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आयुक्त (अपील्स) का कार्यालय, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क:
O/O THE COMMISSIONER (APPEALS), CENTRAL GST & EXCISE,



द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,
राजकोट / Rajkot - 360 001

Tele Fax No. 0281 - 2477952/2441142 Email: cexappealsrajkot@gmail.com

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/258/BVR/2017	84/Excise/Demand/16-17	31/03/2017

7350767357

ख अपील आदेश संख्या (Order-In-Appeal No.):

BHV-EXCUS-000-APP-131-2017-18

आदेश का दिनांक / Date of Order:	22.02.2018	जारी करने की तारीख / Date of issue:	26.02.2018
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कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot

ग अग्रे उल्लेखित आदेशों के संबंध में आदेश जारी करने वाले अधिकारी / अधिकारियों के नाम अपील द्वारा बतवाये जाते हैं।
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham

घ **अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name&Address of the Appellants & Respondent :-**
I.M/s Madhu Silica pvt. Ltd. Unit-I, Plot No. 40 GIDC,Chitra Bhavnagar

इस आदेश/अपील से व्यभिक्त कोई व्यक्ति निम्नलिखित तरीके से उपयुक्त अधिकारी / अधिकारियों के समक्ष अपील दायर कर सकता है।
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way

- (A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है।
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-
- (i) सर्वोच्च न्यायालय में सम्बन्धित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं. 2, आर.के. पुरम, नई दिल्ली, को की जा सकती है।
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.
- (ii) उपरोक्त परिच्छेद (1a) में बताए गए अपील के अलावा सब अपीलें सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (किरस्टैट) की वेस्ट क्षेत्रीय पीठ, द्वितीय तल, भवनाथ भवन असावी अहमदाबाद-380016 को की जानी चाहिए।
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhavnath Bhawan, Asawa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above
- (iii) अपील न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) विधिसूची, 2001, के नियम 6 के अंतर्गत निर्धारित फॉर्म नंबर EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इसमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की रकम, आयाज की रकम और लगाया गया जुर्माना, रकम 5 लाख या उससे कम, 5 लाख रकम या 50 लाख रकम तक अथवा 50 लाख रकम से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपील न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सर्वजनिक क्षेत्र के बैंक द्वारा जारी रेकॉर्ड बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपील न्यायाधिकरण की शाखा स्थित है। स्थान आदेश (एट आर्डर) के लिए आदेश-पत्र के साथ 500/- रुपये का निर्धारित शुल्क जमा करना होगा।
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.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/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 Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-
- (B) अपील न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर विधिसूची, 1994, के नियम 9(1) के तहत निर्धारित फॉर्म S.T.-5 में चार प्रतियों में की जा सकती है। इसमें से कम से कम एक प्रति के साथ, जहां अपील की रकम, आयाज की रकम और लगाया गया जुर्माना, रकम 5 लाख या उससे कम, 5 लाख रकम या 50 लाख रकम तक अथवा 50 लाख रकम से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपील न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सर्वजनिक क्षेत्र के बैंक द्वारा जारी रेकॉर्ड बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपील न्यायाधिकरण की शाखा स्थित है। स्थान आदेश (एट आर्डर) के लिए आदेश-पत्र के साथ 500/- रुपये का निर्धारित शुल्क जमा करना होगा।
The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-



