









**!! ORDER IN APPEAL !!**

M/s. Green Anandh Shis Breakers, "15 Agrowal House", 22nd/23rd Street, Hill Drive, Bangalore-56001 (hereinafter referred to as the appellant) as in the present appeal appears. The Order in Original No. 22/30/2017/BE&S/T/2017 (Dated 30/12/17) is (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner of Central Excise & Service Tax, Rural Division, Bangalore. (hereinafter referred to as "the Adjudicating Authority").

2 The appellant holding Central Excise Registration No. 600967/SARVM001 engaged in manufacture of excisable goods viz. Material covered from Breaking of Old & Used Ship Galley, under Chapter 80 to 84 of Section 8X of the first schedule to the Central Excise Tariff Act, 1928 availing benefit of Central Credit as per the Central Credit Rules, 2006. During the course of Audit, it was observed that the appellant had cleared excisable goods through different Consignment Agents. Further scrutiny of records revealed that the appellant has availed Central Credit of Rs. 3,71,155/- & Rs. 6,25,190/- as Input Services as G.S.T. in the month of April 2019 and April-2018 respectively and utilized the same towards payment of Central Excise Duty. The availment of Central Credit of service tax, used by their Consignment Agents, on the basis of the documents issued by the Consignment Agents was not legal and proper, a show cause notice No. V/13-114/Den/BQ:2015-16 dated 15.11.2016 was issued to the appellant by the Joint Commissioner, Central Excise, H.Q. Bangalore. The aforesaid Show Cause Notice, after issuance of a corrigendum dated 20.10.2016 in pursuance of CBEC Circular dated 20.10.2016 made the aforesaid duty credits for subject goods revised and as a result, the duty credits to be adjusted by the Assistant Commissioner of Central Excise, Rural Division, Bangalore. The aforesaid Show Cause Notice was Adjudicated vide impugned order dated 30.12.2016 wherein the Adjudicating Authority cancelled the claimed wrongly availed Central Credit of Rs. 9,96,347/- availed and utilized by the appellant and ordered to its recovery under Rule 14 of Central Credit Rules, 2006 read with Section 11A(1) of the Central Excise Act, 1944. Although the interest

*(Signature)*

under Section 110A of RKA 1947, which imposed a general penalty of Rs. 5000/- under Rule 11A of Contract Credit Rules, 2001.

3. Being aggrieved by the impugned order, the Appellant filed the present appeal.

- The impugned order is not specific and not material as the Bill of exchange having been dishonored with the proceeds raised by the appellant during the course of hearing before him as well as made in reply to the Show Cause Notice; completely ignored the judgment rendered and relied upon by the appellant.
- The show cause notice is time barred: Revenue authority can not invoke the extended period of limitation when the reasons of the appellant were admitted by the officers during the previous audit, when it could have been put to rest by short payment from tax due. And the present liability has been raised during the subsequent audit carried out by the second audit party covering the same period or overlapping period and hence, department cannot allege that the appellant misstated or suppressed the facts from the document.
- The appellant had rightly taken and availed the CENVAT credit of Rs. 9,56,543/- of Service tax on freight (OTR) paid by their consignment agents and availing authority opted by treating the consignment agent of the appellant as a "OTR", their consent agents rendered services to the appellant and as the agent of the appellant to collect the service tax on transportation charges and collected from the appellant as per the Service Tax Rules. As regards the documents, appellant submitted that there were some minor defects in the consignment notes issued by their consignment agents but same are technical in nature; there is no doubt about payment of service tax, the availing authority is rightly opted and the consent agent of their consignment agents, which proves that the appellant did receive the services of consignment agents and the appellant were not attempting to avail benefit of accounting; there was no intention on the part of the appellant to deprive the revenue of taxes payable and they are equally liable not to be ignored.

- Penalty under Rule 15A of the Rules is not imposed as the Adjudicating Authority had not given any grounds in its findings and for imposition of penalty under Rule 15A of the Rules, the appellant was not ready to pay the duty as per Rule 15A.

11. Hearing in the matter was held on 21.2.2018, wherein Shri M.S. Vaidyanath, Counselor, appeared on behalf of the appellant and reiterated the submission of their appeal memorandum and submitted the additional submission dated 31.3.2018 for consideration.

