/Ahmd-South/JC/SR/2022-23 दिनांक: 13.01.2023 passed by The
Joint Commissioner, CGST, Ahmedabad South.
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s. Perfect Boring Pvt. Ltd,
3822/A, GIDC Estate, Behind Indo German Tool Room,
Vatva, Ahmedabad-382445.

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) केंद्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.



- (क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों 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 भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए।उसके साथ खाता इ.का मुख्य शीर्ष 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 होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम 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 सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

- (1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

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

- (क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004
- (a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd Floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. 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 Appellate 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 अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर 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 हैं।

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

10 सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामले में कर्तव्यमांग(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 सेवाकर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded)-

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

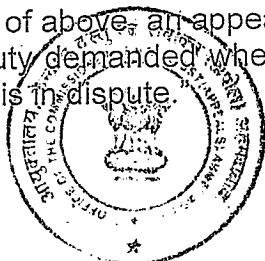
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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

The present appeal has been filed by M/s. Perfect Boaring Pvt. Ltd., 3822/A, GIDC Estate, Behind Indo German Tool Room, Vatva, Ahmedabad – 382445 (hereinafter referred to as “the appellant”) against Order-in-Original No. 74/CGST/Ahmd-South/JC/SR/2022-23 dated 13.01.2023 (hereinafter referred to as “the impugned order”) passed by the Joint Commissioner, Central GST, Ahmedabad South (hereinafter referred to as “the adjudicating authority”).

2. Briefly stated, the facts of the case are that the appellant are engaged in the business of manufacturing of machinery parts and were holding Central Excise Registration No. AACCP7404EXM001. During the inspection conducted on 23.04.2018 under Form GST INS-1 under Section 67 of the CGST Act, 2017, at the premises of the appellant, it was observed that they had filed ER-1 return till May-2017 and not filed ER-1 return for the month of June-2017.

2.1 During the investigation, a statement dated 23.04.2018 of Shri Vasant Jayantilal Modi, Managing Director of the appellant was recorded, wherein he submitted that they were availing and utilizing Cenvat Credit and they used to regularly maintain Cenvat Credit record in MS Excel; that the computer in which it was maintained had become corrupt in October, 2017; that they had all the Invoices in hard copy on the basis of which they had claimed Cenvat Credit and that they could reconstruct the Cenvat Credit register and submit the same to the Department.

2.2 Since the appellant did not submit the above documents, letters dated 13.07.2018 and 06.08.2019 were issued to the appellant to submit the details of Cenvat Credit viz. Cenvat register, Cenvatable invoices, payment particulars etc. However, the said details/ documents were still not submitted by the appellant. Therefore, summons dated 26.06.2020 and 17.02.2021 were issued to the appellant to submit the said documents. However, no compliance was received from them.

2.3 The appellant vide e-mail dated 08.11.2019 forwarded (i) copy of Public Announcement dated 07.10.2019 under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for the attention of the creditors of M/s. Perfect Boring Pvt. Ltd. and (ii) copy of Order C. P. No. (I) 148/9/NCLT/AHM/2019 dated 30.09.2019 of Adjudicating Authority (NCLT), Ahmedabad Bench in the matter of M/s. Devsaria Boring Pvt. Ltd., New Delhi {Operational Creditor} Vs.



M/s. Perfect Boring Pvt. Ltd., Ahmedabad (Corporate Debtor) wherein it was inter alia ordered that it is a fit case to initiate Insolvency Resolution Process by admitting the Application under Section 9(5) (1) of the Code. Further, Shri Manish Kumar Bhagat was appointed by the adjudicating authority to act as an Interim Resolution Professional under Section 13(1) (c) of the Insolvency and Bankruptcy Code.

2.4 A letter dated 20.12.2019 was also issued to the said Interim Resolution Professional to provide the documents/ details of Cenvat Credit viz. Cenvat register, Cenvatable invoices, payment particulars etc. However, till date, the said documents/ details had not been provided by the said Interim Resolution Professional to the department.

2.5 From the Central Excise Returns (ER-1) filed by the appellant, it was observed that they had availed Cenvat Credit of Rs. 1,04,32,442/- for the period from 2016-17 to 2017-18 (up to May, 2017). During the course of investigation, the appellant was requested to submit the duty paying Cenvat Invoices and payment particulars to ascertain the eligibility of Cenvat credit availed. However, the appellant failed to submit full documents for verification of eligibility of the Cenvat credit. The appellant failed to submit or show original invoices for the verification of eligibility of Cenvat credit.

