

:: ORDER IN APPEAL ::

M/s. Moonu Silica Pvt. Ltd., D-142, Plot No. 147, Vardaj, Bhadravaj (Hereinafter referred to as "Appellant") filed an appeal against Order In Original No. 150/GST/Demand/2017-18 dated 24.04.2017 (Hereinafter referred to as the impugned order) passed by the Assistant Commissioner, Central Excise, City District Bhadravaj (Hereinafter referred to as the lower adjudicating authority).

2. The brief facts of the case are that scrutiny of records of Appellant for the period from January, 2015 to July, 2016 revealed that Appellant had availed Central Excise credit in respect of various screens, which were allegedly not admissible as per the definition of input service provided under Rule 2(i) of the Central Excise Rules, 2004 (Hereinafter referred to as the Rules) on the alleged ground that the screens have been used for making structures for support of capital goods installed for expansion of existing manufacturing unit and hence, a specifically excluded from the purview of availment of Central Excise.

2.2 Show Cause Notice dated A3-IMPSON/MADHU SILICA AUDIT PARAY'S 19 dated 23.11.2016 was issued to the Appellant which was adjudicated with the impugned order and amount of Central Excise of Rs. 56,795/- was confirmed under Rule 14 of the Rules, read with Section 11(b) 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 of Rs. 16,488/- was also imposed under Rule 15 of the Rules read with Section 11AC of the Act.

3. Being aggrieved with the impugned order, Appellant preferred the present appeal under the provisions of the Act.

3.1 The lower adjudicating authority has wrongly observed that Central Excise is not available as fabrication was carried out on the material supplied by Appellant, that the service provider has provided labour was carried out fabrication of part as per design required by the Appellant and such work fell within the purview of definition of input service as provided under the Rule 2(i) of the Rules since the service provider had then carried out any civil construction work nor did laying of foundation or making of structure for support of capital goods and therefore, exclusion part of the definition was not applicable. In view of the fact, the demand is not sustainable and interest ordered and penalty imposed in the impugned order are required to be set aside.

3.2 It was also contended that the charges of suppression of facts are not tenable inasmuch as General credit taken by them was duly reported in an expanding para of E3-1 returns; that the judgments of Hon'ble Supreme Court in the cases of *Shamavtra Tackle Processor* reported as 2006 (231) EIT 3 (SC) and *Rajeshwar Spinning and Weaving Mills* reported as 2008 (111)3 (SC) relied upon by the lower adjudicating authority are not applicable.

4. Personal hearing in the matter was attended by Shri. H. B. Dave, Consultant when he considered the grounds of appeal and submitted synopsis detailing facts of the case; also submitted that General credit needs to be allowed as the services have been used for fabrication of capital goods and parts thereof within the factory premises; that these particular goods have direct nexus to the manufacture of the final products; that the services provided by J.T. Associates are towards erecting and commissioning of these capital goods and parts thereof.

4.1 Appellant also submitted written PL submissions stating that M/s. J.T. Associates provided services as per Order No. MSPL/PROJ_005/2014-14 pertaining to the fabrication and erection of MG Tank and platforms etc., which did not require any Civil Construction Work and therefore, General Credit is admissible on such services. M/s. Sharma Associates provided services in relation to fabrication of MG Platform in H-10 Plant, and hence General Credit is admissible; that M/s. Marill Barden Fabrication has provided services of fabrication of Cable tray, which was required in H-11 Plant for laying cables from Transformer to Plant and no civil work was done for erection of Cable Tray, hence General credit is admissible, that they relied upon the following precedents:

- (i) Jai Shakti - Engg. & Construction - 2012(27)STR264 (1-Ambd);
- (ii) Kunal Fabricators & Engg Works - 2014(30)STR448 (1-Del);
- (iii) Kiler Industries (India) Ltd - 2015(38)STR422 (T-Ambd) &
- (iv) IRII Industries Ltd. - 2017(40)STR448 (1-Ambd)

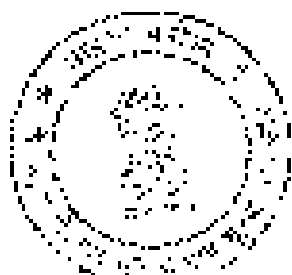
Findings:-

a. I have carefully gone through the facts of the case, the impugned order, the grounds of appeal, written and oral submissions made by the Appellant. I find that the Appellant has filed this Appeal, despite it being due along with Application for condonation of delay on the ground that the delay has occurred in delivery of appeal papers from consultant, by the courier, & banking delay of 1 day in filing appeal under Section 55 of the Act and would amount to excuse the appeal on merits.

