



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



सत्यमेव जयते

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रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.J.O. No.	दिनांक / Date
	V2/184/BVR/2017	51/Demand/Excise/2016-17	28-02-2017

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

BHV-EXCUS-000-APP-243-2017-18

आदेश का दिनांक /
Date of Order: **27.03.2018** जारी करने की तारीख /
Date of issue: **28.03.2018**

कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by **Shri Kumar Santosh, Commissioner (Appeals), Rajkot**

ग अथवा आयुक्त/संयुक्त आयुक्त/उपायुक्त/सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क, राजकोट / जामनगर / गांधीधाम, द्वारा उपरोक्तित जरी मूल आदेश से सूचित /
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, GIDC, Chitra Bhavnagar 364 004

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके से उपयुक्त प्राधिकारी / प्राधिकरण 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 अपीलीय 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) विशेषकर मूल्यांकन से सम्बन्धित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट 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 बतौर गए अपील के अलावा शेष सभी अपील सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टम) की पश्चिम क्षेत्रीय पीठ, द्वितीय तल, बहमाली भवन असावी अहमदाबाद-380016 को की जानी चाहिए /
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above
- (iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित फॉर्म प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इसमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की शीट, ब्याज की शीट और लगाया गया जुर्माना, रुपा 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए 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 अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक 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 अपीलीय 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/-.
- (iv) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है एवं उसके साथ जित आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की शीट, ब्याज की शीट और लगाया गया जुर्माना, रुपा 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए 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 अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक 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 अपीलीय 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 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/-.

- (i) किल्ल अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दंड की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न कीं (उनमें से एक प्रति धारणागत होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क सेवाक, को अपीलिय न्यायाधिकरण को आवेदन दंड करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न कराई होगी। / 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 अपीलिय प्राधिकरण (सेस्टैट) 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 अपीलिय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत 'मांग किए गए शुल्क' में विभक्त शामिल है
- धारा 11 डी के अंतर्गत रकम
 - सेस्टैट जमा की गयी गलत राशि
 - सेस्टैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के अंश से पूर्व किसी अपीलिय प्राधिकारी के समक्ष विधायीय स्थान अर्ज 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, 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 :
- amount determined under Section 11 D;
 - amount of erroneous Cenvat Credit taken;
 - 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 आवेदन :**
Revision application to Government of India:
इस आदेश की पुनरीक्षण प्राधिकार निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परतुक के अंतर्गत आवेदन किया जा सकता है, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौकी मंजिल, जीवन दीप भवन, संसद 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
- यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के परिवहन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह परिवहन के दौरान, या किसी भंडार गृह से या भंडारण में माल के परिवहन के दौरान, किसी कारखाने या किसी भंडार गृह में 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
 - भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) 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.
 - 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.
 - अभिहित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इच्छा की गई इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत प्रत्येक की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तरीक अथवा समावृत्ति पर या बाद में पारित 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.
 - उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संशोधन 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 अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर 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.
 - पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।
जहाँ संलग्न रकम एक लाख रुपये या उससे 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.
 - यदि इस आदेश में कई मूल आदेशों का सम्बन्ध है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपरोक्त ढंग से किया जाना चाहिए। इस तथ्य के होने हुए भी की विद्या नहीं करने से बचने के लिए यथास्थिति अपीलिय 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 Appellant 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.
 - यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट लगा होना चाहिए। / One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-1 in terms of the Court Fee Act, 1975, as amended.
 - सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलिय न्यायाधिकरण (कॉपी विधि) नियमावली, 1982 में बर्णित एवं अन्य संबंधित मामलों को सम्बन्धित करने 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.
 - उपरोक्त अपीलिय प्राधिकारी को अपील दायित्व करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलिय विभागीय 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., DU-IV, Plot No. 147, Vartej, Bhavnagar (*hereinafter referred to as "the appellant"*) filed an appeal against the Order-In-Original No. 051/Demand/Excise/2016-17 dated 28.02.2017 (*hereinafter referred to as 'the impugned order'*) passed by the Assistant Commissioner, Central Excise Division, Surendranagar (*hereinafter referred to as 'the lower adjudicating authority'*).

2. Briefly stated the facts of the case are that during the scrutiny of records of the appellant for the period from January, 2014 to March, 2014, it was revealed that the appellant had availed Service Tax credit in respect of various services as listed at Para 2 of the impugned order.

2.1 It was alleged that as per the definition of input service as provided under Rule 2(l) of the Cenvat Credit Rules, 2004 (*hereinafter referred to as 'the Rules'*), as amended w.e.f. 01.04.2011, the Cenvat Credit in respect of Architect's Services, Port Services, Airport Services, Commercial and Industrial Construction Services, Complex Construction Services and Works Contracts Services have been specifically excluded from the purview of availment of Cenvat credit if above said six services are 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.

2.2 It was also alleged that as per the Negative List of input services if the services were received for personal consumption of employees, then the same was ineligible for availment of input service.

2.3 Since the appellant had allegedly availed Cenvat credit which was not as per the provisions of the Rules, Show Cause Notice was issued to the appellant, which was adjudicated vide the impugned order whereby the demand of Cenvat credit of Rs. 37,38,405/- was confirmed under Rule 14 of the Rules, read with Section 11(A) 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 of the Rules.

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

3.1 As regards Cenvat credit in respect of Canteen service, the appellant

contended that the lower adjudicating authority has wrongly concluded that the service received for personal consumption of the employee; that the credit cannot be denied on Canteen Service as the canteen is situated within the factory premises and they were providing services as per Factory Act, 1948; that the service of preparation of food and serving food in-house canteen cannot be considered as Outdoor catering service and no service tax is payable under the Finance Act, 1994 and in support of their contention relied upon the following case laws ;

- (i) HCL Technologies reported as 2015 (37) STR (716) (All);
- (ii) Cema Electric Lighting Products 2015(37)STR754(T-Amd);
- (iii) Mahindra and Mahindra Ltd. 2015(39)STR298(Tri-Mum).