2.6 In terms of Rule 9(5) of Cenvat Credit Rules, 2004, the appellant was required to maintain proper records for the receipt, disposal, consumption and inventory of the input and capital goods and the burden of proof regarding the admissibility of the Cenvat Credit lied upon them. Likewise, Rule 9(6) of the Cenvat Credit Rules, 2004 provides that the appellant was required to maintain proper records for the receipt, disposal, consumption and inventory of the input services and the burden of proof regarding the admissibility of the Cenvat Credit lied upon them. Further, Rule 9 (1) of the Cenvat Credit Rules, 2004 prescribes the documents on the strength of which Cenvat Credit can to be taken and Rule 9(2) *ibid* stipulates that no Cenvat Credit was to be taken if all the requisite particulars were not mentioned in the said duty paying documents.

2.7 In the instant case, it was observed that the appellant had failed to produce the duty paying documents and the records despite several opportunities having been accorded to them as narrated hereinabove. In such circumstances, it appeared that the appellant were neither in possession of the prescribed duty paying documents nor had maintained the proper records as prescribed under law. Therefore, it appeared that, the Cenvat credit amounting to Rs. 1,04,32,442/- taken and utilized by them was inadmissible and needs to be recovered along with applicable interest under Rule 14 of the Cenvat Credit Rules, 2004 read with proviso to



Section 11A & Section 11AA of the Central Excise Act along with penalty under Rule 15 of Cenvat Credit Rules, 2004 read with Section 11 AC of the Central Excise Act, 1944 as amended.

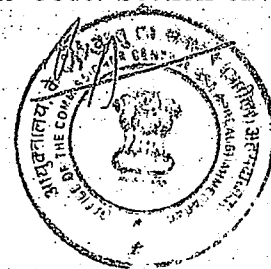
2.8 Subsequently, the appellant were issued Show Cause Notice No. STC/4-56/Perfect/O&A/20-21 dated 12.04.2021 demanding recovery of wrongly availed Cenvat Credit amounting to Rs. 1,04,32,442/- for the period FY 2016-17 to FY 2017-18 (upto May-2017), under Rule 14 of the Cenvat Credit Rules, 2004 read with proviso to Section 11A of the Central Excise Act, 1944. The SCN also proposed recovery of interest under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11AA the Central Excise Act, 1944; and imposition of penalties under Section 11AC the Central Excise Act, 1944 read with Rule 15 of the Cenvat Credit Rules, 2004 and Rule 27 of the Central Excise Rules, 2002.

2.9 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the demand of recovery of Cenvat Credit amounting to Rs. 1,04,32,442/- was confirmed under Rule 14 of the Cenvat Credit Rules, 2004 read with proviso to Section 11A of the Central Excise Act, 1944 along with Interest under Rule 14 of the Cenvat Credit Rules, 2004 read with 11AA of the Central Excise Act, 1944 for the period FY 2016-17 to FY 2017-18 (upto May-2017). Further (i) Penalty of Rs. 1,04,32,442/- was imposed on the appellant under Section 11AC of the Central Excise Act, 1944 read with Rule 15 of the Cenvat Credit Rules, 2004; and (ii) Penalty of Rs. 5,000/- was imposed on the appellant under Rule 27 of the Central Excise Rules, 2002 for not filing of ER-1 return for the month of June-2017.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal, inter alia, on the following grounds:

(i). The adjudicating authority has erred in confirming the demand of Cenvat Credit of Rs. 1,04,32,442/- for the period from April, 2016 to May, 2017 even though it is settled position that no demand can be raised on the corporate debtor or the resolution applicant once the resolution plan is approved by the NCLT, considering the following facts and submissions.

(ii). The appellant submitted that the NCLT (Adjudicating Authority) vide its Order dated 16-03-2021 was of the considered opinion and also being satisfied that the Resolution Plan approved by CoC meets the requirements referred to under Section 30(2) of the Code, approved the resolution plan under the Code. Section 82 of the



CGST Act, 2017 states that "Notwithstanding anything to the contrary contained in any law for the time being in force, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person." Thus the Provisions of Insolvency and Bankruptcy Code, 2016 shall have an over-riding effect on the provisions of CGST Act, 2017.

(iii). According to Section 31(1) of Insolvency and Bankruptcy Code, 2016:

"If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation."

