



::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 / 2<sup>nd</sup> 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



सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या Appeal / File No.	मूल आदेश नं / O/O No.	दिनांक / Date
	V2/52/BVR/2017	BHV-EXCUS-000-ADC-PV-003- 16-17	09.01.2017

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

**BHV-EXCUS-000-APP-214-2017-18**

आदेश का दिनांक / Date of Order:	19.03.2018	जारी करने की तारीख / Date of issue:	23.03.2018
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कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा परित /  
Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपआयुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जयनगर / गांधीधाम) द्वारा उपरलिखित जारी मूल आदेश से शिष्टित /  
Arising out of above mentioned O/O 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 :-  
M/s Madhu Silica P. Ltd. DU-IV, Plot No. 147, Vartej Bhavnagar, .

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके से उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दावा 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 अपीलार्थी न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अन्तर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अन्तर्गत 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 से सम्बन्धित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलार्थी न्यायाधिकरण की विशेष पीठ, बेंगलूर ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए।।

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 1(a) में बतलाए गए अपील के अलावा सभी अपील सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलार्थी न्यायाधिकरण (विस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहामली भवन असावा अहमदाबाद-380016 को की जानी चाहिए।।

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> Floor, Bhamali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above.

(iii) अपीलार्थी न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवली, 2001, के नियम 6 के अन्तर्गत निर्धारित किए गये फॉर्म EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की सीमा, ब्याज की सीमा और ब्याज का जमाना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपए, 5,000/- रुपए अथवा 10,000/- रुपए का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलार्थी न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलार्थी न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए 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) अपीलार्थी न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अन्तर्गत सेवाकर नियमवली, 1994, के नियम 9(1) के तहत निर्धारित फॉर्म S.T-5 में चार प्रतियों में की जा सकती है। एक साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न की जायेगी। इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की सीमा, ब्याज की सीमा और ब्याज का जमाना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपए, 5,000/- रुपए अथवा 10,000/- रुपए का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलार्थी न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलार्थी न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए 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 fee 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/-.

(i) विल अपीलियम, 1994 की धारा 86 की उप-धारा (2) एवं (2A) के अंतर्गत देने की सभी अपील, सेवाकर नियमवली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित फॉर्म S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा जारी आदेश की प्रतियाँ संलग्न करें (जहाँ से एक प्रति प्रस्तुत होनी चाहिए) और आयुक्त द्वारा सहस्रक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन देने करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For 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 अपीलीय प्रतिकरण (सेस्टैट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अपीलियम 1994 की धारा 35एक के अन्तर्गत, जो की विलीय अपीलियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्रतिकरण में अपील करते समय उत्पाद शुल्क/सेवाकर का मूल्य के 10 प्रतिशत (10%), जब मूल्य एवं जुर्माना विवादित है, का जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाय, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपीलित देय राशि इस करोंद समय में अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत 'आयुक्त द्वारा शुल्क' में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत रकम
- (ii) सेनवेट जमा की ती नई लागू राशि
- (iii) सेनवेट जमा नियमवली के नियम 6 के अंतर्गत देय रकम

- बशर्ते कि इस धारा के अंतर्गत विलीय (सं. 2) अपीलियम 2014 के अंतर्गत से पूर्व किसी अपीलीय प्रतिकार की प्रस्ताव विचारार्थ संशय नहीं एवं अपील को 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 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 Central Credit taken;
- (iii) amount payable under Rule 6 of the Central 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 आवेदन :  
Revision application to Government of India.

इस आदेश की पुनरीक्षण प्रतिक्रिया विभागाधिकृत मामलों में, केन्द्रीय उत्पाद शुल्क अपीलियम, 1994 की धारा 35EE के अंतर्गत अपील संघिक, भारत सरकार, पुनरीक्षण आवेदन इकाई, विल सहायक, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, सरदर 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, जहां नुकसान किसी माल को किसी कारखाने से अंतर गृह के परामर्श के दौरान या किसी अन्य कारखाने या फिर किसी एक अंतर गृह से दूसरे अंतर गृह परामर्श के दौरान, या किसी अंतर गृह में या अंतर गृह में माल के परिवहन के दौरान, किसी कारखाने या किसी अंतर गृह में माल के नुकसान के सम्बन्ध 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 भारत के विनिर्माण में प्रयुक्त कच्चे माल या भी नई केन्द्रीय उत्पाद शुल्क के छूट (पिबेट) 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 an 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 इव्यूटी क्रेडिट इस अपीलियम एवं इसके विभिन्न प्रावधानों के तहत माल की गई है और एसी आदेश जो आयुक्त (अपील) के द्वारा विल अपीलियम (सं. 2), 1998 की धारा 109 के द्वारा निर्यात की गई तरीक अथवा स्वयंप्रति पर या बाद में प्रदान किए गए 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 आवेदन की ही प्रतियां फॉर्म संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) नियमवली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संघेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अपीलियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदावती के संबंध के लिए 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 Chalan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(vi) पुनरीक्षण आवेदन के साथ विभागाधिकृत निर्धारित शुल्क की अदावती की जानी चाहिए। जहाँ संभव रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाय और यदि संभव रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाय। / 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 सम्बन्ध है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपरोक्त इस में किया जाना चाहिए। इस तथ्य के होते हुए भी की प्रियां यही कार्य से बचने के लिए प्राथमिक अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता 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 scriptona work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) प्रथमसंघिक न्यायालय शुल्क अपीलियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट 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 अपीलीय न्यायाधिकरण (कार्य विधि) नियमवली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्बन्धित करते वाले नियमों की और भी ध्यान आकर्षित किया जाता 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 अपीलीय प्रतिकार की अपील टाइम करने में संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट [www.cbec.gov.in](http://www.cbec.gov.in) में 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](http://www.cbec.gov.in)

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**:: ORDER IN APPEAL ::**

M/s. Madhu Silica Pvt. Ltd., DU-IV, Plot No. 147, Vartej, Bhavnagar (*hereinafter referred to as "the appellant"*) filed an appeal against the Order-In-Original No. BHV-EXCUS-000-ADC-PV-003-16-17 dated 09.01.2017 (*hereinafter referred to as 'the impugned order'*) passed by the Additional Commissioner, Central Excise & Service Tax, Bhavnagar (*hereinafter referred to as 'the lower adjudicating authority'*).

2. The brief facts of the case are that audit revealed that while setting up / expansion of plant the appellant availed Service Tax credit in respect of various services as listed at Para 2 of the impugned order. It was alleged that as per the definition of input service as provided under Rule 2(l) of Cenvat Credit Rules, 2004 (*hereinafter referred to as 'the Rules'*), as amended w.e.f. 01.04.2011, Cenvat Credit in respect of Architect's Services, Port Services, Airport Services, Commercial and Industrial Construction Services, Complex Construction Services and Works Contracts Services were specifically excluded from Cenvat credit if used for providing (i) Construction of a building or a civil structure or a part thereof, and (ii) Laying of foundation or making of structures for support of capital goods.

2.1 It was also alleged that the services of Outdoor Canteen for personal consumption of the employees were also ineligible input services for availment of Cenvat credit.

2.2 Show Cause Notice was issued to the appellant, which was adjudicated vide the impugned order whereby demand of Rs. 32,98,563/- was confirmed under Rule 14 of the Rules, read with Section 11(A)(5) of the Central Excise Act, 1944 (*hereinafter referred to as "the Act "*), along with interest under Rule 14 of the Rules read with Section 11AA of the Act and penalty was imposed under Rule 15(2) of the Rules read with Section 11AC of the Act.

3. Being aggrieved with the impugned order, the appellant preferred the present appeal, *inter alia*, contending as under:

3.1 The appellant contended that the lower adjudicating authority has wrongly concluded that Canteen services were received for personal consumption of the employees; that the credit cannot be denied on Canteen Service as the canteen was situated within the factory premises; that the services for preparation of food for in-house canteen cannot be considered as Outdoor caterer service; that

Outdoor caterer always provide food at a place other than his own, where he has to manage not even food but also utensils etc. for preparation of food, utensils for eating, service table, water etc. whereas in the present case the place of Canteen, furniture, dining etc. were owned by the appellant and therefore, the services provided in the canteen cannot be considered as outdoor catering; that value of food per dish was mutually agreed upon by the appellant and caterer; that the caterer issued invoices for the said services to the appellant and the appellant had paid the said value along with service tax to the caterer; that the appellant had not recovered service tax from the employees; that the observation of the lower adjudicating authority is not correct as providing canteen is a statutory requirement under the Factories Act, 1948, for welfare of the employees, hence, credit cannot be denied; that the lower adjudicating authority has misinterpreted the decision of Hon'ble CESTAT in case of M/s. ICICI Lombard General Insurance Company Limited reported as 2016 (42) STR 938 (Tri. Mumbai), under which the Hon'ble CESTAT has not denied credit of Service tax on canteen service.