3.2 Regarding Cenvat credit of Service Tax on the services of M/s. Archivista Engineering Projects Pvt. Ltd. & M/s. King Engineers it was stated that they were providing service of bolt fixing on bolts supplied by the appellant and this fact has been ignored by the lower adjudicating authority; that in respect of M/s. Sharma Associate, M/s. Fabri-Tek Enginners, M/s. Rama Engineering and Fabrication, M/s. Shubham Udhog, M/s. U.T. Associates, M/s. Richa Industries Ltd., M/s. Maruti Nandan Fabrication, the lower adjudicating authority has wrongly stated that relevant invoices were not submitted by the appellant; that the Department should have called for the invoices instead of proceeding to decide the Show Cause Notice and violating principles of natural justice; that regarding Cenvat credit on invoices issued by M/s. Jay Equipment and System Pvt. Ltd. it was stated that if there was doubt, the lower adjudicating authority should have got verified through Range Officer; that in case of Cenvat credit on invoices issued by M/s. Sai Geotechnical Lab the material used by them was required to be tested and therefore Cenvat credit was available to them; that the lower adjudicating authority has wrongly denied the Cenvat credit of Service Tax on vehicles used by them as the same were registered in the name of the appellant; that Cenvat credit of Service Tax in respect of invoices issued by M/s. Om Sai Furnace Lining Works has been wrongly denied inasmuch as the bricks were periodically required to be replaced and such activity cannot be considered as civil work; that Cenvat credit of Service Tax in respect of M/s. Top 3 Lords Resorts and M/s. Hotel While Rose has been wrongly denied as the same were meant for providing stay facility to the professional person visiting their factory for business purpose; that the activity relating to expansion of existing business cannot be considered to be covered under the exclusion clause of the definition of Rule 2(l) of the Rules; that in view of above submissions Cenvat credit is admissible to them and therefore, interest and penalty are not maintainable.

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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 a detailed written submissions giving work order, invoices/bills of service providers to give evidences; that services are for fabrication of parts, components and accessories of machineries and also for fabrication and erection of plant and machineries and hence, Cenvat credit is admissible.

4.1 The appellant submitted written submissions as under :-

M/s. Archivista Engineering Projects Pvt. Ltd. were providing services relating to designing, drawing etc as well as Project Management relating to setting up new factory premises at Plot No. 147, G.I.D.C, Vartej, therefore credit is admissible; M/s. King Engineers were providing service of bolt fixing on bolts supplied by the appellant and Fixing of Bolt did not require any Civil Construction, hence Credit is admissible; that M/s. Sharma Associate were providing Fabrication and Erection Service as per measurement under Order No. MSPL/Project-009/30/2013-2014 and not Civil Construction Service hence Credit is admissible; that M/s. Fabri-Tek Engineers were providing services of assembling of back filter tube sheet in filter press services, hence, credit is admissible; M/s. Rama Engineering and Fabrication, M/s. Shubham Udhoyog were providing services relating to fabrication and testing of Tube Bundle, Tube Sheet Drilling and Fabrication of Supporting and Transport Structure etc, and no Civil Construction Work for providing above Services hence, Credit is admissible; M/s. U.T. Associates had provided the services in relation to fabrication and Erection of MS Tank and Vessels, Pre-Fabrication of SS 304 Silos and Cladding as per measurement etc. which did not require any Civil Construction Work and therefore, this Service not covered under exclusion Clause of definition of Input Service and hence, Credit is admissible; M/s. Richa Industries Ltd. were providing services in relation to Erection and Commissioning of Melter Machine used for Melting material and no Civil Construction Work was required, hence, Credit is admissible; M/s. Maruti Nandan Fabrication provided services of Fabrication work of Spray Dryer and full welding of Hot Air Ducting and no Civil Construction Work was carried out hence, Cenvat Credit is admissible.

4.2 The lower adjudicating authority has wrongly held that relevant invoices were not submitted by the appellant; that the Department should have called for invoices instead of proceeding to decide the Show Cause Notice and therefore, the principles of natural justice have been violated; that regarding Cenvat credit on invoices issued by M/s. Jay Equipment and System Pvt. Ltd. if there was any

doubt the lower adjudicating authority ought to have got it verified through Range Officer; that in case of Cenvat credit on invoices issued by M/s. Sai Geotechnical Lab, the appellant submitted Order No. MSPL-009/33/2013-2014 dated 08.08.2013 contending that services were required for Testing and Analysis of material i.e. Mobilization, Rebound, Hammer, UP Test, Compressive Strength Test etc. of the Material, no Civil construction work was carried out by them; that the material was required to be tested and therefore Cenvat credit was available to them; that the lower adjudicating authority has wrongly denied Cenvat credit of Service Tax on vehicles used by them as the same were registered in the name of the appellant; that Cenvat credit of Service Tax in respect of invoices issued by M/s. Om Sai Furnace Lining Works, who have provided the Service of labour in lining works and no Civil Construction work required, hence, Credit is admissible and has been wrongly denied inasmuch as the lining of furnace were periodically required to be replaced and such activity cannot be considered as civil work; that Cenvat credit of Service Tax in respect of M/s. Top 3 Lords Resorts and M/s. Hotel While Rose has been wrongly denied as the same were meant to provide stay facility to the professionals visiting their factory for business purpose; M/s. DNV Engineers (Professional Fees) have provided the service of Certification of quantity of M.S. and S.S. utilization in fabrication work, no Civil Construction work required for such Certification, hence, credit is admissible. M/s. Jay Equipment & Systems Pvt Ltd. (Installation Charges) have provided services of Installation of Long Span Shelve Rack without Civil Construction Work and hence, credit is admissible. M/s. Bhoomi Enterprise had provided services of Levelling of Land by JCB Machine, which is not construction service and therefore, Cenvat Credit is admissible.

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 is as to whether the impugned order denying Cenvat credit of Service Tax Rs. 37,38,405/- paid on various services on the ground of non-compliance of Rule 2(l) of the Rules is correct or not.

6. 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 issued by each service provider on merits of each case by examining

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purchase orders and / or description given in the relevant invoices / Bills to come to correct conclusion in each case.

6.1 Illustrative scanned copy of invoice in respect of M/s. Sai Geotechnical Lab indicates description of service provided as Tensile test of reinforcing steel bar, relevant test for concrete hardened compressive strength, physical testing of TMT bar etc :-

SAI GEOTECHNICAL LAB
(Govt. Approved Lab.)

INVOICE

Invoice No. : BRD/343
 Date : 03-03-2014
 Job No. : 117-426

To:
 Madhu Silica Pvt. Ltd.
 Bhavnagar

Mobile No. : 9227773007
 Contact Name : Mukashhai Pandya
 Client : Madhu Silica Pvt. Ltd.