(iv). As regards the provisions of Section 31 of the Insolvency and Bankruptcy Code, 2016 the resolution plan is binding on the central government and the state government. As per Para ix. on Page number 59 of the approved resolution plan that provides that

"All dues under the provisions of all the indirect taxes, including but not limited to, the Central Excise Act, 1944, the Finance Act, 1994 (Service Tax), The Customs Act, 1962, VAT Act, GST Act and any other indirect tax laws, including taxes, duty, penalties, interest, fines, cess, charges, unpaid TDS/TCS (to the extent applicable), whether admitted or not due or contingent, whether part of the above mentioned contingent liability schedule dues or not, whether claimed by the tax authorities or not, asserted or un-asserted, crystallized or not crystallized, known or unknown, secured or unsecured, disputed or



undisputed present or future, in relation to any period prior to the acquisition of control by the Resolution applicant over the corporate debtor pursuant to this Resolution Plan, shall stand extinguished by virtue of the order of the Honorable NCLT approving this Resolution plan and the Corporate Debtor or Resolution Applicant shall not be liable to pay any amount against such demand. All outstanding litigation/demands, assessments/appellate or other proceedings, including but not limited to any audits, investigations, search and seizure, pending in case of the corporate debtor, on the date of the order of NCLT relating to the period prior to that date, shall stand terminated and all consequential liabilities if any, shall be deleted and shall be considered to be not payable by the Corporate Debtor by the virtue of the order on the Honorable NCLT. All the notices proposing, to initiate any proceedings against the corporate debtor in relation to the period prior to the date of the NCLT order, and pending on that date, shall be considered deleted and shall not be proceeded against. Post the Order of the NCLT, no re-assessment, revision or any other proceedings under the provisions of any of the Indirect tax laws shall be initiated on the corporate debtor or resolution applicant in relation to the period prior to acquisition of control by the resolution applicant and any consequential demand shall be considered non-existing and as not payable by the corporate debtor. Any proceedings which were kept in abeyance in view of insolvency process or otherwise shall not be revived post the order of NCLT."

- (v). Since the above stated approved resolution plan categorically states that all dues related to any period prior to the acquisition of control by the Resolution applicant shall stand extinguished by virtue of the order of the Honorable NCLT dated 16-03-2021, the confirmed demand under the impugned Order for the period April, 2016 to May, 2017 under SCN issued on 12-04-2021 after the order of NCLT is not sustainable as it is a proceeding initiated after the approval of resolution plan by NCLT. The appellant submitted that as this resolution plan is approved by Adjudicating Authority/NCLT and the same shall be binding on central government and state government. Hence, no claim can be raised by central government and state government against the appellant and thus the SCN issued and the Impugned Order is pointless or unnecessary or infructuous.

- (vi). The appellant submitted that the CBIC, vide its Instruction No. 1083/04/2022-CX9 dated 23-05-2022, has provided Standard Operating Procedure (SOP) for NCLT



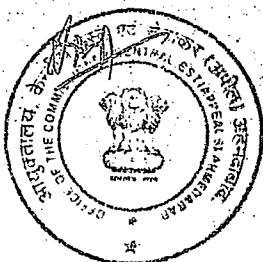
cases in respect of the Insolvency and Bankruptcy Code (IBC) wherein it has stated that it is settled position that no claims can be raised once the plan is approved and no demands can be raised on the resolution applicant who has taken over the company through such a resolution plan. Paragraph 2 of this instruction is reproduced here for ready reference:

"A timeline of 90 days from the insolvency commencement date is available for filing of claims. However, it has been observed that there is an inordinate delay in filing of claims by Customs and GST authorities. This leads to their claims not being admitted and extinguished once a resolution plan is approved. It is also observed that the authorities then litigate on the rejection of each claims, despite the settled position that no claims can be raised once the plan is approved and no demands can be raised on the resolution applicant who has taken over the company through such a resolution plan."

(vii). SCN dated 12-04-2021 has been issued, despite the clear instructions from CBIC that, that claims shall stand extinguished once the resolution plan is approved and no demands can be raised thereafter. Therefore, this SCN is issued in clear defiance of the legal position explained by the CBIC instruction dated 23-05-2022 referred above and thus this SCN is infructuous and any Order on the basis of such infructuous SCN is not sustainable in law.