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- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दंडों की राशि अर्थात्, सेवाकर विधेयक, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित धारा S.T.-7 में की जा सकती एवं उसके साथ अनुसूचित, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा जारी आदेश की प्रतियाँ संलग्न की (जहाँ से एक प्रति प्रामाणिक होनी चाहिए) और अनुसूचित द्वारा सहायक आयुक्त अथवा उपस्थित, केन्द्रीय उत्पाद शुल्क सेवाकर, को अपीलार्थि प्रशासिका को आदेश दूने करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होती। / The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST-7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
 - (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलार्थि प्रशासिका (सेलैट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एक के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलार्थि प्रशासिका में अपील करते समय उत्पाद शुल्क/सेवा का मूल्य के 10 प्रतिशत (10%), जब मूल्य एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जहाँ कि जाने वाली अपेक्षित टैक्स रशि टैक्स कलेक्टर द्वारा से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत 'आवृत्त किए गए शुल्क' से निम्न शामिल है
 - (i) धारा 11 डी के अंतर्गत रकम
 - (ii) सेलैट जमा की गयी गयी राशि
 - (iii) सेलैट जमा प्रिधानवली के नियम 6 के अंतर्गत टैक्स रकम
- बशर्ते यह कि इस धारा के प्राधान्य वित्तीय (सं. 2) अधिनियम 2014 के अंतर्गत में पूर्व किसी अपीलार्थि प्रशासिका के द्वारा विधेयक नियम अर्थात् अपील की लागू नहीं होगी।
For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, 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, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores.
Under Central Excise and Service Tax, 'Duty Demanded' shall include :
 - (i) amount determined under Section 11 D;
 - (ii) amount of erroneous Cenvat Credit taken;
 - (iii) amount payable under Rule 6 of the Cenvat Credit Rules
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.
- (C) भारत सरकार को पुनरीक्षण आदेश :**
Revision application to Government of India:
इस आदेश की पुनरीक्षण वारिष्क विधेयक नियमों के अंतर्गत, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के अंतर्गत आदेश अर्थात्, भारत सरकार, पुनरीक्षण आदेश (क्याई, वित्त सचिवालय, राजस्व विभाग, लोधी मंजिल, लोकार्थी टावर अवन, समुद्र मार्ग, नई दिल्ली-110001, को किया जाना चाहिए)।
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid.
- (i) यदि माल के किसी नुकसान के मामले में, जहाँ नुकसान किसी माल को किसी कारखाने से अथवा गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक अथवा गृह से दूसरे अथवा गृह पारगमन के दौरान, या किसी अथवा गृह में या अथवा में माल के पारगमन के दौरान, किसी कारखाने या किसी अथवा गृह से माल के नुकसान के मामले में। / In case of any loss of goods, where the loss occurs 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
 - (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त किये गए माल पर अर्धी गयी केन्द्रीय उत्पाद शुल्क के छूट (रिबैट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। / 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.
 - (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
 - (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इच्छा केवल इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मूल्य की गई है और ऐसे आदेश जो अनुसूचित (अपील) के द्वारा वित्त अधिनियम (सं. 2), 1998 की धारा 109 के द्वारा निर्यात की गयी माल अथवा अथवा वारिष्क पर या बट में प्रदान किए गये हैं। / 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 such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
 - (v) उपरोक्त आदेश की दो प्रतियाँ धारा संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) विधेयक, 2001, के नियम 9 के अंतर्गत निर्दिष्ट है, इस आदेश के संकेत के 3 महीने के अंतर्गत की जानी चाहिए। उपरोक्त आदेशों के साथ मूल आदेश व अपील आदेश की दो प्रतियाँ संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के संकेत के नीचे पर TR-6 की प्रति संलग्न की जानी 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.
 - (vi) पुनरीक्षण आदेश के साथ विधेयक निर्धारित शुल्क की अदायगी की जानी चाहिए। / जहाँ संलग्न रकम एक लाख रुपये या उसके कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 / का भुगतान किया जाए। / The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
 - (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपरोक्त दंड से किया जाना चाहिए। इस तथ्य के होने हुए भी की निम्न परी करके से दंडों के लिए वारिष्क अपीलार्थि प्रशासिका को एक अपील या केन्द्रीय सरकार को एक आदेश किया जाना है। / In case, if the order covers various numbers 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 Appellate Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
 - (E) वयासार्थि प्रशासिका शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं अथवा आदेश की प्रति पर निर्धारित 6.50 रुपये का अथवा शुल्क टिकट लगा होना चाहिए। / One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.
 - (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलार्थि प्रशासिका (क्याई विधि) विधेयक, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्बन्धित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाना है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.
 - (G) उच्च अपीलार्थि प्रशासिका को अपील दर्जित करने से संबंधित न्यायक, विस्तृत और संबंधित प्रावधानों के लिए, अपीलार्थि विस्तृत वेबसाइट www.cbec.gov.in को देख सकते हैं। / For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in.

:: ORDER IN APPEAL ::

M/s. Madhu Silica Pvt. Ltd., No. 40, GIDC Chitra, Bhavnagar (*hereinafter referred to as "Appellant"*) filed appeal against Order-In-Original No. 84/Excise/Demand/2016-17 dated 31.03.2017 (*hereinafter referred to as 'the impugned order'*) passed by the Assistant Commissioner, Central Excise, City Division, Bhavnagar (*hereinafter referred to as 'the lower adjudicating authority'*).