Ref. No & Date : Letter No. MSPL-009-176 Dated : 01/03/2014
 Name of Work : Project MSPL-009 at Vantaj, Bhavnagar

Sr.No.	Particulars	Qty	Unit	Rate	Amount
1	Concrete Hardened Compressive Strength	2	Nos	100	Rs. 200
2	Steel Tensile Test of Reinforcing Steel Bar for % Elongation, Yield Stress, Ultimate Tensile	2	Nos	400	Rs. 800
	Bend Test		Nos		
	Rebend Test		Nos		
Sub Total					Rs. 1000
12 % Service Tax					Rs. 120
2 % Education Cess					Rs. 20
1 % H. Education Cess					Rs. 10
Total					Rs. 1150

VOUCHER No.
TDS-103

MSPL-009

for Sai Geotechnical Lab

In Words : **RUPEES ONE THOUSAND THIRTY FOUR ONLY**

We thank you for your trust

PAN No. : ABWFS1347M
 SERVICE TAX REG No. : ABWFS1347M3C001 DTD 30/04/2011

13-A, Basement Parohitra Apartment, Sudharapur Road, VADODARA-390023
 T: 0225-2281150, E-mail : saigeo13@gmail.com

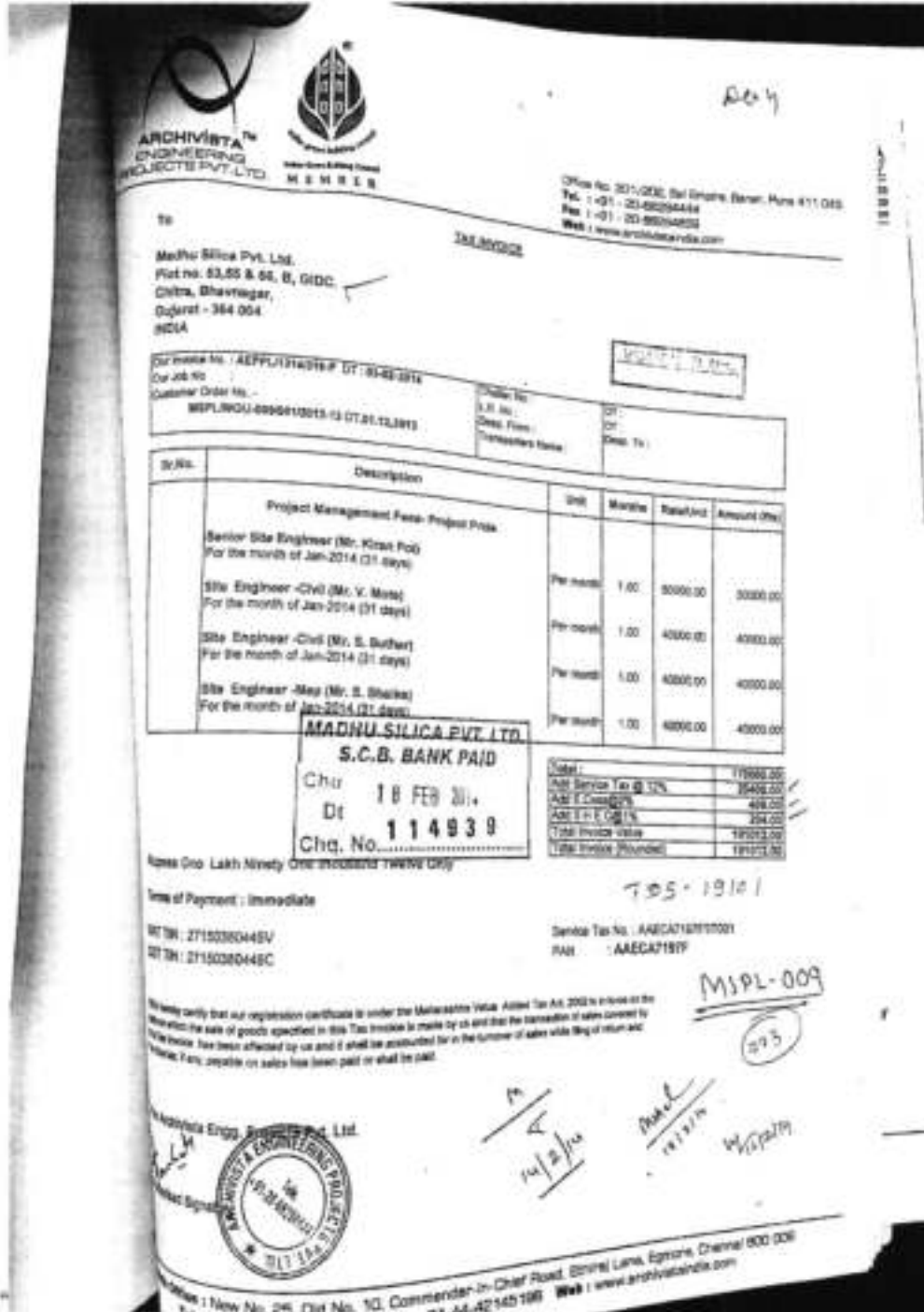
ISO

The description provided in the aforesaid invoice establish that service has been provided for checking of strength of (cement) concrete, TMT bar, which is nothing but directly related to Civil construction and therefore, Cenvat credit in respect of invoices issued by M/s. Sai Geotechnical Lab fall under the exclusion clause and Cenvat credit of Rs. 1,097/- in respect of such documents

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is not available under Rule 2(l) of the Rules.

6.2 Illustrative scanned copy of voucher/bill of M/s. Archivista Engg. Projects Pvt. Ltd. indicates description of services provided as below :-



The appellant has not provided any work order issued to them, however, on going through the description provided in the vouchers, I find that services provided is in relation to site engineer of Civil work. Therefore, I hold that Cenvat credit in respect of bills issued by M/s. Archivista fall under the exclusion clause and Cenvat credit Rs. 1,52,118/- is not available to the appellant under Rule 2(l) of the Rules.