(viii). The appellant submitted that no demand can be raised against them and no proceedings can be initiated against them, in respect of dues for the period prior to the date on which the adjudicating authority/NCLT has approved the resolution plan. In this regard, the appellant relied upon the following case laws:

- a) Ghanashyam Mishra & Sons Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Company Ltd. [(2021) 9 SCC 657]
- b) Ultra Tech Nathdwara Cement Limited Vs. Union of India [(2020) 37 G.S.T.L. 289(Raj.)].
- c) Ruchi Soya Industries Ltd. Vs. Union of India [2022 (380) E.L.T 8 (S.C)]
- d) V. S. Metacast P. Ltd. Vs. DCIT [ITA No. 2950/Ahd/2017 (ITAT-Ahmd.)]
- e) Garden Silk Mills Ltd. Vs. Union of India [2022 (381) E.L.T 445 (Guj.)]
- f) UOI Vs. Kamlakshi Finance Corporation Ltd. [1991 (55) ELT 433 (SC)]



(ix). When no amount can be demanded for dues prior to date of approval of resolution plan, the demand for tax as well as interest thereon in the impugned order is not sustainable.

(x). Confirming demand beyond normal period of limitation when there is not an iota of evidence of suppression or intent to evade payment of duty on the part of this appellant. Considering the following submissions, this appellant prays to hold that penalties cannot be imposed and extended period of limitation cannot be invoked in this case and that entire demand is time barred.

(xi). The appellant submitted that they have not received any show cause notice or notice of personal hearing in this matter. There was no change of address of this appellant after taking completion of CIRP. It is strange that they have not received any communication from the department in this matter. This clearly shows that the matter was adjudicated without giving us any opportunity of being heard and thus they requested to hold that the impugned order is issued defying the principles of natural justice and quash such an order.

4. Personal hearing in the case was held on 04.09.2023. Shri Nandesh Barai, Chartered Accountant and Shri Nilesh Suchak, Chartered Accountant, appeared on behalf of the appellant for personal hearing and handed over additional submissions in a paper book containing supporting decisions. They reiterated contents thereof, and the submissions made in appeal memorandum. They submitted that the impugned order was passed after completion of resolution process by NCLT and acquisition of the appellant company by resolution applicant. Therefore, the impugned order is not valid in law and requires to be set aside. Further, the show cause notice was issued after expiry of stipulated time period of 30 months from relevant date and as there is not an iota of evidence of suppression on the part of appellant, he requested to set aside the impugned order on merits as well as on limitations.

4.1 The appellant vide their additional written submission dated 04.09.2023, inter alia reiterated the submission made by them in the appeal memorandum.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum, additional written submission as well as during the course of personal hearing and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand of recovery of cenvat credit against the appellant along with interest and penalty, in



the facts and circumstance of the case, is legal and proper or otherwise. The demand pertains to the period FY 2016-17 to FY 2017-18 (upto May-2017).

6. It is observed that the main contention of the appellant is that the show cause notice dated 12.04.2021 was issued to the appellant after the resolution plan as approved by Committee of Creditors was allowed by NCLT vide its order dated 16.03.2021. As the resolution plan categorically states that all dues related to any period prior to the acquisition of control by the resolution applicant i.e. the appellant shall stand extinguished by virtue of the order of the Hon'ble NCLT dated 16.03.2021. Thus, the confirmation of demand of recovery of cenvat credit under the impugned order for the period from April-2016 to May-2017 is not sustainable as the same is for the period prior to acquisition of control of the appellant by Resolution applicant i.e. N. A. Roto Machines & Moulds India.

7. On verification of the case records, I find that the the application for initiating Corporate Insolvency Resolution Process was admitted by National Company Law Tribunal (NCLT) under Section 9 of The Insolvency and Bankruptcy Code against the appellant vide NCLT Order dated 30-09-2019 and moratorium was declared prohibiting institution of suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or authority. Thereafter, Manish Kumar Bhagat was appointed as Resolution Professional. M/s. N. A. Roto Machines & Moulds India (Resolution applicant) put up a resolution plan dated 09.11.2020 to Shri Manish Kumar Bhagat, Resolution Professional.

7.1. Then after, the Committee of Creditors was formed and Resolution Plan was approved by majority of 96.37% of the Committee of Creditors members. The NCLT being satisfied that the Resolution Plan approved by Committee of Creditors meets the requirements referred to under Section 30(2) of the Code, the NCLT vide Order dated 16.03.2021 allowed IA 926 of 2020 in CP(IB) No. 148/NCLT/AHM/ 2019. N. A. Rota Machines and Moulds India has taken over the management of Perfect Boring Pvt. Ltd. after passing of Order by NCLT on 16.03.2021 approving the resolution plan.