2. The facts of the case are that audit of records of Appellant revealed that they had availed Cenvat credit of Rs. 40,517/- on Construction Service, Hotel Services and Vehicle Repairing Services allegedly in contravention of Rule 2(l) of the Cenvat Credit Rules, 2004 (*hereinafter referred to as "the Rules"*) as amended vide Notification No. 3/2011-Central Excise(NT). Show Cause Notice No. V/15-43/Demand-MSPL DU-I/2015-16 dated 29.02.2016 was issued to the Appellant proposing recovery of Rs. 40,517/- under Rule 14 of the Rules read with Section 11(A)(4) of the Central Excise Act, 1944 (*hereinafter referred to as "the Act"*) and interest under Rule 14 of the Rules read with Section 11AA of the Act and to impose penalty under Rule 15(2) of the Rules read with Section 11AC of the Act. Vide the impugned order, the lower adjudicating authority confirmed demand of Rs. 40,517/- along with interest and imposed penalty of Rs. 40,517/- .

3. Being aggrieved with the impugned order, the appellant preferred appeal, *inter alia*, contending that they availed Cenvat credit of Service Tax on repairing of vehicles as the subject vehicles were registered in the name of the Appellant factory and the same were not capital goods for them; that credit of Hotel Services available to them as nexus is not required to be proved except that the services are not covered under exclusion clause of the definition of 'input service' under Rule 2(l) of the Rules; that hotel services availed by them actually pertained to business activity and all relevant records like invoices of service provider, report of visitors, R.C. book were available with them; that no interest is recoverable under Rule 14 of Rules as the balance of Cenvat credit always has remained in excess of the disputed Cenvat credit ie. Rs. 40,517/- in the Cenvat credit account.

3.1 The appellant submitted that availment of Service Tax credit on hotel services, construction services and vehicle repairing services were in the knowledge of the Department all along; that the appellant was registered with Central Excise Department and they were required to disclose in the periodical

returns which they did and the department could have examined/verified this aspects any time and therefore the extended period is not invocable; that due to this reason interest is not chargeable in this case; that availment of Cenvat credit on Hotel Services and Vehicle Repairing services being an issue of interpretation penalty should not be imposed upon them.

4. Personal hearing in the matter was attended by Shri R. R. Dave, Consultant wherein he, *inter alia*, reiterated the grounds of appeal and submitted that Cenvat credit of Service Tax on Hotel charges is admissible as the technical experts come for business development plan to handle major technical work; that vehicles are in name of company to be used for business purpose and hence appeal may be allowed. No one appeared from the Department despite personal hearing notices sent to the Commissionerate.

Findings :-

5. I have carefully gone through the facts of the case, the impugned order, the grounds of appeal, written and oral submissions made by the appellant. The issues to be decided in the instant appeal are,

- (i) Whether Cenvat credit of Service Tax on Hotel Services availed is correct or not;
- (ii) Whether Cenvat credit of Service Tax on Vehicle repairing services availed is correct or not;
- (iii) Whether Cenvat credit of Service Tax on Construction Services is correct or not;
- (iv) Whether interest is chargeable under Rule 14 of the Rules read with Section 11AA of the Act or not; and
- (v) Whether penalty under Rule 15(2) of the Rules read with Section 11AC of the Act is imposable or not.

6. The appellant submitted Worksheet during personal hearing showing bill-wise details of disputed Service Tax credit scanned copy of which is as under :