3.2 The lower adjudicating authority has failed to justify disallowance of Cenvat credit of service tax in respect of invoices listed at Para No. 18.5, 18.6 and 18.7 of the impugned order; that copies of invoices at Serial. No. 51, 59, 61 were taken by the auditors of the Department.

3.3 The appellant submitted that the lower adjudicating authority has not taken pains to examine Invoice No. H00019 dated 11.05.2011 provided by them while denying Cenvat credit of Rs. 1,23,600/- on the ground that the services were the nature of site activities in spray drying plant and no other details have been made available by the appellant.

*Handwritten signature*

3.4 The appellant submitted that the Cenvat credit of Service Tax paid is admissible in respect of services used for Sidhamaha Chalisa Pujan and Hanuman Jayanti Celebration in the factory premises at time of inauguration of factory, which is preliminary requirement before commencement of production of the finished goods.

3.5 Running Bill is a billing system in construction business and running bill is issued only after completion of assignment and accordingly bills were issued after 01.04.2011 for construction carried out before 01.04.2011 and hence, credit is admissible to them.

3.5.1 The lower adjudicating authority wrongly denied credit of Rs. 8,17,023/- holding that the Construction service cannot be considered as job work as invoices of the service providers stated that the service provided and service tax paid on abated value; that service provider had done the job of construction on the material supplied by the appellant and hence, credit is admissible.

3.6 The lower adjudicating authority has also denied credit of Rs. 2,95,390/- and Rs. 4,30,094/- on the ground that the services of construction were provided after 01.04.2011 and these services were excluded from the purview of input service, whereas the appellant submitted that Construction of canteen building, gate, office building, DG foundation work, set lying tank, compound wall work, breaking of wall, color work, solid waste room, soak well tit work, glazed tiles fitting etc. are related to their business only and they had supplied material to the service provider and hence, Cenvat credit is admissible to them.

3.7 The lower adjudicating authority has denied credit of Rs. 4,202/- on the ground that invoice was not produced by the appellant, which appears to be prejudiced as they provided service as per invoice submitted by them.

3.8 The denial of credit of Rs. 2,75,790/- and 1,93,911/- in respect of services provided by M/s. Lalita Interior and M/s. Shehnath Gupta respectively on the grounds that services were related to Construction is not correct as they received service of interior for administration building and back office which are part and requirement of their business and hence credit is admissible.

3.9 The lower adjudicating authority denied credit on the ground of non-submission of invoices by the appellant, whereas he was required to call for the said invoices from them for verification and was also required to ascertain the services from description shown in audit report. The appellant had submitted copies of invoices along with this appeal memorandum, claiming that credit is admissible.

3.10 In view of their above submissions, Cenvat credit is admissible to them and interest and penalty are not maintainable.

3.11 The department has not proved charge of suppression raised in the Show Cause Notice and hence the extended period invoked in the Show Cause Notice for raising demand is not sustainable. Further, the lower adjudicating authority

has not discussed plea of limitation and hence, the impugned order deserves to be set aside.

4. Personal hearing in the matter was attended by Shri R. R. Dave, Consultant wherein he, inter alia, reiterated the grounds of appeal. No one appeared from the Department despite personal hearing notices issued to the Commissionerate.

**Findings:-**

5. I have carefully gone through the facts of the case, the impugned order, the grounds of appeals, written and oral submissions made by the appellant. The issue to be decided in the instant appeal is whether the impugned order denying Cenvat credit of Service Tax paid on various services is correct or not in terms of Rule 2(l) of the Rules.

6. I find that Cenvat credit of Service Tax of Rs. 45,87,185/- was proposed to be denied in the Show Cause Notice, whereas the lower adjudicating authority vide the impugned order has dropped demand of Rs. 12,88,622/-, but confirmed demand of Rs. 32,98,563/- and is contesting denial of Rs. 32,98,563/- vide the impugned order.

6.1 The appellant has submitted that Cenvat credit of Service tax availed as inputs service has been wrongly disallowed to them, inasmuch as Purchase orders and relevant invoices indicate that they have not carried out any civil construction or work in relation to foundation structures for support of capital goods. I need to examine admissibility of Cenvat credit availed on basis of invoices on merits. Let's examine purchase orders and description given in the relevant scanned copy of the illustrative invoices / Bills etc. one by one to come to correct conclusion.

6.2 I find that Cenvat credit of Rs. 1,63,064/- on the services provided by M/s. Shreesha Facility and Rs. 52,342/- by M/s. R. K. Caterers through canteen of the appellant, which the appellant was under obligation to maintain under the Factories Act, 1948. As per Agreement dated 15.06.2012 between the appellant and M/s. R.K. Caterers, the latter has provided canteen facility to workers of the factory of the appellant which was having direct nexus with manufacture of finished goods. Similar is the case for the services provided by M/s. Shreesha Facility. The denial of Cenvat credit in respect of bills issued by these two service providers on the grounds that the appellant had not produced copies of invoices

of relevant period placing reliance on the decision of the Hon'ble CESTAT in the case of M/s. ICICI Lombard General Insurance Co. Ltd. reported as 2016 (42) STR 938 (Tri-Mumbai) is not correct as it is contrary to the facts available in this case. Illustrative scanned copy of bill/invoices raised by M/s. R. K. Caterers is reproduced below :-

**R. K. Caterers**

Block No.5, R.No.90, New 3 Storeyed Bldg,  
Anandnagar, Bhavnagar-5. Mobile : 9426715220

Bill No. **5** MADHU SILICA PVT LTD. Date: 11-09-2012

DATE	AMOUNT	PARTICULARS	QTY	RATE	AMOUNT
August		Lunch & Brunch Provided	680	321	218280.00
1-8-12 M		Extra - Smooth etc			288.00
31-8-12		Mineral water + hot coff. Smooth etc.			6938.00
					2,19,206.00
127,551.60		60% touchable amount			
					15,306.19
					306.12
					152.06
MADHU SILICA PVT. LTD. S.C.B. BANK PAID CHQ 14 SEP 2012 Dt 508821 Chq. No.					12% Service tax 2% EOD CEST 1% SHE CEST
M 11/9/12 TDS-2271 12/9/2012 ANAPA JOSI KID 001					TOTAL 2,28,351.37
Rs. In Words - Two Lacs thirty eight thousand three hundred fifty one rupees and 37 paise only					GRAND TOTAL 2,28,351.37
Prepared By <i>[Signature]</i>			Checked By <i>[Signature]</i>		For, R. K. Caterers

6.2.1 Similarly, M/s. Shreesha Facility have also raised taxable bills on the appellant for providing catering services. Illustrative scanned copy of bill/invoices raised by M/s. Shreesha Facility is reproduced below :-

DUM  
STC



INVOICE

Name: Madhu Silica Pvt. Ltd. Invoice No. SF 02/11-12  
 Date: 5-Mar-12  
 Address: 147, Vartej Bhavnagar V. No. Month of Feb-12

Sl. No.	Item / Service	Quantity	Rate	Amount
1	Lunch & Dinner Provided for Month of Feb 2012	3721	28.00	104,188

VOUCHER No.

MADHU SILICA PVT. LTD.  
 S.C.B. BANK PAID  
 Chq. 13 MAR 2012  
 Dt  
 Chq. No. 108771

TDS-1671

1,68,437.68  
 1,281.50  
 1,69,146.18

M  
 11/3/12  
 1 Copy of Total Cost

Handwritten  
 02/11/12  
 015 Handwritten  
 02/03/12

Subtotal	104,188.00
Tax 3.10%	3229.93
TOTAL	107,417.93

104,188.00  
 3,229.93  
 107,417.93

Payment Details  
 Cash  
 Cheque



REG NO. ACP1488304  
 Service Tax No. ACP1488304001  
 GST TIN NO. - 2422002345 07-01-01-2004  
 B-406, Surya, 2/11 Shiksha Bhawan School, Anand Mahal Road,  
 Rajpur, Surat. 391009, Email- shreeshafacility@gmail.com

6.2.2 The lower adjudicating authority has disallowed Cenvat credit of Service Tax paid on the canteen services actually alleging outside catering, which are not facts. The order of Hon'ble CESTAT in the case of M/s. ICICI Lombard General Insurance Company Ltd. reported as 2016(42) STR 938 (Tri-Mum) relied upon the lower adjudicating authority is not applicable in the present case. The relevant para of the decision reads as under :-

"6.1 As regards the Cenvat credit of the Service Tax paid on catering services, the law is fairly settled by a judgment of Hon'ble High Court of Bombay in the case of Ultratech Cement (supra). The Hon'ble High Court has categorically stated that Cenvat credit can be availed on the Service Tax paid on the portion which is being paid by the canteen contractor. The Hon'ble High Court has also held that Service Tax paid on contribution or value of the canteen services enjoyed by the employees will not be available as Cenvat credit. In view of this, we hold that appellant is eligible to avail Cenvat credit to the extent of Service Tax paid by the canteen contractor and is not eligible to avail Cenvat credit of the Service Tax paid on the value of the services utilized by the employees of the appellant. Lower authorities are directed to rework out the demand as per the judgment of Hon'ble High Court of Bombay and also recover interest at appropriate rate from the appellant."