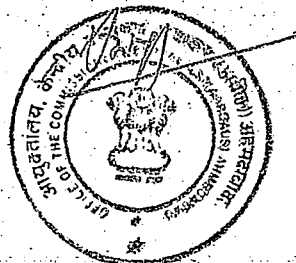
7.2 I also find that on issuance of the Order dated 16.03.2021 by the NCLT all dues under the provisions of all the indirect taxes, including taxes, duty, penalties, interest, fines, cess, charges, unpaid TDS/TCS (to the extent applicable), in relation to any period prior to the acquisition of control by the Resolution applicant over the corporate debtor pursuant to the Resolution Plan, shall stand extinguished. The relevant Para Part J (ix) of the Order dated 16.03.2021 of the NCLT reads as under:



"All dues under the provisions of all the indirect taxes, including but not limited to, the Central Excise Act, 1944, the Finance Act, 1994 (Service Tax), The Customs Act, 1962, VAT Act, GST Act and any other indirect tax laws, including taxes, duty, penalties, interest, fines, cess, charges, unpaid TDS/TCS (to the extent applicable), whether admitted or not due or contingent, whether part of the above mentioned contingent liability schedule dues or not, whether claimed by the tax authorities or not, asserted or un-asserted, crystallized or not crystallized, known or unknown, secured or unsecured, disputed or undisputed present or future, in relation to any period prior to the acquisition of control by the Resolution applicant over the corporate debtor pursuant to this Resolution Plan, shall stand extinguished by virtue of the order of the Honorable NCLT approving this Resolution plan and the Corporate Debtor or Resolution Applicant shall not be liable to pay any amount against such demand. All outstanding litigation/demands, assessments/appellate or other proceedings, including but not limited to any audits, investigations, search and seizure, pending in case of the corporate debtor, on the date of the order of NCLT relating to the period prior to that date, shall stand terminated and all consequential liabilities if any, shall be deleted and shall be considered to be not payable by the Corporate Debtor by the virtue of the order on the Honorable NCLT. All the notices proposing, to initiate any proceedings against the corporate debtor in relation to the period prior to the date of the NCLT order, and pending on that date, shall be considered deleted and shall not be proceeded against. Post the Order of the NCLT, no re-assessment, revision or any other proceedings under the provisions of any of the Indirect tax laws shall be initiated on the corporate debtor or resolution applicant in relation to the period prior to acquisition of control by the resolution applicant and any consequential demand shall be considered non-existing and as not payable by the corporate debtor. Any proceedings which were kept in abeyance in view of insolvency process or otherwise shall not be revived post the order of NCLT."

7.3 I also observed that the Insolvency Professional, Shri Manish Kumar Bhagat, vide his letter dated 04.05.2021, informed the adjudicating authority about the passing of the resolution plan which was taken as defence reply by the adjudicating authority as mentioned in Para 21 of the impugned order by him, which reads as under:

"The Insolvency Professional, Shri Manish Kumar Bhagat, vide his letter dated 04.05.2021, filed the defence reply in the said matter, wherein he has submitted that resolution plan in case of M/s Perfect Boring Pvt Ltd had been approved by Hon'ble



NCLT, Ahmedabad Bench vide its order dated 16.3.2021 in IA 926 of 2020 in C.P.(1.8.) No. 148/NCLT/AHM/2019. Further, he also stated that once the Resolution Plan is approved by adjudicating authority, Resolution Professional ceases to exist and his duties and responsibilities as Resolution Professional finishes. A copy of the Order dated 16.03.2021 of the NCLT was also enclosed."

7.4 For ease of reference I hereby reproduce the provision of Section 31(1) of Insolvency and Bankruptcy Code, 2016:

"If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan: under this sub-section, satisfy that the resolution plan has provisions for its effective implementation."

7.5 Bare reading of the aforesaid provision makes it clear that the Central Government, any State Government or any Local Authority to whom debt in respect of payment of dues arising under any law for the time being in force, then such as the authorities to whom statutory dues are owed falls within the purview of Section 31 of the Code, 2016. As such, when the resolution plan is approved by NCLT, the claims, which are not part of the resolution plan, shall stand extinguished and the proceedings related thereto shall stand terminated.

7.6 I also find that present proceedings i.e. issuance of the SCN and confirmation of demand relates to the period prior to the approval of the plan and not the part of the approved plan, even the SCN was issued after the approval of the plan by NCLT. Therefore, in my considered view that the proceeding initiated vide the present SCN dated 12.04.2021 and issuance of the impugned order by the adjudicating authority is infructuous and not legally tenable and deserved to be set aside.