5.1 The issue to be decided in the instant appeal is as to whether the impugned order denying Credit of Service Tax of Rs. 95,735/- paid on the various services on the ground of non-compliance of Rule 7(j) of the Rules is correct or not.

6. The Appellant has submitted that availment of Credit of Service tax paid on various input services has been wrongly disallowed to them even when Work orders/Purchase orders and relevant invoices indicate that they have not carried out any civil construction or any work in respect of foundation & masonry of structure for support of capital goods. Therefore, there is need to examine admissibility of Credit credit available on the basis of work orders and/or invoices issued by each service provider. Let's examine work orders and description given in the relevant invoices / Bills etc. to come to the conclusion in each case.

5.1 Scanned copy of invoice of M/s. Mohali Nandini Construction, Dhawanagar, Indore is captioned as the services provided by them is set as below:-



3.1. Bill No. 88 dated 23.07.2016 submitted by the Applicant indicates description of services rendered as labour charges for fabrication and erection of fabric - for Rack - Home Pipe, etc. therefore held that the services do not fall under the exclusion clause and General credit of Rs. 24,513/- in respect of the services provided by M/s. Maruti Nandan - should not be disallowed on account of exclusion clause of Rule 2(b) of the Rules.

3.2. Scanned copy of bill of M/s. Charma Associates, Delhi, Durgam Chauri, L.P., indicates description of the service provided as below :

CHARMA ASSOCIATES				
DELHI				
Durgam Chauri, L.P.				
Bill No. 88 dated 23.07.2016				
To the Hon'ble Joint Commissioner, Delhi, Durgam Chauri, L.P.				
Particulars				
Sl. No.	Description of work	Unit	Rate	Amount
1	Labour charges for fabrication and erection of fabric - for Rack - Home Pipe, etc.	1000	24.513	24513.00
Total				24513.00

6.2.1 The above scanned copy of Bill No. 32 dated 28.03.2018 clearly indicates that the services are for the Fabrication and Erection of Platform for 50' Part on Keel and hence, Credit limit of Rs. 1.02L is available to the Applicant.

6.3 Illustrative scanned copy of invoice in respect of this Bill is Assembled, replicates, attachment of the service as shown below :