Service Tax No. - BMOPS-7678.MSD 009
SHARMA ASSOCIATES
 Fabricators & Erectors

Vill. Khuriyawall, Post Arniya, Distt. Bulandshahr (U.P.) PIN-203131
 Sheets: 1 of 3

Bill TO: M/S. Madhu. Silica P.U.T. B.T.D.
 Plot NO:- 147 G.I.D.C. Vardaj Bhavnagar
 JO. NO:- MSP6/ARAD-009/30/2013-14
 Date - 31-7-2013
 Dated: 6-8-2014
 BILL NO:- 04

Description	QTY	Unit	Rate	Value
Fabrication & Erection of M.S Pipeline	363.6	Trach mtr	39.32	14515.00
Fab & Erection of M.S Structural	719.0	Kg	8.31	5976.00
men Power supply for F/D Reactor	AS per	Sheet attached		18445.00
H.D.P.E. Pipeline Spent modification & S.S 304 'U' Clamp fitting welding		b.s.	20000	2000.00
AS per measurement sheets attached.				41366.00
		Service Ed 12%		5036.00
		2% Education cess on 100%		101.00
		1% Secondary and Higher Education		50.00

MAADHU SILICA PVT. LTD. B.T.
 S.C.B. BANK PAID
 Chn 31 JUL 2014
 Di
 Chq. No. 515359
 Total = 47850/-
 Forty Seven Thousand One Hundred Eighty Five Rupees.
 TDS - 387

TO PAY
 38754/-
 25/11/14
 710
 38754/-
 6-1-14

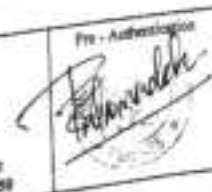

The above scanned invoice submitted by the appellant clearly indicates that it is for providing of Fabrication and Erection of M.S. Pipeline, which has appears relation with fabrication of plant and machineries and hence Cenvat credit of Rs. 1,02,780/- is available as services received do not fall under the exclusion clause under Rule 2(l) of the Rules.

6.5 The scanned copy of Invoice of M/s. Fabri-Tek Engineers indicates description of service provided as below :-

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FABRI-TEK ENGINEERS

Manufacturer : Flow Elements - Orifice Meter, Venturi Tube, Flow Nozzle, Averaging Pitot Tube,
Process Tank/Equipment, Heat Exchanger, Distillation Column, Reaction Vessel/ Agitator, Jacketed Tanks,
Custom Fabrication in C. S., Stainless Steel, Alloy Steel, Duplex Steel, Inconel, Monel, Aluminum and Copper

INVOICE		Invoice No. FE/13-14/143	Date: 28/01/2014	Duplicate For Transporter		
Name & Address of Consignor: M/s. MADHU SILICA PVT. LTD. PLOT NO-33,35 &36,S.O.I.D.C.,CHITRA BHAVNAGAR,364 004,GURAT		Name & Address of Consignee: (Rule 11 of C.E. Rules, 2002)				
Party ECC No. Party VAT No. 24140200613 Party CST No.		Party ECC No. Party VAT No. 24140200613 Party CST No.				
A/C : M/s. MADHU SILICA PVT. LTD.		Super ECC No. Super VAT No. 24140200613 Super CST No.				
MSPL/PROJ-009/YD-203/ Date: 30/01/2013		MSPL/PROJ-009/YD-203/ Date: 30/01/2013				
Item Description		Desc of Package	Quantity	Unit	Rate / Unit	Amount
J-009 BAG FILTER COMPONENTS SEEA FOR PACKING SLIP NO. MSPL/DFD-2003 DT 28.01.2014			1.00	NO	87,984.00	87,984.00
LABOUR CHARGES ONLY						
Ninty Eight Thousand Eight Hundred Fifty Nize Only						
10556 211 116 10875		Accessible Value: 87,984.00 S.T. %: 12.36 10,875.00 E. Cess %: S.H.E.C %: Freight: 0.00 Grand Total: 98,859.00				
Pre-Authentication 		For FABRI-TEK ENGINEERS 				

MSL 2700852437 V w.e.f. 18.08.2011
 MSL 2700852437 C w.e.f. 18.08.2011

LBT REG NO. PCMC-LBT-000099

Phone : 26, Mob : 9681496707, 9087752628, Ph : 020-68148038
 Email : info@fabritekengineers.com

The scanned invoice submitted by the appellant clearly indicates that it is for providing of services in relation to Project No. J-009 in relation to Bag Filter components, which has relation with fabrication of plant and machineries and hence, Cenvat credit of Rs. 1,28,314/- is available as services received do not fall under the exclusion clause under Rule 2(l) of the Rules.

6.6 The scanned copy of invoice of M/s. Subham Udyog indicates description of service provided as below :-



SHUBHAM UDYOG

Works : J - 380, MIDC, BHOSARI, PUNE - 411 008.
 Ph: (020) 66114177, 66120721, 66120722. Telex: (020) 66120717
 E-mail : shubhamudyog@yahoo.co.in / mapan@shubhamudyog.com
 Website : www.shubhamudyog.com

Your Purchase Order No. MSPL/SO-CFHAG/MSPL-009 Invoice No. LC-12
 D.R.R.No. 11/12-13 dt. 11/3/13
 Our Order No. 42
 Mr. Madhuilica Pvt. Ltd. Date - 10/01/14
 Plot No. 147, G.T.D.C., Vantaj, Bhayranganer - 360060
 Gujarat

Sr. No.	Description	Quantity	Rate	Amount Rs.	Rs.
	Labour charges only		MSPL-009		
	Fabrication & Testing of Tube Bundle Assembly in SS 304 L Tube For Module 3 MSPL 003		CFHAG - REMANUAL		
			Module-3		
			SS 304L		
1.	SS 304 L Fabrication of Tube Bundle Tube sheet & stiffener with tube bending for Module 3 MSPL 003	25/mo	58.5	1467.50	Rs
2.	SS 304 L Tube sheet drilling φ 63.5mm	660	67.5	44550.00	Rs
3.	Fabrication of supporting & Transport structure in MS For Module 3 MSPL 003	2700kg	15	40500.00	Rs
	Service Tax 12%			130538.00	Rs
	Ed. cess 2%			3810.00	Rs
	H.Ed. cess 1%			1301.00	Rs
			TOTAL	1784691.00	Rs