6.2.3 In the present case, the services were not enjoyed by the employees of the appellant but inhouse canteen services had been provided by the appellant through these service providers to the workers of the appellant in terms of the Factories Act, 1948. It is also not the case of the Department that the contractors had provided food outside factory premises or brought pre-prepared food in the canteen, but they prepared food inside the canteen of the appellant situated within the factory premises for serving to the workers in-house. I find that the lower adjudicating authority has incorrectly applied the case law of M/s. ICICI Lombard General Insurance Company Ltd. inasmuch as the service provided in this case is not Outdoor Catering meant for personal use or consumption of any employee but was meant for Canteen services to provide food in the Canteen of the appellant for all workers of the factory. I am therefore, of the view that the appellant has availed services of M/s. R. K. Caterers to provide canteen facility to their factory workers/staff, which is mandatorily required under the provisions of the Factories Act, 1948. I, therefore, hold that the Cenvat credit of Rs.1,63,064/-, is admissible to the Appellant.

6.2.4 Similarly, in the case of M/s. Shreesha Facility, Surat the Cenvat credit of Rs. 52,342/- has been availed. The appellant submitted invoices raised by M/s. Shreesha Facility, and from scanned copy of invoice reproduced above, it is seen that they have provided canteen service to the appellant. I, therefore, find that Cenvat credit of Rs. 52,342/- is also admissible to the appellant as per law.

6.3 Illustrative scanned copy of bill/invoice in respect of M/s. U. T. Associates indicates description of service as various mechanical jobs undertaken and executed as per measurement and abstract attached as below :-

*DUM*

**U. T. ASSOCIATES**

BILL NO. UTYMSP/05/2013-14 DATE 12-05-2013 J.O. NO. : DATE :	TO Madhu Silica Pvt-Ltd Plot No-147 LPIIC Vasth Blav Nagar
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Sl No	Description	Unit	Qty.	Rate	Value	
	Billing the amount chasde towards various jobs done as per Measurement of Abstract attached  <div style="border: 1px solid black; padding: 2px; width: fit-content;"> <b>MADHU SILICA PVT. LTD.</b>  <b>S.C.B. BANK PAID</b>              CH. 21 JUN 2013              DI 512736              Chq. No.           </div> (Two Lac Ninety four thousand Sixty three only)			VOUCHER NO.  12% Service Tax 2% Education 12% 1% State excise 12%	262,715/- 31,405.50 628.00 314.00	TDS - 2941
<b>Total</b>					<b>3,44,000/-</b>	

E&O/E *W 18/6/13* *OK 10/6/13* For U. T. Associates

Plot No. 147, Vasth Blav Nagar, J.P. Nagar (U.P.) Dist. - J.P. Nagar, N.H. - 24, Gairauda-244225, Gairauda-244225, Dist. - J.P. Nagar (U.P.) Mob. 9837074594, 9837030428  
 Service Tax No. ACRPJ 0144K5T001

*85*

6.3.1 Work Order No. MSPL/J-250/81/2010-11 dated 15.10.2010 submitted by the appellant indicates scope of designated labour work as fabrication and erection of Sub-section 321 Hot Air Duct and its accessories for CFHAG for Project J-250 etc. The description provided in the invoices, do not indicate any Civil Construction Services. Therefore, relevant invoice, as well as work order establish that the services provided by the service provider do not fall under the exclusion clause in any manner and therefore Cenvat credit of Rs. 2,51,487/- in respect of invoices/bills issued by the M/s. U. T. Associates do not seem to be hit by mischief of the exclusion clause of Rule 2(l) of the Rules.

6.4 Illustrative scanned copy of bill/invoices in respect of M/s. Mojj Enigeering System Ltd., Pune indicates description of service as Site activities on their spray drying Plant as below :-

para 20

**TAX INVOICE**

**MOJJ ENGINEERING SYSTEMS LTD.**

81-B/15, M.J.D.C., Bhosari, Pune-411 026, (India)  
 Tel. : +91-20-27120935 / 27120980, Fax : +91-20-27127198  
 E-mail : mojj@vsnl.net, Web : www.mojjune.com

**MOJJ**

DU/2/2

Page 1 of 1

Sales Invoice Services

M/s. Madhu Silica Pvt. Ltd. Plot No 147, MIDC Coy. Vanej, Ph: Dist. Bhusarj State. Ph. 020-2712158 Fax.		Invoice No : H00019 Invoice Date : 11/05/2011 Your order no. : MSPL/J-250/SD/013/2009- Order Dated : 31/12/2010 Job No : MSD-393			
Customer's (TIN) No. : 24140200683 DT-140905 C.S.T. (TR) No. : 24640200653 DT-140905					
Sl. No.	Item Description	Quantity	UOM	Unit Rate	Amount (Rs.)
1	776.514 SITE ACTIVITIES ON YOUR SPRAY DRYING PLANT	1.00	kg	1,200,000.00	1,200,000.00
<b>VOUCHER No. :</b>					
Remark : <div style="border: 1px solid black; padding: 5px; display: inline-block;"> <b>MADHU SILICA P. LTD.</b>  <b>PAYD S.C.B. BANK</b>            Chq. No. 145413            Chq. Dt. 9-5-2011         </div>					<b>NET AMOUNT :</b> 1,200,000.00  Excise Edu. Cess S.H. Edu. Cess : <b>TDS-132360</b> Additional Excise Tax Service Tax 10.00% 120,000.00 ✓ Service Tax Edu. Cess 2.00% 2,400.00 ✓ Service Tax S.H. Cess 1.00% 1,200.00 ✓
Rupees in words : Rupees thirteen Lakh twenty-three thousand six hundred Only					<b>Grand Total</b> 1,323,600.00
We hereby certify that my/our registration certificate under the Maharashtra Value Added Tax Act, 2002 is in force on the date on which the sale of the goods specified in this Tax Invoice is made by me/us and that the transaction of sale covered by this tax invoice has been effected me/us and it shall be accounted for in the turnover of sales while filing of return and the due tax if any payable on the sale has been paid or shall be paid.					
<b>TERMS :</b> I. Any rejection/Complaint about above mentioned goods, should be informed within 2 weeks. II. Interest @ 24% p.a. will be charged if not paid with in due date. III. Our responsibility ceases once goods mentioned in the bill leave our premises.					
PAN No. AABCM1797L VAT TIN 27390338054 V.w.e.f 1.04.06 CST TIN 27390338054 C.w.e.f 1.04.06 Service Tax Code AABCM1797LST024 ✓		For <b>MOJJ ENGINEERING SYSTEMS LTD.</b>  Signature			

Work Order No. MSPL/J-250/SD/013/2009-10 dated 25.12.2009 submitted by the appellant indicates design scope of work as Design, Engineering, Fabrication, Erection and validation and commissioning of 7500 kg/hr water evaporation capacity spray dryer plant for precipitated silica. The description provided in the invoices, also do not indicate any Civil Construction Services. Therefore, invoice read with work order establish that the services provided by the service provider do not fall under the exclusion clause and therefore, Cenvat credit of Rs. 1,23,600/- in respect of invoices/bills issued by M/s. Mojj Engineering System Ltd. does not seem to be hit by mischief of the exclusion clause of Rule 2(l) of the Rules.

6.5 Illustrative scanned copy of bill of M/s. Mahavir Mandap Service indicating description of service as water proof tent as below :-

DV-III 5/13/17

Subject to Bhavnagar Jurisdiction

## મહાવીર મંડપ સર્વિસ

૧૨, ડોક્ટર હાઈસ, સેન્ટ ઇમરસાલ પોસ્ટ, કાલાવળા, ભાવનગર, ગુજરાત. ફોન : ૨૨૨૮૮૭૭/૨૭૭૧૩૭૮/૨૨૨૧૩૭૮