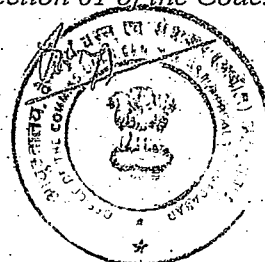


8. In this regard, I refer to the order of the Hon'ble High Court of Gujarat in case of Garden Silk Mills Ltd. vs. UOI, wherein it was held that claims which are not part of resolution plan approved by the NCLT, stand extinguished and so proceedings related thereto should be terminated. The relevant part of the said decision reads as under:

"8. In our view, the legal position as regards the effect of resolution plan once approved by the NCLT vis-a-vis the claims pending adjudication is concerned, is no longer res integra in view of the recent pronouncement of the Supreme Court in the case of Ghanshyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd. reported in (2021) 9 sec 657 wherein the Supreme Court took the view as regards 2019 amendment being incorporated to Section 31 of the Insolvency and Bankruptcy Code, 2016 being treated clarificatory and declaratory in nature and thereby treating it to have come into effect retrospectively. The relevant observation as recorded in Paragraph 138 of the aforesaid decision are reproduce as under:

"In the foregoing paragraphs, we have held, that 2019 amendment to Section 31 of I&B Code is clarificatory and declaratory in nature and therefore will have a retrospective operation. As such, when the resolution plan is approved by NCLT, the claims, which are not part of the resolution plan, shall stand extinguished and the proceedings related thereto shall stand terminated. Since the subject matter of the petition are the proceedings, which relate to the claims of the respondents prior to the approval of the plan, in the light of the view taken by us, the same cannot be continued. Equally the claims, which are not part of the resolution plan, shall stand extinguished."

9. In view of the aforesaid legal position as well as taking into consideration the provisions of the resolution plan as approved by the National Company Law Tribunal, Ahmedabad Bench, in case of the writ applicant along with all the reliefs, concessions and dispensations as granted in the approval order, we hereby hold that the present writ application is rendered infructuous, non est and is disposed of as abated. So far as the issue of extinguishment of claims pending adjudication of the respondent revenue department is concerned, Mr. Dhaval Vyas, the Learned Senior Standing Counsel appearing for the department has submitted that though the writ petition being declared as infructuous and abated, liberty may be reserved in favour of the revenue department to invoke Section 61 of the Insolvency and Bankruptcy Code, 2016, if in any eventuality such question arises for consideration in future. It would be appropriate to consider sub-section (3) of Section 61 of the Code.



10. Thus, we find that the provision itself makes it clear that if in case the revenue is dissatisfied in any manner with the sanctioning of the resolution plan by the National Company Law Tribunal then the liberty is always reserved in favour of the revenue to prefer an appeal under Section 61 of the Code, 2016 before the National Company Law Appellate Tribunal.

11. For the reasons stated above, the present writ application does not survive and is hereby disposed of as abated and infructuous. We further clarify that we have otherwise not expressed any opinion on the merits of the case and at the same time, we reserve the liberty in favour of the revenue department to file appropriate proceedings or an appeal as provided under Section 61 of the Code, 2016. Resultantly, the Civil Application bearing No. 1 of 2021 filed in the main writ application also stands disposed of accordingly Notice stands discharged."

9. In view of the above discussion, I hold that the impugned order passed by the adjudicating authority, demanding recovery of Cenvat Credit for the period from April-2016 to May-2017, is not legal and proper and deserve to be set aside. Since the demand of recovery of Cenvat Credit is not sustainable on merits, there does not arise any question of charging interest or imposing penalties in the case. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

10. अपील कर्ता 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.

(Signature)
25-9-23

(Shiv Pratap Singh)
Commissioner (Appeals)

Attested

(Signature)
Superintendent(Appeals),
CGST, Ahmedabad

Date : 25-9-23



By RPA / SPEED POST

To,
M/s. Perfect Boaring Pvt. Ltd.,

Appellant

3822/A, GIDC Estate,
Behind Indo German Tool Room,
Vatva, Ahmedabad – 382445

The Joint Commissioner,
Central GST,
Ahmedabad South

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad South
- 3) The Joint Commissioner, CGST, Ahmedabad South
- 4) The Assistant Commissioner, CGST, Division III, Ahmedabad South
- 5) The Assistant Commissioner (HQ System), CGST, Ahmedabad South
(for uploading the OIA)
- 6) Guard File
- 7) PA file