MAOHU SILICA PVT. LTD.
40, GDC, Chitra, Bhavnagar

OIO NO. 84/DEMAND/EXCISE/2016-17

Sr. No.	Entry No.	Dt. of credit Availed	Bill Date	Bill No.	Name of Service Provider	Paymt Date	CREDIT			Total	Nature of Service
							S.TAX	du. Cdg	S.S.H.		
1	640	20-01-2013	09-01-2013	3338	Hotel White Rose	18-01-2013	136	3	1	140	Hotel service
2	665	05-02-2013	07-01-2013	3964	Hotel Sun n Shine	22-01-2013	692	14	7	713	Hotel service
3	666	05-02-2013	13-01-2013	3381	Hotel White Rose	22-01-2013	1,488	30	15	1,533	Hotel service
4	667	05-02-2013	12-01-2013	1677	Nilambag Palace Hotel	22-01-2013	202	4	2	208	Hotel service
5	673	05-02-2013	19-01-2013	3019	Gauraj Hotels Pvt. Ltd.	02-02-2013	87	2	1	90	Hotel service
6	674	05-02-2013	12-01-2013	3330	Generation X Hotel	02-02-2013	115	2	1	118	Hotel service
7	675	05-02-2013	12-01-2013	3331	Generation X Hotel	02-02-2013	345	7	3	355	Hotel service
8	676	05-02-2013	13-01-2013	3346	Generation X Hotel	02-02-2013	605	16	8	629	Hotel service
9	692	10-02-2013	06-02-2013	3666	Hotel White Rose	08-02-2013	136	3	1	140	Hotel service
10	729	05-03-2013	15-02-2013	1960	Nilambag Palace Hotel	25-02-2013	202	4	2	208	Hotel service
11	740	10-03-2013	22-10-2012	1352	Narayani Heritage	05-03-2013	155	3	2	160	Hotel service
12	741	10-03-2013	27-06-2012	619	Narayani Heritage	05-03-2013	311	6	3	320	Hotel service
13	742	10-03-2013	01-07-2012	641	Narayani Heritage	05-03-2013	401	8	4	413	Hotel service
14	743	10-03-2013	20-08-2012	947	Narayani Heritage	05-03-2013	77	2	1	80	Hotel service
15	751	10-03-2013	06-07-2012	-	Jay Parekh	08-03-2013	6,056	121	61	6,238	Tank Foundation
16	754	10-03-2013	03-10-2012	1216	Narayani Heritage	08-03-2013	1,942	39	19	2,000	Hotel service
17	755	10-03-2013	04-07-2012	664	Narayani Heritage	08-03-2013	155	3	2	160	Hotel service
18	756	10-03-2013	26-10-2013	1202	Nilambag Palace Hotel	08-03-2013	404	8	4	416	Hotel service
19	757	10-03-2013	11-05-2012	222	Nilambag Palace Hotel	08-03-2013	252	5	3	260	Hotel service
20	781	31-03-2013	20-02-2013	SIP304037	Parsol Motor Works Pvt. Ltd.	19-03-2013	173	3	2	178	Vehicle Repairing
21	785	31-03-2013	09-03-2013	3264	Top3 Lords Resort	19-03-2013	192	4	2	198	Hotel service
22	10	20-04-2013	21-03-2013	12009424	Eternal Motors Pvt. Ltd.	09-04-2013	160	3	2	165	Vehicle Repairing
23	11	20-04-2013	22-03-2013	12009454	Eternal Motors Pvt. Ltd.	09-04-2013	234	5	2	241	Vehicle Repairing
24	12	20-04-2013	04-04-2013	13000074	Eternal Motors Pvt. Ltd.	09-04-2013	42	1	0	43	Vehicle Repairing
25	13	20-04-2013	21-03-2013	12009409	Eternal Motors Pvt. Ltd.	19-03-2013	300	6	3	309	Vehicle Repairing
26	14	20-04-2013	22-03-2013	12009434	Eternal Motors Pvt. Ltd.	19-03-2013	240	5	2	247	Vehicle Repairing
27	15	20-04-2013	20-03-2013	12009383	Eternal Motors Pvt. Ltd.	19-03-2013	264	5	3	272	Vehicle Repairing
28	16	20-04-2013	20-03-2013	12009387	Eternal Motors Pvt. Ltd.	19-03-2013	264	5	3	272	Vehicle Repairing
29	17	20-04-2013	20-03-2013	12009390	Eternal Motors Pvt. Ltd.	19-03-2013	264	5	3	272	Vehicle Repairing
30	18	20-04-2013	20-03-2013	12009389	Eternal Motors Pvt. Ltd.	19-03-2013	264	5	3	272	Vehicle Repairing