પુસ્તક નં: ૨      બિલ નં: ૨૨૫      મહાવીર સેવા      તારીખ: ૨/૬/૨૦૧૧

શ્રી: મહાવીર પા. લો.  
 સંસ્થા: વરમોજી

વસ્તુ નં	વિષય	મી	કામનું નામ	કામનું સ્થાન	કામનું પ્રકાર	કામનું દર	કામનું કુલ
૧૩	મંડપ	૪૦૫૦	૧૩૧૪	૧૬-૧૪	૪	૨૨.૦	૪૪૦૦
૨૧	કાંચ લોડ	૪૦૫૦	૫	૫	૫	૨૨.૫	૯૨૨૩
૨૨	સ્ટોલ મંડપ	૪૦૦	૫	૫	૫	૨૨.૫	૯૦૦
૨૩	કાંચ	૪	૫	૫	૫	૨૨.૦	૬૦૦
૨૪	પાર્ટીશન	૩૬૦	૫	૫	૫	૨૨.૦	૭૯૦
૨૫	લોડીંગ પાર્ટીશન	૨૦૦	૫	૫	૫	૨૨.૦	૪૪૦
૨૬	લોડીંગ કોર્સ	૨	૫	૫	૫	૨૨.૦	૪૪
૨૭	કાંચ	૨૪	૫	૫	૫	૨૨.૦	૫૨૮
૨૮	કાંચ	૬૬	૫	૫	૫	૨૨.૦	૧૪૫૨
૨૯	કાંચ	૧૧	૫	૫	૫	૨૨.૦	૨૪૨
૩૦	કાંચ	૩૨	૫	૫	૫	૨૨.૦	૭૦૪
૩૧	કાંચ	૧૨	૫	૫	૫	૨૨.૦	૨૬૪
૩૨	૫૦૦ W સિમ્પાલ	૩	૫	૫	૫	૨૨.૦	૬૬
૩૩	૨૫૦ W સિમ્પાલ	૩	૫	૫	૫	૨૨.૦	૬૬

MADHUSILICA P. LTD.  
 PAIG L.C.S. BANK  
 Chq. No. 505822  
 Chq. Dt. 02-03-11

705-360  
VOUCHER No. 30713

Gross Total 10301 = 3163  
 Net Total = 8100  
 25534

TIN No 24140300139 Dt 1-7-2007      મહાવીર મંડપ સર્વિસ      કુલ મહાવીર રકમ ૩૪૯૫૬

• E & O E TEX No. AARPL4500FS0002      કુલ મહાવીર રકમ ૩૪૯૫૬

• કોમ્પ્યુટર દ્વારા તૈયાર કરેલું છે.      કુલ મહાવીર રકમ ૨૯૦૦

• મહાવીર રકમ કુલ મહાવીર રકમ.      કુલ મહાવીર રકમ ૩૬૨૬૦

6.5.1 In respect of this bill, no Work Order has been provided by the appellant, and from the description shown in the invoice dated 02.06.2011 it is seen that M/s. Mahavir Mandap Service has provided items for conducting some social function, which has no relation with fabrication of plant and machineries and hence Cenvat credit of Rs. 4,604/- is not available to the appellant as held by the lower adjudicating authority.

6.6 Illustrative scanned copy of Bill of M/s. Jinesh Doshi and Associate indicates description of service as excavation, masonry work etc. as below :-

# JINESH DOSHI & ASSOCIATES

CIVIL CONTRACTOR • INTERIOR DESIGNERS

TAX INVOICE

Page 23.1

To,  
Madhu Silica Pvt.Ltd,  
Plot No 53, & 58B  
G.I.D.C. Estate, Chitra  
Bhavnagar

MADHU SILICA P. LTD.  
PAID S.C.B. BANK  
Chq. No. 106733  
Chq. Dt. 15-07-2011

DATE - 07/08/2011

Sub: R.A. Bill No. 2 for Construction of Security Building @ Main entrance, at Plot No. 147, GIDC, Bhavnagar.


No.	Description	Unit	Qty.		Total	Rate	Amt.
			Left	Present			
<b>A Excavation and Back Filling</b>							
	Excavation tanks in soil, soft & hard murum & existing murum						
	A) 0.00 - 1.50	M3		58.8	58.80	118.85	6949.17
	B) 1.50 - 3.00	M3		40.81	40.81	190.74	7754.10
	2 Filling with outside murum	M3		30.7	30.70	232.75	7176.13
	14 Shifting of excavated earth	Trig				0.00	0.00
	15 Anti termite treatment	M2		147.82	147.82	60.00	8871.20
<b>B Concrete &amp; R.C.C. Item</b>							
	16 RCC (1:3:6)	M3		11.982	11.98	1638.25	19621.91
	18 RCCM (200)						
	a Footings	M3		7.791	7.79	2250.00	17578.50
	b Column	M3		7.678	7.98	4653.00	37121.83
	c Rish beam	M3		4.992	4.90	4693.00	23027.76
	d Slab	M3		8.112	8.11	4888.00	39851.48
	e Beam & Lintel	M3		15.522	15.52	4794.00	74412.47
	f Chajjan (Lintel)	M3					
	20 Reinforcement	MT		6	6.00	5142.00	30852.00
<b>C Masonry</b>							
	28 Brick work	M3		30.497	30.70	2067.00	63143.73
	22 Brick work 4 & 1/2" thick	Smt		25.87	25.87	378.68	9796.45
	45 Internal Plaster	M2		536.91	531.08	147.33	42607.46
	47 External Plaster	M2		180.67	185.87	187.94	72464.60
	53 Chicken Mesh	M2		25	25.00	144.53	3623.25
	55 Water Proofing	M2		163.88	163.88	327.25	53829.73
	94 Apex acrylic paint	M2		548.01	548.01	119.68	64857.76

Revised 11/6/11  
S.S. 5.55.22.21

6.6.1 Work Order No. MSPL/J-250/WO/Admin.Bldg/061/2010-11 dated 30.08.2010 submitted by the appellant also clearly indicates that it is for providing of Civil Construction work such as Brick and Internal plaster work and hence, Cenvat credit of Rs. 92,008/- is not available to the appellant as held by the lower adjudicating authority.

6.7 Illustrative scanned copy of bill of M/s. Desai Construction Pvt. Ltd. indicating description is as below :-

Page 27 DU-IV, STC



**DESAI CONSTRUCTION PVT. LTD.**

CONSTRUCTION HOUSE, P.O. Box No. 17, Opp. New G.I.D.C., N.H. No. 8, P.O. Gandevi - 390 035, Valod, Gujarat.  
Tel./Fax : (02632) 304000 (8 lines), 224509 • e-mail : info@desaiconstruction.com

INVOICE				
Client Name : Madhu Silica Private Limited			Bill No. Final	
Client Address : Plot No. 147, GIDC Estate, Vande Bhavnagar, Gujarat - 364000.			Bill Date : 30/07/2011	
Consultant : Archivate Engg Projects Pvt Ltd			Period : April 11 to July 11	
Work Order No. MSPL/WO/J-250/DCPL/022/2009-10			10/- 755816 -	
Party's TIN No. 2414C200853			2/- 15116 -	
			1/- 7558 -	

BILL SUMMARY				
Sr. No	Description	Previous Bill Amount Rs.	This Bill Amount Rs.	Total Bill Amount Rs.
A.1	WORK DONE	120,476,485	27,363,551	147,840,036
A	GROSS WORK DONE (GWA)	120,476,485	27,363,551	147,840,036
B.1	Service Tax @4% on (GWA)	4,819,059	1,094,542	5,913,601
B.2	Education Cess @2% on service tax (on B.1)	96,381	21,891	118,272
B.2	Secondary and Higher education cess @1% (on B.1)	48,191	10,945	59,136
B	Total Service Tax on GWA (B=B.1+B.2+B.3)	4,963,631	1,127,378	6,091,009
C	Value of Material Supply by Client at free of Cost	56,052,488	3,519,722	60,172,190
D.1	Service Tax @4% on Client Supplied Material (on C)	2,209,099	140,789	2,406,888
D.2	Education Cess @2% on service tax (on D.1)	40,322	2,816	48,138
D.3	Secondary and Higher education cess @1% (on D.1)	22,661	1,408	24,069
D	Total Service Tax on Client Supplied Material (D=D.1+D.2+D.3)	2,334,882	148,013	2,479,894
E	Total Service Tax including Cess (E=B+D)	7,297,713	1,272,391	8,570,104
E	Total with GWA + TAX (E+A + D)	127,774,198	28,635,942	156,410,140
F	ADVANCES / RETENTION			
F.1	Retention Deduction @ 5 % of GWA	6,072,647	1,319,355	7,392,002
F.2	Others			
F	TOTAL RECOVERIES (F=F.1+F.2+F.3)	6,072,647	1,319,355	7,392,002
G	AMOUNT RECEIVABLE AGAINST BILLS* (G=E - F)	121,701,551	27,316,587	149,018,138

Ser. GST No. 24190100675 d030.09.2009 Our TIN No. 24250200175 d030.09.2009	Pan Card No. ANACD8503F Service Tax No. ANACD8503F002 Service Tax Scheme - Work Contract Services Composition Scheme
---	---

I/We hereby certify that my/our Registration under the Subject Value Added Tax Scheme ACT 2005 is in force as the date on which the work done specified in this bill by me/us and that the execution of contract work covered by this bill has been effected by me/us in regular course of my/our business.

**VOUCHER No.**

**MADHU SILICA P. LTD.**

**PAID S.C.B. BANK**

Chq. No. 506338

Chq. @ 7 DEC 2011

FOR DESAI CONSTRUCTION PVT. LTD.