Rs. Seventeen Lacs Eighty Four thousand six hundred thirty one only

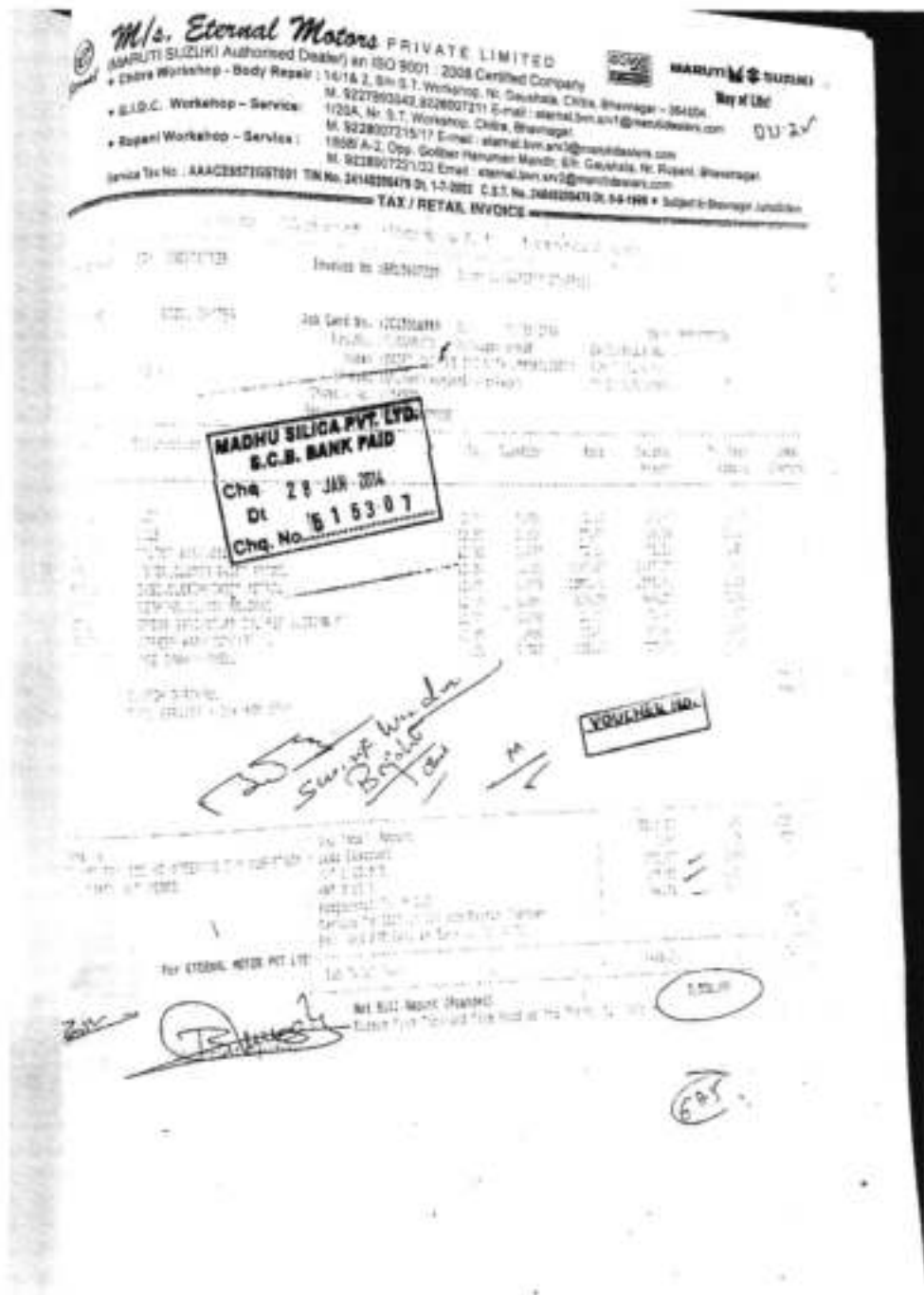
VATTIN No. 27740012345 V dt. 1-4-2006
 GSTIN No. 27740012345
 MADHU SILICA PVT. LTD.
 For SHUBHAM UDYOG
 For SHUBHAM UDYOG
 Partner

Chq. No. 114943

On perusal of the above scanned invoice submitted by the appellant clearly indicate that it is for providing of services in relation to Fabrication and Testing of Tube Bundle Assembly in Module 3 MSPL-009, which has relation with fabrication of plant and machineries and hence, Cenvat credit of Rs. 1,96,316/- is available as services received do not fall under the exclusion clause under Rule 2(i) of the Rules.

6.7 Illustrative scanned copy of Invoice of M/s. Eternal Motors Pvt. Ltd. indicates description of services as below :-

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Relevant Work Order also indicates that it is for servicing of Maruti Swift car, which has no relation with fabrication of plant and machineries or in the manufacture of final/finished goods and hence, Cenvat credit of Rs. 117/- is not available as held by the lower adjudicating authority.

6.8 Illustrative scanned copy of bill/invoices 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 :-

(Handwritten signature)

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MSPL-009

K/A Bill No-08
U. T. ASSOCIATES

Bill No. : UTA/MSPL/23/13-14
Date : 24.03.2014
Bill No. : MSPL/PROJ/009/13-14
Date : 06.02.2013

TO,
M/s Madhu Silica Pvt. Ltd
Plot No-147
G.I.D.C (Varley)
Bhavnagar

No.	Description	Unit	Qty	Rate	Value
	Being the amount charged towards fabrication and erection of MS Tanks and vessels, prefabrication of SS-304 Silos and SS-304/SS-316L cladding as per measurement & abstract attached.				
					3,58,14,326.00
				Less R/A bill/UTA/MSPL/23	1,20,11,873.00
					38,02,453.00
				12% Service Tax	4,56,294.00 ✓
				2% education cess on 12%	9,126.00 ✓
				1% add. edu. cess on 12% ST	4,563.00 ✓
					42,72,436.00
				TDS	62,724
				Total	42,72,436.00

Stamp: MADHU SILICA PVT. LTD. S.C.B. BANK PAID. Chq. No. 25 FEB 2014. Chq. No. 515660. VOUCHER No.

MSPL-009
Silo

[₹ Forty two Lacs Seventy two thousand four hundred thirty six only]

Hotel Vasant, N.H.-24, Gajraula-244235, Distt.-Amroha (U.P.) Mob.: 9837074594, 9837030428
Service Tax No. ACRPJ 0144KST001

From the description shown in Bill No. UTA/MSPL/24/13-14 dated 24.02.2014 it is seen that the services provided are in nature of fabrication and erection of capital goods like MS Tanks, Vessels, Silos etc. and do not indicate that it is in nature of Civil Construction Services. Therefore, the services provided by this service provider do not fall under the exclusion clause in any manner and therefore, Cenvat credit of Rs. 13,86,338/- in respect of bills issued by M/s. U. T. Associates is not hit by mischief of the exclusion clause of Rule 2(l) of the Rules.