31	19	20-04-2013	21-03-2013	12009419	Eternal Motors Pvt. Ltd.	19-03-2013	264	5	3	272	Vehicle Repairing
32	20	20-04-2013	22-03-2013	12009432	Eternal Motors Pvt. Ltd.	19-03-2013	240	5	2	247	Vehicle Repairing
33	52	20-04-2013	23-03-2013	4163	Hotel White Rose	16-04-2013	136	3	1	140	Hotel service
34	65	10-05-2013	13-04-2013	132	Top3 Lords Resort	25-04-2013	192	4	2	198	Hotel service
35	70	10-05-2013	21-04-2013	4666	Generation X Hotel	25-04-2013	119	2	1	122	Hotel service
36	71	10-05-2013	17-04-2013	4605	Generation X Hotel	25-04-2013	119	2	1	122	Hotel service
37	78	10-05-2013	29-04-2013	4776	Generation X Hotel	07-05-2013	238	5	2	245	Hotel service
38	79	10-05-2013	29-04-2013	4777	Generation X Hotel	07-05-2013	238	5	2	245	Hotel service
39	106	25-05-2013	28-03-2013	BR12009577	Eternal Motors Pvt. Ltd.	14-05-2013	439	9	4	452	Vehicle Repairing
40	107	25-05-2013	14-05-2013	5001363	Landmark Automobiles Pvt. Ltd.	14-05-2013	303	6	3	312	Vehicle Repairing
41	108	25-05-2013	14-05-2013	5001354	Landmark Automobiles Pvt. Ltd.	14-05-2013	224	4	2	230	Vehicle Repairing
42	109	25-05-2013	11-05-2013	235	Narayani Heritage	21-05-2013	155	3	2	160	Hotel service
43	115	25-05-2013	13-04-2013	131	Hotel White Rose	17-05-2013	136	3	1	140	Hotel service
44	116	25-05-2013	07-05-2013	4870	Generation X Hotel	17-05-2013	238	5	2	245	Hotel service
45	117	25-05-2013	07-05-2013	4871	Generation X Hotel	17-05-2013	238	5	2	245	Hotel service
46	118	25-05-2013	06-05-2013	4863	Generation X Hotel	17-05-2013	118	2	1	121	Hotel service
47	146	30-06-2013	29-05-2013	633	Hotel White Rose	07-06-2013	136	3	1	140	Hotel service
48	160	30-06-2013	01-06-2013	666	Hotel White Rose	16-06-2013	136	3	1	140	Hotel service
49	174	31-07-2013	28-06-2013	0206	Parsol Motor Works Pvt. Ltd.	28-06-2013	14,479	290	145	14,914	Vehicle Repairing
50	203	31-07-2013	13-07-2013	1132	Hotel White Rose	19-07-2013	79	2	1	82	Hotel service
51	211	31-07-2013	16-07-2013	S-01549	Landmark Automobiles Pvt. Ltd.	19-07-2013	665	17	9	691	Vehicle Repairing
52	226	23-08-2013	12-07-2013	002646	Eternal Motors Pvt. Ltd.	02-08-2013	409	8	4	421	Vehicle Repairing
53	228	23-08-2013	31-07-2013	1327	Hotel White Rose	06-08-2013	135	3	2	140	Hotel service
54	251	28-09-2013	24-08-2013	762	Narayani Heritage	30-08-2013	155	3	2	160	Hotel service
55	252	28-09-2013	13-08-2013	743	Narayani Heritage	30-08-2013	234	4	2	240	Hotel service
56	255	28-09-2013	03-08-2013	1351	Hotel White Rose	23-08-2013	471	9	5	485	Hotel service
57	326	20-11-2013	13-11-2013	1156	Narayani Heritage	19-11-2013	155	3	2	160	Hotel service
58	335	30-11-2013	31-10-2013	1123	Narayani Heritage	12-11-2013	155	3	2	160	Hotel service
59	359	18-12-2013	07-12-2013	2661	Hotel White Rose	17-12-2013	174	3	2	179	Hotel service
60	370	31-12-2013	12-12-2013	1317	Narayani Heritage	20-12-2013	233	5	2	240	Hotel service
61	401	20-01-2014	11-01-2014	01621	Narayani Heritage	17-01-2014	155	3	2	160	Hotel service
62	405	20-01-2014	14-12-2013	02754	Hotel White Rose	03-01-2014	158	3	2	163	Hotel service
63	406	31-01-2014	20-01-2014	1318008	Parsol Motor Works Pvt. Ltd.	21-01-2014	1,462	29	15	1,506	Vehicle Repairing
Total ...							38,336	786	395	40,517	