*[Signature]*

Sr. Project Manager

PTO

*MA*  
*82*  
*J-250*  
*24/12/11*  
*Desai Construction*  
*bill*

6.7.1 Scanned copy of Work Order No. MSPLWO/J-250/DCPL/022/2009-10 dated 30.01.2010 submitted by the appellant is as under :-



**MADHU SILICA PVT. LTD.**  
Manufacturers of Precipitated Silicas



Regd. Office: Plot No. 147, G.I.D.C. Valsad, Bhavnagar - 364 080 Gujarat State, INDIA  
Phone: Off: +91- 278 2541188, 2541189, 2541488, 2540800, 2928530, 2928580 - Fax: 91-278- 2541200  
E-Mail: madhu@madhusilica.com + Website: www.madhusilica.com + CIN: U24299GJ1681MTC018012

**WORK ORDER**

**Ref: MSPL/WO/3-250/DCPL/022/2009-10.**  
**Date: 30<sup>th</sup> January' 2010.**

**Desai Construction Pvt Ltd.,**  
'Construction House',  
Opp. New GIDC, N.H. No - 8,  
Gandlav - 396 035,  
District - Valsad,  
Tele Fax: 02632 - 304000,  
Cell: 09376710323.

**Subject:** Work Order for the Construction of Factory Building for our proposed precipitated Silica plant at Vartej, Bhavnagar.

**Reference:**

- Our Civil Tender No AEPPL/MADHU/CIVIL-001 floated by our consultant M/s Archivista Engineering Projects Pvt Ltd (AEPPL).
- Your final offer for the above work via E-Mail dated 14/12/09 with flat 6 % discount on all item rates submitted.
- M.O.M. held at Bhavnagar dated 22.12.09 between MSPL, AEPPL and M/s DCPL.
- Our Agreement and Secrecy Documents sent to you via E-Mail dated 30/12/09 and your acknowledge of receipt of the above via E-Mail dated 30.12.09
- Our LOI dated 11/01/2010.
- Your acceptance of our LOI vide letter DCPL / HO / P&C / 319 dated 13/01/2010.

**Kind Attention:** Shri Mahendra B Desai

With reference to above we are now please to award the work for the Construction of Factory Building for our proposed Precipitated Silica plant at Vartej, Bhavnagar on to you as per terms and conditions mentioned in the above referred Tender Document and Agreements.

6.7.2 The above Work order dated 20.01.2010 clearly indicates that the services are nature for providing of Civil Construction work for factory building, and hence, Cenvat credit of Rs. 8,70,023/- is not available as correctly held by the lower adjudicating authority.

6.8 The scanned copy of bill of M/s. Jay Parekh indicates description of service provided as below :-

DU-IV  
STC

**Jay Parekh**  
B.E. (Civil) Consulting Engineer & Contractor  
F-1, Trade Center, Kalarala, Bhavnagar - 364 001.  
Tel. (O) 2516309 (R) 2573673 • Cell 9426262216

**TAX INVOICE**

To:  
Madhu Silica Pvt.Ltd.  
G.I.D.C. Vartej,  
Bhavnagar.

Date :- 19/10/2011

2

Sub:- R.A.Bill No - 1 for Construction of Office Building

No.	Description	Qty.	Rate	Unit	Amount	
<b>A</b>						
Excavation and back filling						
1	(A) - 0.00 to 1.50 mt depth	146.84	137.50	Cu.mt	20190.50	
	(B) - 1.50 to 3.00mt depth	127.26	165.00	Cu.mt	20997.90	
5	Murum Filling	87.90	275.00	Cu.mt	24172.50	
15	Anti - termite treatment	97.67	50.00	Cu.mt	4883.50	
<b>Concrete &amp; R.C.C Items</b>						
16	P.C.C.M - 10	23.02	1870.00	Cu.mt	43047.40	
19	(A) Footing C.C	31.683	2800.00	Cu.mt	88712.40	
	(B) Coloumn C.C	20.80	3932.50	Cu.mt	81796.00	
	(C) Plith beam C.C	6.86	3932.50	Cu.mt	26976.95	
	(D) Slab of all type C.C	34.04	4345.00	Cu.mt	147903.80	
	(E) Beam & lintels	16.36	4015.00	Cu.mt	65665.40	
	(G) Waist slab, landing & steps	3.93	4070.00	Cu.mt	15995.10	
	(H) Coping C.C	2.74	4125.00	Cu.mt	11302.50	
20	Tor & mild steel bar-banding	13932	3.50	Kg.	48762.00	
<b>C</b>						
Masonry Items						
22	Partion wall	20.47	385.00	Sq.mt	7880.95	
28	Brick masonry	83.83	2650.00	Cu.mt	222149.50	
					<b>Sub Total</b>	830456.00
					<b>Service tax 3.43% on 100% Total bill Value</b>	28485.00
					<b>Grand Total</b>	858941.00

TDS - 8589

( Rupees:- Eight lacs Fifty Eight Thousand Nine hundred Forty One only )

SERVICE TAX NO.  
BVN/STAX/CTY/XX/1/  
CCS/001/05-06

VOUCHER No.  
111-27655  
21- 553  
12- 277

MADHU SILICA P. L. T. LTD.  
PAID S.C.B. BANK  
Chq. No. 505377  
Chq. Dt. 27 DEC 2011

28485 FOR. JAY PAREKH  
Authorized signatory

M  
21/12/11  
J-200  
Bank  
Office

Bharat

6.8.1 Work Order No. MSPL/WO/J-250/056/2010-11 dated 10.08.2010 submitted by the appellant clearly establishes that the services are for providing Civil Construction work of canteen building, and hence, Cenvat credit of Rs. 2,95,390/- is not available as services received fall under the exclusion clause under Rule 2(I) of the Rules as held by the lower adjudicating authority.



16.9 The scanned copy of bill of M/s. Maitree Construction Co., Bhavnagar indicates description of the services provided as below :-

Page 27 STC Du-ly

**MAITREE CONSTRUCTION CO.**  
CONSULTING ENGINEER AND CONTRACTOR  
D-106, KALSA BLD, BHAYNAGAR  
Pin-37820000 M. GUJARAT

Bill No-002 Date: 30/07/2018

To: Madhu Silica Pvt Ltd  
147, G. Z. D. C  
Vastij,  
Bhavnagar

Rel: W.O No: 18  
MVL/DU-07/18  
dt: 08-08-2018

**INVOICE**

MADHU SILICA PVT LTD.  
S.C.B. BANK PAID  
Che 01 JAN 2018  
Chq. No. 508721

Sl. No.	Description	Qty	Rate	Amount
1	Erection of pre-coated colour roofing sheet for parking shed as per your design & Requirement. Total 87 Sheets of 7.7 mtr x 6.93 sq.mtr 10.75 x 3208.2 = 34487.15	7125.00 sqm	6.00	42750.00
	Add service tax 12.36% on bill value			5283.90
	Service Tax Reg. No. APSPD0899C50001 Dated: 15-7-2018			
	Rs: Forty eight thousand three hundred and ninety paise only.			48033.90

5130  
122  
51

(60) /

6.9.1 The appellant has not submitted any work order but description in the invoices, clearly establish that the services provided by M/s. Maitree Construction Co. are for civil work pertaining to the erection of roofing sheet for parking shed, which falls under the exclusion clause and therefore, Cenvat credit of Rs. 4,30,094/- is not available under Rule 2(l) of the Rules.

6.10 The scanned copy of bill of M/s. King Engineers, Vadodara indicates description of the services provided as below :-

*Page 31*

## KING ENGINEERS

N.O. - F-48, Earth Complex, Axar Chowk, Padra Road, VADODARA-390 025.  
S.D. - 106, 107, Aadha Complex, Near BP Petrol Pump, Dohaj Bypass Road, BHARUCH-382 001.

Vadodra : 222741 21111  
Vadodra : 2225-2229784  
Bharuch : 262758 22457  
Email : kingengineers2007@gmail.com  
G.S.T. No. : 2419000000  
C.S.T. No. : 2400000000  
PAN No. : AOPF99627D  
Service Tax No. : 40099887030101  
HDFC Bank Ac. No. : 0413200002794  
RTGS/NEFT #FC Code : HDFC0000033

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**JOB RETAIL INVOICE**

KING ENGINEERS		Invoice No.	Date
P-48, Earth Complex, Axar Chowk, Padra Road, VADODARA-390 025. S.D. - 106, 107, Aadha Complex, Near BP Petrol Pump, Dohaj Bypass Road, BHARUCH-382 001.		0047	18-Apr-2013
Buyer		Delivery Note	
MADHU SILICA PVT LTD PLLOT NO- 52 - 55 & 56/9 SIDDH VINAYAK, SHARVADWAR - 384004 S.A. - 405 NEHRUPUR Sole No. 9827172004		JON NO: 8054	Other Reference No:
		Supplier Ref	8050 (MSP/1000-07 000)
		Buyer's Order No	Date
		MSPL/IV/100/2012-13	6-Apr-2012
		Despatch Document No	Date
			13-Apr-2013
		Despatched through	Destination
		WORK DONE BY TEJA	MADHUSILICA

Description of Goods	HSN Code	Quantity	Rate	per	Unit	Amount
1 HIT V M 20X380 ANCHOR ROD 451990479 8540-00004 (Service - Construction Services in Commercial/Industrial/Civil) Taxable Value @ 40% on 72,180.00		80 Nos.	902.00	Per	Nos.	72,180.00
				12 %		3,488.00
				2 %		88.00
				1 %		38.00
						75,738.00
Total 80 Nos.						₹ 75,738.00

Service Tax (On Assessable Amount 28,894.00)  
Education Cess  
Secondary and Higher Education Cess

Approval Taken for S. D. Bagfilter.