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6.9 Illustrative scanned copy of invoice in respect of M/s. Richa Industries Ltd. (PEB Division), Faridabad is as below :-

CHALLAN

© RICH INDUSTRIES LIMITED-(PEB DIVISION)
An ISO 9001:2008 Certified Company
Mfg. of Pre-Engineered Steel Buildings

Richa Industries Ltd (PEB Div.)
Engineering Building Division
Plot No. 147, G.I.D.C. Vardol,
Bhavnagar-364080

Richa Industries Ltd (PEB Div.)
Engineering Building Division
Plot No. 147, G.I.D.C. Vardol,
Bhavnagar-364080

Invoice No: RKE13/0087
Invoice Date: 27-Jan-2014
Challan No: [Blank]
Mode/Terms of Payment: 15% Adv. Agt. 80% 15% Agt. 10% OA
Supplier's Ref: 3483E
Order No: RKE13/0087
Dispatch Dtg No: 39271
Dispatch Through: Pal Motor Transport Company
Destination: Bhavnagar Gujarat
Terms of Delivery: 85% Agt, LC
10% Agt, CPDG, 5% Agt PBD

Description of Goods	Quantity	Rate	per	Amount
Erection & Commissioning Charges				1,10,780.23
Erection Charges Building E For PCFHAG				13,296.18
Service Tax-Basic Payable		12 %		266.90
Service Tax Education Cess Payable		2 %		132.95
Service Tax High Education Cess Payable		1 %		(-10.27)
Rounded Off				
Total				₹ 1,24,487.00

Madhu Silica P. Ltd.
PAID HDFC BANK
Chq. No. 190
Chq. Dt. 28/1/14

Account Chargeable (in words)
Indian Rupees One Lakh Twenty Four Thousand Four Hundred Eighty Seven Only

Remarks:
Erection & Commissioning charges to M/s Madhu Silica Pvt. Ltd. against job no. 3483 building E for PCFHAG
IM against job no. 3483 building E dt 11.08.2008
Company's VAT TIN : 05008302740 dt 11.08.2008
Company's CST No. : 05008302740
Company's Service Tax No. : AAACR7943JST002
Buyer's VAT TIN : 24140200563
Buyer's CST No. : 24040200653
Company's PAN : AAACR7943J

Richa Industries Ltd. Faridabad
Plot No. 147, G.I.D.C. Vardol, Bhavnagar-364080
Tel: 01823-251111, Fax: 01823-251112, Email: richa@richa.in, Website: www.richa.in

TERMS & CONDITIONS
Please check the goods at the time of delivery. Afterwards no claim of Late deliveries would be entertained by us.
Once the goods will be accepted, afterwards no claim of Late deliveries would be entertained by us.
Interest @ 24% P.A. will be charged if payment are not cleared within due date.
All disputes are subject to Faridabad (Haryana) Jurisdiction.

From the description shown in Invoice No. RKE13/0087 dated 27.01.2014, it is seen that the services provided are in nature of Erection and Commissioning and do not indicate that it is in nature of Civil Construction Services. Therefore, relevant invoices, for the services provided by this service provider do not fall under the exclusion clause in any manner and therefore, Cervat credit of Rs. 6,25,164/- in respect of invoices issued by M/s. Richa Industries Ltd. are not hit by mischief of the exclusion clause of Rule 2(i) of the Rules.

Works do not seem to be hit by mischief of exclusion clause of Rule 2(l) of the Rules.

6.12 Illustrative scanned copy of invoice of M/s. DNV Engineers, Bhavnagar indicates description of services provided as is shown below :-

Invoice No. 360

M/s. Madhu Silica Pvt. Ltd (DU-IV)

Sr. No.	Particulars	Rate (Rs.)	Amount (Rs.)
	Fees for Professional Services rendered under : Testing, Inspection & Certification work.		
	Thickness Checking of Melter Tank No. 04		1,100/-
Total:			1,100/-
Service Tax @ 12%			132/-
Edu. Cess @ 3.2%			3/-
High Seas Cess @ 1.7%			17/-
Grand Total :			1,252/-

ONE THOUSAND TWO HUNDRED THIRTY SIX ONLY

Service Tax Registration No. AAWPV8525FSD001

Our PAN - AAWPV8525F

For DNV Engineers

Invoice No. 360 dated 28.01.2014 submitted by the appellant indicates Fees for Professional services rendered for Testing, Inspection and Certification pertaining to Melter Tank No. 4. Hence, the description provided in the invoices do not indicate any kind of Civil Construction. I, therefore, find that these services do not fall under the exclusion clause and Cenvat credit of Rs. 4,462/- in respect of services provided by M/s. DNV Engineers, is not hit by mischief of exclusion clause of Rule 2(l) of the Rules.

6.13 Illustrative scanned copy of invoice of M/s. Jay Equipment & Systems Pvt. Ltd. Vasai(E), Thane indicates description of services provided as shown below

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JAY
EQUIPMENT & SYSTEMS PVT. LTD.
Plot No. 92, S. No. 36, Complex, Dhimal Nagar, Wagle Vihar, Vasai (East), Dist. Palghar, Maharashtra - 401204

Jay Equipment & Systems Pvt. Ltd.
Sales Office / Unit 1 - Plot No. 47, S. No. 101, Vihar Park, Behind Pooj. Mandir, Vasai (E), Dist. Palghar - 401204
Tel: 022-666749 / 666750 / 2481800 / 2481801 / 2481802 / 2481803 / 2481804 / 2481805 / 2481806 / 2481807
Unit 2 - Plot No. 92, S. No. 36, Complex, Dhimal Nagar, Wagle Vihar, Vasai (E), Dist. Palghar - 401204
Tel: 022-666749 / 666750
Email: info@jayequipment.com / sales@jayequipment.com

COMMERCIAL ORIGINAL COPY INVOICE

Inv. No. JES/ 026/ 13-14 Date: 03-Mar-14
Order No: W.O.No.MEPL/ DU-IV/181/2013-14 Date: 04-Feb-14
Dispatch By:

Particulars	Quantity	Rate	Per Unit	Amount
	Units	Rs.		Rs.
Installation Charge				
Long Span Shelfe Racks	1 Nos	12,000.00	Each	12,000.00
Dismantling of Racks :Qty:08 Nos				
Reassembly of Racks : Qty: 08 Nos				
TOTAL				Rs. 12,000.00
Pack & Pwd. Chgs. Rs.				0.00
Delivery Chgs. Rs.				0.00
TOTAL				Rs. 12,000.00
Service Tax 12.36% Rs.				1,483.00
CST 2.00% Rs.				0.00
Grand Total				Rs. 13,483.00

MAHU SILICA P. LTD.
PAID S.C.B. BANK
Chq. No. 114, 278
Chq. Dt. 21.2.14

VOUCHER No.