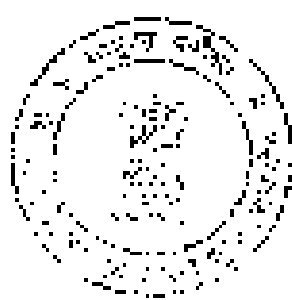
MANDI BANSI

(A) Bill of Materials

Sl. No.	Description	Quantity	Rate	Amount
1	Supply of 1000 nos. of 10mm dia. steel reinforcement bars	1000	1000	1000000
2	Supply of 1000 nos. of 12mm dia. steel reinforcement bars	1000	1200	1200000
3	Supply of 1000 nos. of 16mm dia. steel reinforcement bars	1000	1600	1600000
4	Supply of 1000 nos. of 20mm dia. steel reinforcement bars	1000	2000	2000000
5	Supply of 1000 nos. of 25mm dia. steel reinforcement bars	1000	2500	2500000
6	Supply of 1000 nos. of 32mm dia. steel reinforcement bars	1000	3200	3200000
7	Supply of 1000 nos. of 40mm dia. steel reinforcement bars	1000	4000	4000000
8	Supply of 1000 nos. of 50mm dia. steel reinforcement bars	1000	5000	5000000
9	Supply of 1000 nos. of 63mm dia. steel reinforcement bars	1000	6300	6300000
10	Supply of 1000 nos. of 80mm dia. steel reinforcement bars	1000	8000	8000000
11	Supply of 1000 nos. of 100mm dia. steel reinforcement bars	1000	10000	10000000
12	Supply of 1000 nos. of 125mm dia. steel reinforcement bars	1000	12500	12500000
13	Supply of 1000 nos. of 160mm dia. steel reinforcement bars	1000	16000	16000000
14	Supply of 1000 nos. of 200mm dia. steel reinforcement bars	1000	20000	20000000
15	Supply of 1000 nos. of 250mm dia. steel reinforcement bars	1000	25000	25000000
16	Supply of 1000 nos. of 315mm dia. steel reinforcement bars	1000	31500	31500000
17	Supply of 1000 nos. of 400mm dia. steel reinforcement bars	1000	40000	40000000
18	Supply of 1000 nos. of 500mm dia. steel reinforcement bars	1000	50000	50000000
19	Supply of 1000 nos. of 630mm dia. steel reinforcement bars	1000	63000	63000000
20	Supply of 1000 nos. of 800mm dia. steel reinforcement bars	1000	80000	80000000
21	Supply of 1000 nos. of 1000mm dia. steel reinforcement bars	1000	100000	100000000
22	Supply of 1000 nos. of 1250mm dia. steel reinforcement bars	1000	125000	125000000
23	Supply of 1000 nos. of 1600mm dia. steel reinforcement bars	1000	160000	160000000
24	Supply of 1000 nos. of 2000mm dia. steel reinforcement bars	1000	200000	200000000
25	Supply of 1000 nos. of 2500mm dia. steel reinforcement bars	1000	250000	250000000
26	Supply of 1000 nos. of 3150mm dia. steel reinforcement bars	1000	315000	315000000
27	Supply of 1000 nos. of 4000mm dia. steel reinforcement bars	1000	400000	400000000
28	Supply of 1000 nos. of 5000mm dia. steel reinforcement bars	1000	500000	500000000
29	Supply of 1000 nos. of 6300mm dia. steel reinforcement bars	1000	630000	630000000
30	Supply of 1000 nos. of 8000mm dia. steel reinforcement bars	1000	800000	800000000
31	Supply of 1000 nos. of 10000mm dia. steel reinforcement bars	1000	1000000	1000000000
32	Supply of 1000 nos. of 12500mm dia. steel reinforcement bars	1000	1250000	1250000000
33	Supply of 1000 nos. of 16000mm dia. steel reinforcement bars	1000	1600000	1600000000
34	Supply of 1000 nos. of 20000mm dia. steel reinforcement bars	1000	2000000	2000000000
35	Supply of 1000 nos. of 25000mm dia. steel reinforcement bars	1000	2500000	2500000000
36	Supply of 1000 nos. of 31500mm dia. steel reinforcement bars	1000	3150000	3150000000
37	Supply of 1000 nos. of 40000mm dia. steel reinforcement bars	1000	4000000	4000000000
38	Supply of 1000 nos. of 50000mm dia. steel reinforcement bars	1000	5000000	5000000000
39	Supply of 1000 nos. of 63000mm dia. steel reinforcement bars	1000	6300000	6300000000
40	Supply of 1000 nos. of 80000mm dia. steel reinforcement bars	1000	8000000	8000000000
41	Supply of 1000 nos. of 100000mm dia. steel reinforcement bars	1000	10000000	10000000000
42	Supply of 1000 nos. of 125000mm dia. steel reinforcement bars	1000	12500000	12500000000
43	Supply of 1000 nos. of 160000mm dia. steel reinforcement bars	1000	16000000	16000000000
44	Supply of 1000 nos. of 200000mm dia. steel reinforcement bars	1000	20000000	20000000000
45	Supply of 1000 nos. of 250000mm dia. steel reinforcement bars	1000	25000000	25000000000
46	Supply of 1000 nos. of 315000mm dia. steel reinforcement bars	1000	31500000	31500000000
47	Supply of 1000 nos. of 400000mm dia. steel reinforcement bars	1000	40000000	40000000000
48	Supply of 1000 nos. of 500000mm dia. steel reinforcement bars	1000	50000000	50000000000
49	Supply of 1000 nos. of 630000mm dia. steel reinforcement bars	1000	63000000	63000000000
50	Supply of 1000 nos. of 800000mm dia. steel reinforcement bars	1000	80000000	80000000000
51	Supply of 1000 nos. of 1000000mm dia. steel reinforcement bars	1000	100000000	100000000000