Stamp: MADHU SILICA PVT LTD, S.C.B. BANK FUND, 17 MAY 2013, 112198

Stamp: VOUCHER No.

Stamp: SUBJECT TO VADODARA JURISDICTION

Stamp: fischer FIXING SYSTEMS

6.10.1 Work Order No. MSPL/DU-IV/100/2011-12 dated 09.01.2012 and the above scanned invoice submitted by the appellant clearly establish that the services are Civil Construction work for commercial and industrial construction, and hence, Cenvat credit of Rs. 9,330/- is not available as the services fall under the exclusion clause under Rule 2(l) of the Rules as held by the lower adjudicating authority.

6.11 The scanned copy of bill of M/s. Top India Elevator, Rajkot indicates description of the service provided as below :-

**TOP INDIA ELEVATOR**  
 205-B, CRYSTAL COMMERCIAL COMPLEX NR K K V HALL CIRCLE,  
 NR BANSKAR COMPLEX, 150 FT RING ROAD, RAJKOT - 360 005.  
 PHONE (0281) 2587635 MOBILE 98242 30746 / 98242 30748  
 e-mail: topelevator@hotmail.com

DU-IV  
Page 33

**TOP**  
LIFT MFG. MODERNIZATION  
& MAINTENANCE

To, THE PRESIDENT / SECRETARY, MADHU SILICA FLAT OWNERS ASSOCIATION, BHAYNAGAR.		SERVICE BILL (ORIGINAL)		
DU-M		Bill No: 048 / 13 -14, (Page 1 of 1)		
		Dt: 27 / 05 / 2013. Ref.No:		
Sr.	Matrial Description	PERIOD	LIFT	Amount
1	LIFT MAINTENANCE & SERVICE CHARGES	MAY - 13	(NONE)	17,000
		TO	LIFT	
		APR - 14		
				TOTAL
				17,000.00
				SERV. TAX @ 12.36%
				2,101.20
				0.00
				ROUND UP ADD
				-0.20
				GRAND TOTAL
				19,101.00
SERVICE TAX REGI. No. AACFT0676MSD002.				
PAN NO. - AACFT0676M.				
G.S.T. TIN. NO.24091700191 DT.01/10/2006				
C.S.T. TIN. NO.24551700191 DT.01/10/2005				
RUPEES IN WORDS: NINETEEN THOUSAND ONE HUNDRED ONE ONLY.				
* Subject to Rajkot Jurisdiction				
* E & O E.				
For TOP INDIA ELEVATOR				

VOUCHER No.

MADHU SILICA P. LTD.  
PAID S.C.B. BANK  
Chq No. 113267  
Chq Dt. 26/05/13

2040  
11  
20  
2101  
1021

6.11.1 Work Order No. MSPL/J-250/809/2011-12 dated 15.04.2011 and the above scanned invoice submitted by the appellant clearly indicate that the services are for providing of Lift Maintenance and Service Charges, which has no relation with fabrication of maintenance of plant and machineries and hence, Cenvat credit of Rs. 4,202/- is not available as services received fall under the exclusion clause of Rule 2(l) of the Rules as held by the lower adjudicating authority.

6.12 The scanned copy of bill of M/s. Lalita Interior, Vadodara indicates description of service provided as below :-

Date 36

STC INVOICE

## LALITA INTERIOR

Aluminium Wooden Doors & Windows  
All types Wooden Furniture Maker

M. : 98259 76701

229, Gujarat Housing Board, Opp. Shanti Park, Subhanpura, Vadodara-390 023.

Name: <u>MADHU SILICA PVT. LTD.</u> <u>G.I.D.C., VARTAJ,</u> <u>BHUNAGAR.</u>	Bill No. : <u>MS/LAS/AD/2</u> Date : <u>24/7/12.</u>
	D.C. No. : <u>1109949</u> Date : <u>17 AUG 2012</u>
	S. Tax No. : <u>AICP/9334LSD001</u>

Sr. No.	Particulars	Per	Qty.	Rate	Amount Rs.	Ps.
	Being the Labour Charges for Admin Buildings. As Per Measurement Sheet Attached.				2083458/-	
	<del>M &amp; Admin Bldg J-280</del>				<del>2300000/-</del>	
	<del>Charged 28/12/12</del>				<del>50000/-</del>	
					TDS - 23000	

Rupees: <u>TWENTY THREE LAKS</u> <u>FOURTY SEVEN THOUSAND</u> <u>SEVEN HUNDRED FIFTEEN</u> <u>ONLY.</u>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>Total</td> <td style="text-align: right;">2083458/-</td> </tr> <tr> <td>S. Tax @ 12%</td> <td style="text-align: right;">250734 = 36</td> </tr> <tr> <td>Edu. Cess 2%</td> <td style="text-align: right;">5014 = 70</td> </tr> <tr> <td>Higher Edu. Cess @ 1%</td> <td style="text-align: right;">2507 = 35</td> </tr> <tr> <td><b>Grand Total</b></td> <td style="text-align: right;"><b>2347715</b></td> </tr> </table>	Total	2083458/-	S. Tax @ 12%	250734 = 36	Edu. Cess 2%	5014 = 70	Higher Edu. Cess @ 1%	2507 = 35	<b>Grand Total</b>	<b>2347715</b>
Total	2083458/-										
S. Tax @ 12%	250734 = 36										
Edu. Cess 2%	5014 = 70										
Higher Edu. Cess @ 1%	2507 = 35										
<b>Grand Total</b>	<b>2347715</b>										

**Terms & Condition**

- + Subject to Baroda Jurisdiction only.
- + No liabilities after bill is made.
- + Payment:

OK Money 25/12

Bill ok

Kishor

For LALITA INTERIOR

अक्षयराज

Authorized Sign.

6.12.1 Scanned copy of Work Order No. MSPL/PROJ-250/169/2011-12 dated 25.02.2011 is also reproduced as under :-

358

**WORK ORDER****W.O. NO : MSPL/PROJ-250/169/11-12****DATE : 25.02.2011.**

**TO**  
**M/S LALITA INTERIORS**  
**PROPRIETOR NAME: ANOPARAM M. MISTRY**  
 229, GUJARAT HOUSING ROAD OPP SHANTI PARK  
 SUBHNAPURA VADODARA 390023

**Kind Attention : ANOPARAMBHAI****Sub :** Work Order for Furniture Works At Our Site Admin Building.

Dear Sir,

With reference to above, we are pleased to placed to release work order for the above subject.

SR .NO	DESCRIPTION	RATE IN RS	RATE IN RS
		PER SQ.FT	PER R.FT
1	PARTITIONS FULL HT PARTITION(STRAIGHT TYPE) UPTO FALSE CELING	150	
2	PARTITIONS FULL HT PARTITION( CURVED TYPE) UPTO FALSE CELING	185	
3	HALF HT PARTITION FOR STAFF TABLE AND OTHERS	185	
4	PARTITION FRAMING ABOVE FALSE CEILING	50	
5	WOODEN PATTI CEILING IN ACCOUNTS AND OFFICE AREA	110	
8	WOODEN CEILING IN RECEPTION AREA	200	200

6.12.2 The scanned copy of invoice and work order submitted by the appellant clearly establish that the services are for partitioning of office and false wooden ceiling in the office, which has no relation with fabrication of machineries in any manner. Hence, Cenvat credit of Rs. 2,75,790/- is not available as the services fall under the exclusion clause under Rule 2(l) of the Rules as held by the lower adjudicating authority.

6.13 The scanned copy of bill of M/s. Sheshnath Gupta, Bhavnagar indicates description of service provided as below :-



6.13.1 Work Order No. MSPL/DU-IV/132/2011-12 dated 20.02.2012 and the above scanned invoice submitted by the appellant clearly indicate that the services were for providing of painting and water proofing work, which has no relation with plant and machineries and hence, Cenvat credit of Rs. 1,93,911/- is not available as these services fall under the exclusion clause of Rule 2(l) of the Rules as held by the lower adjudicating authority.