PAID

DUPLICATE

For Jay Equipment & Systems P. Ltd.
Paulina
Authorised Signatory / Director.

CC No: AAACJ5480AEM004
Service Tax No: AAACJ5480ASD002
V.A.T. TIN No: 27750006568 V w.e.f. 1/4/2006
EAN No: AAACJ5480A

Invoice No. 026/13-14 dated 03.03.2014 submitted by the appellant indicates Installation charges for dismantling and reassembly of Long span shelfe racks. The description provided in the invoice, does not indicate any nature of Civil Construction. I, therefore, find that these services do not fall under the exclusion clause and Cenvat credit of Rs. 1,483/- in respect of services provided by M/s. Jay Equipment & Systems Pvt. Ltd., is not hit by mischief of exclusion clause of Rule 2(l) of the Rules.

6.14 Illustrative scanned copy of invoice of M/s. Top 3 Lords Resort (A unit of Tree Top Resorts & Spa Pvt. Ltd.), Bhavnagar indicates description of services provided as shown below :-

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Top3 Lords
A UNIT OF TREE TOP RESORTS & SPA PVT. LTD.

SERVICE TAX CATEGORY: ACCOMMODATION

Bill No : 3873 Reg No : 1023 Page No : 1

MR. MALTON GHANA KUMAR

ANNA UNIVERSITY

01/03/2014 to 03/03/2014

01/03/14	TARIFF 108		
01/03/14	LUXURY TAX @ 8%	2666.80	2666.80
01/03/14	SERVICE TAX	199.98	2865.98
01/03/14	C P	197.82	3063.80
		1.00	3064.80
	Day Total		
	Grand Total	3064.80	3064.80
	Net Amount	3064.80	3064.80

3065.00

172
4
2
178

MADHU SILICA P. LTD.
PAID S.C.B. BANK
Chq. No. 515937
Chq. Dt. 18-3-14

Checked

Top3 Lords

CREDIT BILL

CREDIT AUTHORIZED

ANNA UNIVERSITY

User - Id : RAJIB

GUEST'S SIGNATURE

R. O. :- TREE TOP RESORTS & SPA PVT. LTD.
3RD FLOOR, SHY BUILDING, DWANPARA ROAD, BHAVNAGAR - 384001 (GUJARAT)

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 provide 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 purposes and no nexus is required to be proved for availing of Cenvat credit. 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. I also find

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from the above scanned copy of the Bill that the name of the company has been shown as M/s. Anna University which could not be in relation to the appellant concerned in this appeal. I find that as per Rule 9(5) of the Cenvat Credit Rules, 2004, the burden to prove admissibility of Cenvat credit is cast upon the appellant who have failed to discharge this burden and hence, Service tax paid on hotel bills cannot be allowed to be taken as Cenvat credit by the appellant and therefore, Cenvat credit of Rs. 614/- is not admissible under Rule 2(l) of the Rules.

6.15 Illustrative scanned copy of invoice of M/s. Hotel White Rose, Bhavnagar indicates description of services provided as shown below :-

Hotel White Rose

Opp. Vimalnagar, 7th/8th Ring, Bhavnagar-364 003
 TEL : +91 - 278 - 2514022/2481390 Fax : 91 - 278 - 2513407
 E-Mail : hotel.white.rose@yahoo.com www.thehotelwhite.rose.com

DU-IV

12 NOON CHECKOUT TIME
 GST TIN NO : - SERVICE TAX NO : ACLPG465CS0001

MR. ATUL SOLANKI
 C/O. KANGAL PLET
 PATIL PATEL COLONY
 PATILJI ROAD
 CHANDASAD GUJARAT

Room No : 3348
 Room Type : DELUX A.C.
 Rate : 1250

Arrival Date : 13/02/2014
 Depart Date : 14/02/2014
 Persons : 1

Time : 11:40
 Time : 10:20
 Remarks : Discount 50% 625.00

Bill No : 3370
 Page No : 1
 Bill Date : 14/02/2014

Description	Amount	Total
Room Charge	625.00	625.00
Service Tax	50.00	50.00
Other Charges	225.00	225.00
Total	900.00	900.00

MADHU SILICA PVT. LYS.
S.C.B. BANK PAID
 Chq. 11 MAR 2014
 Dt. 11 MAR 2014
 Chq. No. 515825

Handwritten: [Religion Eng] (for main) Time attend) 46
 06/03/14

Description	Amount
S.F. Amount	47.00
Service Tax	47.00
Total Amount	947.00
Less Deposit	
Others	
Bill Amount	947.00

Net 428 X 1 Days = Assessable Value : 825.00
 Svc Tax 7.28% = 48.00 EduCess 2% : 1.00 H.Svc. Cess 1% : 1.00

Amount in Words: NINE HUNDRED FOURTY SEVEN ONLY

Description	Amount
Room Service	199
14 MAR 2014	26

Authorized Signature

I find that Cenvat credit of Service tax paid on bills of Hotel White Rose and cannot be allowed as held above therefore, Cenvat credit of Rs. 47/- is not admissible under Rule 2(l) of the Rules.

6.16 Scanned copy of invoice of M/s. Maruti Nandan Fabrication, Bhavnagar indicates description of services provided shown as below :-

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MARUTI NANDAN FABRICATION

Plot No. 2535 / 36 - B, Near Akshardham Society,
Ayodhyanager, Kalvibid, Bhavnagar
Mobile - 9974168736

No. 46

Dt. 04.03.2014.

M/s. Madhu Silica PVT LTD.
GIDC, Vantaj, Bhavnagar.