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6.1 I would like to examine the definition of "input service" under Rule 2(l) of the Rules which is reproduced as under :-

"l) "input service" means any service,-

- (i) used by a provider of taxable service for providing an output service; or
- (ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,

and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and

training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal;

but excludes, -

(A) service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for -

(a) construction or execution of works contract of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or

(B) services provided by way of renting of a motor vehicle, in so far as they relate to a motor vehicle which is not a capital goods; or

(BA) service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods, except when used by -

(a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or

(b) an insurance company in respect of a motor vehicle insured or reinsured by such person; or

(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee."

[Emphasis supplied]

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6.2 It is seen from that the appellant has availed Cenvat credit of Rs. 6,238/- vide Sr. No. 15 / Entry No. 151 dated 06.07.2012 for constructing tank foundation. I find that Cenvat credit on Construction services is hit by the exclusion clause A(b) of Rule 2(l) of the Rules and therefore, demand of Rs. 6,238/- confirmed vide the impugned order is required to be upheld.

6.3 Regarding demand of Cenvat credit of Service Tax on Hotel Services, I find that the appellant provided accommodation/hotel facility to the personnel visiting their company for stay in various hotels. The definition of "input service" very clearly is provided as any service used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal, with the inclusions such as advertisement, market research and sales promotion, etc. but excludes services which are primarily for personal use or consumption of any employee. The appellant has pleaded that the hotel services are used by them for business purpose and no nexus is required to be proved for availing of Cenvat credit, except when it is covered under exclusion clause. In this regard, I find that the appellant has apparently not been able to demonstrate as to how and in which manner, Hotel services have been used by them in or in relation to manufacture of their final products and clearance thereof. The appellant has also failed to cite case law of any judicial fora to substantiate their contention. I find that as per Rule 9(5) of the Cenvat Credit Rules, 2004, the burden of proof for admissibility of Cenvat credit is cast upon the assessee and the appellant has failed to discharge this burden and hence, Service tax paid on hotel charges cannot be allowed to be taken as Cenvat credit by the appellant.

6.4 Regarding availment of Cenvat credit of Service Tax on repairing of Motor vehicle, it seen from the details provided by the appellant that they have availed Cenvat credit of Service Tax on service and repairing of passenger motor car like, BMW, Honda City, Maruti Suzuki Wagon-R. The exclusion clause (BA) of input service very clearly excludes "Service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods" and it is seen that these vehicles have not been treated as capital goods by the appellant. Hence, Cenvat credit of Service Tax in respect of servicing, repairs and maintenance relating to motor vehicles is Service Tax unequivocally excluded and therefore, Cenvat credit availed in respect of Vehicle/car repairing service is not eligible to the appellant.

6.5 In view of the above discussion and categorical legal position, Cenvat credit on Construction Service, Hotel/Accommodation Service and Vehicle repairing service in this appeal, is not eligible. I, therefore, uphold the impugned order denying Cenvat credit on the disputed services availed by the appellant.

6.6 Since demand of Cenvat credit is upheld recovery of interest under Rule 14 of the Rules read with Section 11AA of the Act is upheld.

6.7 Regarding imposition of penalty equal to demand of Cenvat credit under Rule 15(2) of the Rules read with Section 11AC of the Act, the appellant has contended that issue involved is regarding interpretation of law and therefore, penalty is not imposable upon them. I would like to reproduce Rule 15(2) of the Act which reads as under :-


"2) In a case, where the CENVAT credit in respect of input or capital goods or input services has been taken or utilised wrongly by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of the Excise Act, or of the rules made thereunder with intent to evade payment of duty, then, the manufacturer shall also be liable to pay penalty in terms of the provisions of [clause (c), clause (d) or clause (e) of sub-section (1) of section 11AC of the Excise Act.]"

6.7.1 I find that disputed Cenvat credit taken by the appellant is categorically excluded under the definition of "input service" and therefore, it was incumbent upon the appellant to exercise restraint of availing Cenvat credit. It is well settled law that where there is no ambiguity in law and the intention of the legislature is clearly conveyed, there is no scope to read something else into the provisions, which the legislature in its wisdom has consciously omitted. I, therefore, concur with the findings of the lower adjudicating authority and hold that penalty of Rs. 40,517/- under Rule 15(2) of the Rules is imposable in this case.

8. In view of the above findings, I reject the appeal filed by the appellant and uphold the impugned order.

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

9. The appeal filed by the appellant is disposed off in above terms.


(कुमार संतोष)
आयुक्त (अपील्स)

By R.P.A.D.

To,

M/s. Madhu Silica Pvt. Ltd., Plot No. 40, GIDC Chitra, Bhavnagar – 364 060.	मेस्सेस मधु सिलिका प्राइवेट लिमिटेड, Plot No. 40, GIDC Chitra, भावनगर - ३६४ ०६०.
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Copy for information and necessary action :-

1. The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad for his kind information.
2. The Commissioner, GST & Central Excise, Bhavnagar Commissionerate, Bhavnagar
3. The Joint Commissioner, GST & Central Excise Division, Bhavnagar.
4. The Assistant Commissioner, GST & Central Excise, Bhavnagar
5. Guard File.