357

6.14 Scanned copy of bill of M/s. Bhoomi Enterprise indicates description of work done as excavation charges with JCB machine as below :-

IN No.: 2414700141 DL: 1-7-2002  
Service Tax No.: AGPPF00004-ET007

કચ્છ / DEBIT MEMO  
JCB / Barging Bill

**Bhoomi Enterprise**

Govt. Approved Contractor, Fleet & Excavator (JCB) Owner  
Contact us for: Transportation, Construction & Earthwork

Opp. P.G.I.C.L. Bhavnagar-Bajkot Highway Road, VARTAJ, Dist: Bhavnagar, Mob: 9825208991 Fax: (0278) 2541155

Mr. Madhu Silica Pvt. Ltd. Bill No.: 08  
Vartaj, Bhavnagar DUTY Date: 30-09-12

Sr. No.	Challan No.	Date	Description	Quantity/ Ton Brass / Hours	Rate	Rs. Amount	Ps.
			Excavation charges with JCB machine	49.50 Hours	575/- Per Hour	28,463.00	
			<p>MADHU SILICA PVT. LTD. S.C.B. BANK PAID Chq 30 NOV 2012 Dt Chq. No...610575</p> <p>VOUCHER No.</p> <p>VARTAJ :- 42.50. MARGINAL :- 07.00 (SIMIL)</p> <p><b>Bhoomi</b></p> <p>3416 681 34 3518</p> <p>TDS-320</p>				
Grand Total						28,463.00	
Taxes						3,518.00	
Net Total						31,981.00	

Words: Twenty One Thousand Nine Hundred Eight One Only

Freight to be paid by Consignee / Consignor  
Service Tax to be paid by Consignee / Consignor

Cenvat Credit has not been taken on duty paid on inputs and / or Capital goods used For providing this Transportation Service.  
This bill should be paid immediately on demand otherwise interest at @ 24% will be charged.  
Claim for shortage etc. will not be accepted afterwards.  
All Disputes are Subject to Bhavnagar Jurisdiction. \*E.&O.E.

For Bhoomi Enterprise  
Jeyak  
(Authorized Person)

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6.14.1 The appellant did not submit copy of work order with M/s. Bhoomi Enterprise but the description of work indicates the activities carried out by them are excavation with JCB/foundation work, which is nothing but civil work and therefore, Cenvat credit of Rs. 5,289/- in respect of Bills issued by M/s. Bhoomi Enterprise fall under the exclusion clause of Rule 2(i) of the Rules and Cenvat credit is not available to the appellant.

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6.15 The scanned copy of bill of M/s. Steelart Engineering Pvt. Ltd., Ahmedabad indicates description of service provided as below :-

**DU-1X**

PHONE 98522211, 27499811  
FAX 91-079-27499811, 2642306

**STEELART**

ENGINEERING PRIVATE LTD

115, THIRD FLOOR, MOONLIGHT COMPLEX,  
OPP. SURUL, DRIVE IN RD. AHMEDABAD-3801

**TAX INVOICE**

TIN C.S.T. No. 24073600343 Dt. 1/7/2002  
TIN C.S.T. No. 24573600343 Dt. 1/7/2002

CLIENT'S NAME MESSRS **MADHU SILICA PVT. LTD.** BR No. 26 Date 26.3.2013  
Plot No. 53, 55 & 56/B, C/Infra  
Bhavnagar - 364 004  
REF. CONTRACT/ORDER NO. MSPL/DU-IV/960/2012-13

Particulars	Quantity	Rate	Per	Amount
Supply of M.S. Materials for M.S. Melter	12700 Kg	43.00	Kg	5,71,500.00
VAT 5%				28,575.00
2. Fabrication of M.S. Melter	12700 kg	25.00	Kg	3,17,500.00
3. Loading, Transportation & unloading & erection of M.S. Melter	12700 kg	7.00	Kg	88,900.00
Service Tax 12.36% (Item No. 2 & 3)				50,231.00
<p>RS 456631/-</p> <p>TDS - 9'33</p> <p><i>DU-1X</i></p> <p><i>New Melter</i></p> <p><i>1 Melter</i></p> <p><i>M/S</i></p> <p><i>Capital equipment</i></p> <p><i>New melter</i></p> <p><i>29/3/13</i></p>				
<p>Rupees Ten lacs fifty six thousand seven hundred six only</p>				
<p><b>TOTAL</b></p>				<b>10,56,706.00</b>

ADHU SILICA PVT. LTD.  
S.C.B. BANK PAID  
Dt 02.03.2013  
Chq. No. 1118251

TERMS : (1) Payment by Cheque is requested, (2) Interest at the rate of 12% will be charged on all accounts remaining unpaid after 7 days. (3) Claims of shortage in weight & rejection to be notified within 3 days on receipt of bills otherwise will be nil. A.T.C.

Service Tax No. : AAFCS7615KST001 ✓ 93  
PAN No. : AAFCS7015K

Prepared by \_\_\_\_\_ Checked by *Ch*  
WORKS - 1/1/18-18, G.I.D.C. Katar (N.G.) India. Phone : 82784-222198

6.15.1 Purchase Order No. MSPL/DU-IV/960/2012-13 dated 08.11.2012 and the scanned invoice submitted by the appellant clearly indicate that the services have been used for fabrication of M.S. Melter and important machinery used for the manufacturing proves of their final product and hence, Cenvat credit of Rs. 1,01,213/- is available under Rule 2(l) of the Rules.



6.16 Scanned copy of Tax Invoice of M/s. The Dynamics Outdoor Solutions indicates description of work done as below :-

2012-13  
DU-24

**The Dynamics**  
OUTDOOR SOLUTIONS

Mumbai Office : 3/A, Divya Bharti Bldg., Opp Toyota Showroom Malad Link Road Malad (w) Mumbai 400084  
Ph No : 884787

Tax Invoice			
To <b>MADHU SILICA PVT. LTD</b>		Invoice No: 407	
Address: Plot No. 53,55&56/B G.I.D.C. Estate, Chitra, Bhavnagar- 364 004 Gujarat State		Dated : 18/02/2013	
Requirement for : Stall Erection & Fabrication		Kind Attention : Mr. Brijesh	
Sr. No.	Product Description	Qty	Amount (Rs)
1	Stall Erection & Fabrication Venue NESC (IRE 2013)	1	250,000.00
2	Electricity (Rubber Expo)		3,000.00
VAT TIN NO. 27080629822 V SERVICE TAX: AAGPA0174RBT001 PAN NO : AAGPA0174R		Total Amount 253,000.00 Service Tax 12.36% 31,271.00	
Words : Two Lac Eighty Four Thousand Two hundred and Seventy One only		Total Amount 284,271.00	
<b>MADHU SILICA PVT. LTD.</b> <b>S.C.B. BANK PAID</b> Chq 19 FEB 2013 Dt Chq. No. 111429		The Dynamics Consultancy  Authorise Signatory	

VOUCHER No.  
TDS-5685

6.16.1 The appellant did not submit copy of any work order given to M/s. The Dynamics Outdoor Solutions but the description of work on above Tax Invoice indicates the services provided are Stall erection and fabrication of venue which has no relation with the manufacture of final product and is a kind of temporary civil construction work and therefore, Cenvat credit of Rs. 31,271/- is not available to the appellant as services fall under the exclusion clause of Rule 2(l) of the Rules.

6.17 The scanned copy of bill of M/s. Gujarat Industrial Development Corporation, Bhavnagar as below :-

**GUJARAT INDUSTRIAL DEVELOPMENT CORPORATION, BHAVNAGAR**

Ref. No. GIDC/RM/RCV/NO13:82 NO/GIDC/RM/2013

To: **MADHU SILICA PVT. LTD.**  
 PLOT NO. 53+54+56-B, GIDC CRITRA, CRITRA, BHAVNAGAR  
 BHAVNAGAR

Party A/c Code No.: 1022  
 Status: FULL PAYMENT

Sub: Account of your IND- PLOT-N. 147 (RAW LAND) at Vertej Industrial Area

1660

Dear Sir,

With reference to the above IND- PLOT -No. 147 (RAW LAND) allotted to you on 02/01/09 at Vertej Ind. Area, the due amount as on 01/09/12 is as under:

1. Installments upto 01/09/12	: Rs.	0
2. Interest on delayed payment with PI at 2%	: Rs.	0
3. Service Charge-Bill	: Rs.	0
3.1 Service Charge-Service Tax	: Rs.	0
3.2 Service Charge-Edu. Cess+Other cess	: Rs.	0
4. N.A.A.-Bill	: Rs.	0
4.1 N.A.A.-Service Tax	: Rs.	23787
4.2 N.A.A.-Edu. Cess+Other cess	: Rs.	714
5.1 Lease Rent-Service Tax	: Rs.	0
5.2 Lease Rent-Edu. Cess+Other cess	: Rs.	0
6. Int. on Revenue charged 01/09/12	: Rs.	0
<b>Account Total-other than IUF</b>	: Rs.	<b>24501</b>
Infrastructure Upgradation Fund-Bill	: Rs.	0
Inf. Upg. Fund-Service Tax	: Rs.	0
Inf. Upg. Fund-Edu. Cess+Other cess	: Rs.	0
<b>Account Total-IUF with ST &amp; EC</b>	: Rs.	<b>0</b>

You are, therefore requested to pay the above amount within 20 days hereof failing which recovery proceedings will be initiated against you.