MSDL/MSRL 009/MSL
POWO No. 2013/14 - 05.06.2013

PARTICULARS	QUANTITY	RATE	AMOUNT
			RS. P.S.
Labour job at your GIDC Vantaj site.			
Dismantling, fabrication & erection pipe rack ms. steel structure at your GIDC Vantaj site.			
Total work -	44813 hrs	6200/hrs	279223 50
Service Tax: 12.36%			91368 02
<u>MSDL009</u>			
Fabrication charges Pipe Rack & ms steel structure			
Eight to five hundred ninety one fifty two paise only			
TOTAL			370591 52

MADHU SILICA P. LTD.
PAID S.C.B. BANK
Chq. No. 515,877
Chq. Dt. 11-3-14

For, MARUTI NANDAN FABRICATION

21/11/14

Bhavlal

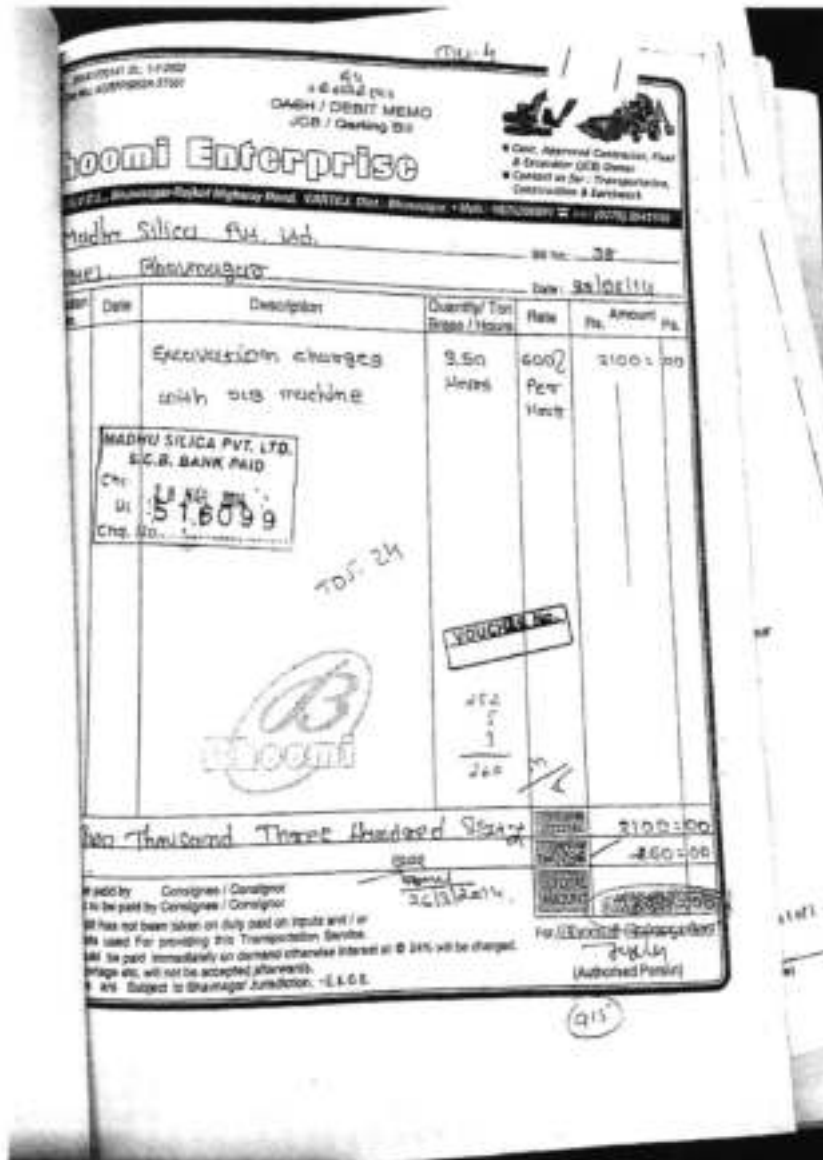
Direct to Bhavnagar Jurisdiction

64202
1234
589
91368

Bill No. 46 dated 04.03.2014 submitted by the appellant indicates description of services provided as labour charge for Dismantling, fabrication and erection of pipe, rack, structure, etc. The description provided in the bill does not indicate any nature of Civil Construction Service. I, therefore, find that the services do not fall under the exclusion clause and Cenvat credit of Rs. 91,368/- in respect of services provided by M/s. Maruti Nandan Fabrication is not hit by mischief of exclusion clause of Rule 2(l) of the Rules.

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6.17 Illustrative scanned copy of bill of M/s. Bhoomi Enterprise indicates description of work done as excavation with JCB machine as below :-



The appellant did not submit copy of any work order with M/s. Bhoomi Enterprise but the description of work as indicated in the above Bill very clearly say excavation with JCB machine / foundation work, which has to be treated as civil work and therefore, Cenvat credit of Rs. 5,105/- in respect of Bills issued by M/s. Bhoomi Enterprise fall under the exclusion clause of Rule 2(l) of the Rules 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. Sai Geotechnical Lab (Rs. 1,097/-), M/s. Archivista Engineering Projects Pvt Ltd. (Rs. 1,52,118/-); M/s. King Engineers(Rs. 5,102/-), M/s. Eternal Motors (Rs. 117/-), M/s. Top 3 Lords Resorts (Rs. 614/-), Hotel

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White House (Rs. 47/-) and M/s. Bhoomi Enterprise (Rs. 5,105/-) totaling to Rs. 1,64,200/- has been correctly denied by the lower adjudicating authority. Accordingly, I hold that Cenvat credit of Rs. 1,64,200/- 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 Rs. 35,74,205/- of Service Tax paid on the services provided by M/s. Sharma Associates (Rs. 1,02,780/-), M/s. Maruti Nandan (Rs. 91,368/-), M/s. Rana Engineering and Fabrication (Rs. 2,96,380/-), M/s. Richa Industries. (Rs. 6,25,164/-) and M/s. Om Sai Furnace Lining (Rs. 7,41,600/-), M/s. DNV Engineers (Rs. 4,462/-), M/s. Fabri-Tec Engineers (Rs.1,28,314/-) and M/s. Subham Udyog (Rs. 1,96,316/-) and no interest is payable on this amount.

8. As regards penalty, I find that the Show Cause Notice dated 22.01.2015 is covering period from January, 2014 to March, 2014 and the impugned order has imposed penalty of Rs. 37,38,405/-. Since Cenvat credit of Rs. 35,74,205/- has been held to be admissible, I set aside penalty of Rs. 37,38,405/-. However, I uphold imposition of penalty of Rs. 1,64,200/- against denial of Cenvat credit of Rs. 1,64,200/- under Rule 15(2) of the Rules.

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 सतोष)
आयुक्त (अपील्स)

By R.P.A.D.

To

M/s. Madhu Silica Pvt. Ltd., DU-IV, Plot No. 147, Vartej, Bhavnagar – 364 060.	मेस्सेर्स मधु सिलिका प्राइवेट लिमिटेड, DU-IV, प्लॉट नो. 147, वरतेज, भावनगर - 364 060.
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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.