Vide the additional Submission of dated 31.3.2018, the counselor of the appellant submitted that the Show Cause Notice issued to their client is time barred and subsequently impugned order is also void and void in law as there was no evidence or discussion in the Show Cause Notice and in impugned order regarding suppression of facts by their client with intent to evade the duty. The said D.D. and H.M. was extended period credit and the amount. Their client was a ship broker, who was dispatching/selling M.S. Plates, Waste & scrap obtained by breaking up of old & used ships by their through their Consignment agents. The freight was not paid by their client, but the same was paid through H.M. Consignment agents. Further the consignment agents paid the freight to the shipping company, discharged their service tax liability on their freight amounts paid by them; also disclosed the paid amount of service tax in their service tax returns. The consignment agents after deducting the freight and service tax paid amount from the total amount received from the ultimate buyers, paid the remaining amount to the appellant. In their case, their consignment agents rendered service to the appellant, as the agent of the appellant, paid the service tax on transportation charges collected from the appellant, which is as per the Service Tax Rules and accordingly appellant had rightly taken the credit of service tax paid by them in respect of services.

12. However, through the appeal memorandum, content and oral submission made during personal hearing by the appellant.



5.1 I find that the appellant has made payment of mandatory deposit of Rs. 5,000/- (7.5 % 5,95,643/-) State Bank of India (Cdn. No. 394 Dtd. 6.3.2017) and thereby complied with the requirement of mandatory pre-deposit in pursuance to the amended provisions of section 23-B of the Central Excise Act, 1944.

5.2 I find that the appellant filed appeal on 04<sup>th</sup> day from the date when prescribed. For the aforesaid delay of 6 days, the appellant submitted that due to its delay was being with the administrative proceedings of various authorities due to delay of adjudication being a chartered Account firm, they were busy with the reply work of notice issued by the Income Tax Department due to dissemination of currency. Therefore they could not comply to respond within the time and hence delay was occurred. Further submitted that if the delay was not condoned, the appellant/appellant would suffer irreparable loss/damage. Also quoted some judgments in support of their contention. I find the reason appears to be genuine and delay is well within the prescribed time limit of 30 days for Comptroller (Appeals) - 1st Wing and is covered by section 35 of the Customs Act, 1962. I condone the delay and allow to appeal to be heard.

5.3 I find that the issue to be decided in the present appeals are:

1. Whether the appeals filed by appellant the Credit of Credit of Service Tax or CTA on the basis of documents issued by their Consignment Agents?
2. Whether the demand is time barred?
3. Whether penalty is imposable on the appellant?

5.4 Now I take up the issue Whether the appellant have rightly availed the Credit of Credit of Service Tax or CTA paid by their Consignment Agent on the basis of Consignment Sale Note issued by their Consignment Agents.

5.4.1 Undisputed fact of the case is that the appellant is a ship-broker, and the consignment goods are M.S. Plates, Waste & Scrap obtained by breaking up of ship or vessel scraps, through their Consignment Agent, received from goods to their Consignment Agent

  
[Signature]





- (i) an dealer of excisable goods who is registered under Central Excise Act, 1944 or under rules thereunder.
- (ii) any body corporate established or incorporated for rendering of any service.

From the above, it is evident that in the case of GTA services the levy of service tax has been shifted from the consignor to the consignee who is liable to pay freight where consignor or consignee of the goods is covered under any of the seven specified categories. Accordingly, I find that liability to pay service tax was upon the Appellant as per the Rules. From the perusal of the Rule 9(1) of the Central Excise Rules, 2004 I find that the credit can be taken on the basis of documents evidencing payment of Service tax. In the present case, it is claimed to have been paid by consignment agents and the credit was taken on the basis of consignment invoices (which too have minor defects) issued by their Consignment Agents.

4.3 I do not find any infirmity in the decision of the adjudicating Authority by holding that Consignment Sale Note upon which credit was taken is not the proper document to seek the Central Credit in terms of the provision of Rule 9(1) of the Central Excise Rules, 2004 and in terms of Rule 14 of Service Tax Rules, 1991. However failed to appreciate, on the appellant's contention of eligibility in terms of Rule 9(1) of the Central Excise Rules, 2004. In this regard, I have gone through the sample copy of the Consignment Sale Note (Sl No. 211 issued by Global Export Linka. Off. No. 8/1000 Sale, Meul Golandach and following discrepancies were observed as given below.