I may inform you to kindly verify the payments made by you till date and if any discrepancy is found, please inform the undersigned immediately. If no reply is received within 15 days, it will be presumed that the Account is correct and you have nothing to represent for the same.

This is computer generated report, no signature is not required.

Thanking You,  
 Yours faithfully,  
 AG/GIDC/BHAVNAGAR

**MADHU SILICA PVT. LTD.**  
**S.C.A. BHAVNAGAR**  
 Date: 16 OCT 2012  
 Chq. No. 810123

6.17.1 On going through above bill, it is seen that M/s. GIDC has charged for 'Infrastructure Upgradation Fund' which has nothing to do with the fabrication of plant and machineries and maintenance thereof and therefore, Cenvat credit of Rs. 24,501/- has rightly been rejected by the lower adjudicating authority in respect of this bill.

6.18 Copy of bill has not been provided by the appellant, however Scanned copy of Work order of M/s. Shripad Conchem Pvt. Ltd., Surat indicates description of work as below :-

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**MADHU SILICA PVT. LTD.**  
Manufacturers of Precipitated Silicas



Regd. Office : Plot No 33/55 A 28 / B, GIDC, Chera, Bhavnagar - 364 004, (India) • Phone : CR. 91-278-244 - 5415 / 5437 / 5132 / 6161  
• Fax : 91-278-2448158 • E-Mail : madhusilica@madhusilica.com • Website : www.madhusilica.com

M/s Shripad Conchem Pvt Ltd, Office Floor, Ashoka Pavillion A, Opp Kapadia Beach Club, New Civil Road, Surat: 392001 E-mail: shripad@conchem.com Head Office: Mr. Deepak Patel Call No. 098289 94489		PURCHASE ORDER			
M/s MADHU SILICA PVT. LTD AT, VARTOL, GIDC BHAVNAGAR GUJARAT TEL: NO. (79)0336233 CONTACT PERSON: POGANNA		P. O. No. MSPL/J-250/1427/2012-13 D, 07/04/13 P. N. No. _____ Date: _____			
Dear Sirs, Please supply the following materials as per the following specifications and conditions at care given address.					
Sl. No.	Description	Unit	Qty.	Rate	Amount
1	Providing and application comprehensive waterproofing coating system including removal of loose from the substrate, crack filling of the substrate, priming coat, base coat (waterproofing) using of Sikka Latex 2000 Implementation application of top coat as completed as per manufacturer specification. (Water Coating should be provided with overlay plaster or tiling or similar plaster for the U.V. resistance of the coating)	SqM	60	600.00	32000.00
2	Providing and injecting cement slurry enriched with expanding agent additive including drilling of 14mm dia holes, clearing of holes, filling of 14mm dia rubber plug inside to quick setting mortar proper mixing material as required pressure by standard grouting pump as completed as directed (Cement shall be provided by us free of cost)	Nos	10	300.00	3000.00
3	Providing and sealing external / internal aluminium window frame with U.V resistant Sikka 221 as completed as directed	SqM	00	150.00	3000.00
<b>Sub Total</b>					<b>38000.00</b>
Deduct duty, VAT & Freight inclusive but service tax @ 4.12%					
<b>Grand Total</b>					<b>38000.00</b>
Rupees: Fifty Eight Thousand, Five Hundred Only.					
Billing Address & Delivery to: Madhu Silica Pvt. Ltd., Plot No. 147, GIDC, Vartol, Bhavnagar, Our DCC No. AACB0438 / J26000 Our GAT (Tia) No. 24140200652 D1, 14, 09, 05 Our GST (Tia) No. 24040200652 D1, 14, 09, 05					
<b>Terms and condition</b>					
<ol style="list-style-type: none"> <li>Price - Firm all work is complete</li> <li>Excise duty / VAT / Freight inclusive</li> <li>Service Tax Extra @ 4.12%</li> <li>Water &amp; Electric power shall be provided by us</li> <li>Storage shall be provided on your responsibility</li> <li>Work shall be started within 15 days from the date of confirmed Purchase Order.</li> <li>Payment shall be made within seven days after submission of bill</li> <li>Protective overlay above listed work shall be done by us</li> <li>All work front shall be free from debris, water, sludge, oil, etc and any other obstacles.</li> <li>All area which require above treatment shall be well finish like brick / projection etc.</li> <li>Space shall be provided for temporary Accommodation only</li> <li>Scaffolding etc shall be provided by us, free of cost.</li> </ol>					
For M/s Madhu Silica Pvt. Ltd.  _____ Authorized Signatory					

*(Handwritten signature)*

6.18 The appellant did not submit copy of any bills or invoices raised by M/s. Shripad Conchem Pvt. Ltd., Surat but the description of work indicated in the Work Order No. MSPL/J-250/1427/2012-13 dated 07.04.2012 reveals that activities carried out by them pertain to waterproofing, priming coat, base coat, mortar mixing, sealing of external and internal aluminum window frame etc. and is a kind of temporary civil construction and therefore, Cenvat credit of Rs. 26,248/- in respect of services provided by M/s. Shripad Conchem Pvt. Ltd., Surat fall under the exclusion clause and Cenvat credit is not available to the appellant.

7. In view of above findings Cenvat credit of Service Tax paid on the invoices/Bills of M/s. Mahavir Mandap Service (Rs. 4,604/-), M/s. Jinesh Doshi and Associate (Rs. 92,008/-); M/s. Desai Construction Pvt. Ltd. (Rs. 8,70,023/-), M/s. Jay Parekh (Rs. 2,95,390/-), M/s. Maitree Construction Co., (Rs. 4,30,094/-),

M/s. King Engineers (Rs. 9,330/-); M/s. Top India Elevator (Rs. 4,202/-), M/s. Lalita Interior (Rs. 2,75,790/-); M/s. Sheshnath Gupta (Rs. 1,93,911/-); M/s. Bhoomi Enterprise (Rs. 6,240/-); M/s. Dynamics Outdoor Solutions (Rs. 31,271/-); M/s. Gujarat Industrial Development Corporation, Bhavnagar (Rs. 24,501/-) and M/s. Shripad Conchem Pvt. Ltd., Surat (Rs. 26,248/-) totaling to Rs. 22,63,612/- has been correctly denied by the lower adjudicating authority. Accordingly, I hold that Cenvat credit of Rs. 22,52,661/- is not admissible to the appellant, which should be paid by them along with interest as per Rule 14 of the Rules read with Section 11AA of the Act.

7.1 I allow Cenvat credit of Service Tax paid on the services provided as per invoices/bills of M/s. R. K. Caterers (Rs. 1,63,064/-), M/s. Shreesha Facility (Rs. 52,342/-), M/s. UT Associates (Rs. 5,94,732/-), M/s. Mojj Engineering System Ltd. (Rs. 1,23,600/-) and M/s. Steelart Engineering Pvt. Ltd. (Rs. 1,01,213/-) totaling to Rs. 10,34,951/- and no interest is payable on these amounts.

8. The appellant contention is that they were regularly filing monthly returns and therefore, the demand is time-barred, I find that merely by filing monthly returns, the facts are not declared to the Department. The appellant was required to inform full details, as they have submitted facts during appeal proceedings, when the Department asked them to submit the details. Having not done so at the assessment stage, I am not inclined to accept the plea of the appellant that the demand due to wrong availment of Cenvat credit is time barred.

9. As regards penalty, I find that out of Rs. 45,87,185/- of credit proposed to be denied by Show Cause Notice, the lower adjudicating authority allowed Cenvat credit of Rs. 12,88,622/- and denied credit of Rs. 32,98,563/- only whereas credit of Rs. 10,34,951/- is further allowed in present appeal proceedings and credit of Rs. 22,52,661/- has been denied. All these transactions have been recorded by the appellant in their books of accounts. I also find that availment of Cenvat credit on various services were denied vide amendment in Cenvat Credit Rules, w.e.f. 01.04.2011 whereas the appellant present case involves availment of Cenvat credit during the period from April, 2011 onwards when there was no clarity in the minds of the departmental officers and also of the appellant. There are many judgments of the Hon'ble CESTAT / High Courts allowing Cenvat Credit on the services having direct or indirect relation in the manufacture of final products. Hence, this is a case not calling for imposition of penalty under Rule 15(2) of the Rules and/or under Section 11AC of the Act and thus, I set aside penalty imposed on the appellant under Rule 15(2) of the Rules read with

Section 11AC of the Act.

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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., DU-IV, Plot No. 147, Vartej, Bhavnagar – 364 060.	मेस्सेस मधु सिलिका प्राइवेट लिमिटेड, DU-IV, प्लॉट नो. 147, वरतेज, भावनगर - ३६४ ०६०.
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**Copy for information and necessary action to :-**

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 Additional Commissioner, GST & Central Excise Division, Bhavnagar.
4. The Assistant Commissioner, GST & Central Excise, Bhavnagar
5. Guard File.