Difficulties details should be available	Observation
Details of Party of services tax payable	Not clearly mentioned. In Return No. of Rs 2454/- have been shown under this head Expenditure on Sale. But Whether it is relevant to GTA or Ancillary service of GTA i.e. Local Carting, RANNA, Unloading or loading or The amount of Service

*[Signature]*

		<u>Tax on the Commission Income, not clear</u>
2	Description of the goods or taxable service (assessable value, Central Excise or Service Tax registration number of the person issuing the invoice, as the case may be.)	Description of Taxable Service (GST) is not mentioned ; value of freight is given; No details of Service Tax Registration is given.
3	Name and address of the buyer or consignee or purchaser or first or second stage dealers or [provider of output service]	No Address of M/s Chandra Ashish Ship Brokers is given

In view of the above facts and circumstances, to check the applicability of clause (a) of Rule 9(2) of Central Credit Rules, 2004, it had become necessary that the appellant should be given one more opportunity to substantiate his contention and should be asked to come forward with the following documents to substantiate his claim:

- i) the respective copy of Sales Challans proving the payment of Service Tax in his account by their Consignment Agents
- ii) Lorry Receipts or Consignment Notes or any form which has issued by their respective Consignment Agents on any single consignment or subject goods from the factory premises to the consignee Agents, proving the movement of goods; Has he booked the consignment?; booked on To-Pay basis or otherwise? Liability of Service Tax/whether is upon consignee or Consignment Agent, have been marked?
- iii) Consignment note copy of original receipts issued by the Consignment Agent, or receipt of consignee Agent.

Since the appellant is not speaking, as far as the availability of Central Credit in terms of Rule 9(2) of the Central Credit Rules, 2004 and in the present case, the appellant has enclosed the sample copy of invoice issued by the Consignment Agent, sales notes and respective Central Excise invoices, Copy of Invoice Ledger etc. to substantiate his claim; hence the veracity of the claim is not in doubt cannot be verified at this point of time, the matter has to go back to the Adjudicating Authority, who will confirm that the goods or services covered by the above said documents have been received and cannot be set aside in the

books of the account of the appellant and ascertain whether the requirements envisaged under the Rules are fulfilled on the basis of merchandise received and confirm the admissibility in terms of the provisions of Rule 2(2) of the Central Excise Rules, 2004 and indicate the amount of duty payable to any last appellant and the person or authority to prove their case and also the Assistant Commissioner shall be free to get any verification if necessary done.

5.4.1. Accordingly, the matter is remanded to the adjudicating Authority to consider issues raised in view of the fact that even in the impugned order after giving an opportunity to the appellant to represent their case in the light of judicial precedents, legal provisions and other relevant factors. Accordingly, keeping all the other issues open, I set aside the impugned order and remand the matter back to the adjudicating authority to consider the issue afresh after following the principles of natural justice and pass a speaking order. Decision of remitting matter back to the adjudicating authority is also supported by decision in the case of West Coast Paper Mills Ltd. reported at 2004(164) E.L.T. 375(5.0). Appellant is also directed to cooperate with the Adjudicating Authority by attending personal hearing granted to them and submit the required documents as referred to at 5.4.3.

6. ~~आरोपकर्ता द्वारा लगे गये अंशों का निस्तार तय होने पर कर के रोक लगाया है।~~

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

सचिव  
श्री. ए. ए. शर्मा  
असिस्टेंट कमेसियर  
सेल नं. 30

श्री. ए. ए. शर्मा  
सेल नं. 30

सह महानिदेशक, जिला / आयुक्त (आयुक्त)

By Regd. Post A.D. / Speed Post  
D.NO.12/Sa.137/2018

Date: 4/3/18

To,  
M/s. Shri Aalish Ship-Exporters,  
113, Appal Road,  
2211/2219/17,  
P.H. Dera,  
Shri Nagar-464001

Copy To:-

The Chief Commissioner, CFT & Central Excise, Ahmedabad  
Zone, Ahmedabad

1. The Chairman and Member, Central Taxes, Rajkot.
2. The Commissioner, GST & Central Excise, Maharashtra  
Commissionerate, Shastinagar
3. The Assistant Commissioner, GST & Central Excise,  
Division, Maharashtra, Maharashtra.
4. The Superintendent, Revenue, GST & Central Excise,  
Maharashtra, Maharashtra, Maharashtra.
5. Guard File.
6. Const. File for Office Additional Director Central  
Taxes, Ahmedabad No. 4 (A), Ahmedabad