52	Supply of 1000 nos. of 1250000mm dia. steel reinforcement bars	1000	125000000	125000000000
53	Supply of 1000 nos. of 1600000mm dia. steel reinforcement bars	1000	160000000	160000000000
54	Supply of 1000 nos. of 2000000mm dia. steel reinforcement bars	1000	200000000	200000000000
55	Supply of 1000 nos. of 2500000mm dia. steel reinforcement bars	1000	250000000	250000000000
56	Supply of 1000 nos. of 3150000mm dia. steel reinforcement bars	1000	315000000	315000000000
57	Supply of 1000 nos. of 4000000mm dia. steel reinforcement bars	1000	400000000	400000000000
58	Supply of 1000 nos. of 5000000mm dia. steel reinforcement bars	1000	500000000	500000000000
59	Supply of 1000 nos. of 6300000mm dia. steel reinforcement bars	1000	630000000	630000000000
60	Supply of 1000 nos. of 8000000mm dia. steel reinforcement bars	1000	800000000	800000000000
61	Supply of 1000 nos. of 10000000mm dia. steel reinforcement bars	1000	1000000000	1000000000000
62	Supply of 1000 nos. of 12500000mm dia. steel reinforcement bars	1000	1250000000	1250000000000
63	Supply of 1000 nos. of 16000000mm dia. steel reinforcement bars	1000	1600000000	1600000000000
64	Supply of 1000 nos. of 20000000mm dia. steel reinforcement bars	1000	2000000000	2000000000000
65	Supply of 1000 nos. of 25000000mm dia. steel reinforcement bars	1000	2500000000	2500000000000
66	Supply of 1000 nos. of 31500000mm dia. steel reinforcement bars	1000	3150000000	3150000000000
67	Supply of 1000 nos. of 40000000mm dia. steel reinforcement bars	1000	4000000000	4000000000000
68	Supply of 1000 nos. of 50000000mm dia. steel reinforcement bars	1000	5000000000	5000000000000
69	Supply of 1000 nos. of 63000000mm dia. steel reinforcement bars	1000	6300000000	6300000000000
70	Supply of 1000 nos. of 80000000mm dia. steel reinforcement bars	1000	8000000000	8000000000000
71	Supply of 1000 nos. of 100000000mm dia. steel reinforcement bars	1000	10000000000	10000000000000
72	Supply of 1000 nos. of 125000000mm dia. steel reinforcement bars	1000	12500000000	12500000000000
73	Supply of 1000 nos. of 160000000mm dia. steel reinforcement bars	1000	16000000000	16000000000000
74	Supply of 1000 nos. of 200000000mm dia. steel reinforcement bars	1000	20000000000	20000000000000
75	Supply of 1000 nos. of 250000000mm dia. steel reinforcement bars	1000	25000000000	25000000000000
76	Supply of 1000 nos. of 315000000mm dia. steel reinforcement bars	1000	31500000000	31500000000000
77	Supply of 1000 nos. of 400000000mm dia. steel reinforcement bars	1000	40000000000	40000000000000
78	Supply of 1000 nos. of 500000000mm dia. steel reinforcement bars	1000	50000000000	50000000000000
79	Supply of 1000 nos. of 630000000mm dia. steel reinforcement bars	1000	63000000000	63000000000000
80	Supply of 1000 nos. of 800000000mm dia. steel reinforcement bars	1000	80000000000	80000000000000
81	Supply of 1000 nos. of 1000000000mm dia. steel reinforcement bars	1000	100000000000	100000000000000
82	Supply of 1000 nos. of 1250000000mm dia. steel reinforcement bars	1000	125000000000	125000000000000
83	Supply of 1000 nos. of 1600000000mm dia. steel reinforcement bars	1000	160000000000	160000000000000
84	Supply of 1000 nos. of 2000000000mm dia. steel reinforcement bars	1000	200000000000	200000000000000
85	Supply of 1000 nos. of 2500000000mm dia. steel reinforcement bars	1000	250000000000	250000000000000
86	Supply of 1000 nos. of 3150000000mm dia. steel reinforcement bars	1000	315000000000	315000000000000
87	Supply of 1000 nos. of 4000000000mm dia. steel reinforcement bars	1000	400000000000	400000000000000
88	Supply of 1000 nos. of 5000000000mm dia. steel reinforcement bars	1000	500000000000	500000000000000
89	Supply of 1000 nos. of 6300000000mm dia. steel reinforcement bars	1000	630000000000	630000000000000
90	Supply of 1000 nos. of 8000000000mm dia. steel reinforcement bars	1000	800000000000	800000000000000
91	Supply of 1000 nos. of 10000000000mm dia. steel reinforcement bars	1000	1000000000000	1000000000000000
92	Supply of 1000 nos. of 12500000000mm dia. steel reinforcement bars	1000	1250000000000	1250000000000000
93	Supply of 1000 nos. of 16000000000mm dia. steel reinforcement bars	1000	1600000000000	1600000000000000
94	Supply of 1000 nos. of 20000000000mm dia. steel reinforcement bars	1000	2000000000000	2000000000000000
95	Supply of 1000 nos. of 25000000000mm dia. steel reinforcement bars	1000	2500000000000	2500000000000000
96	Supply of 1000 nos. of 31500000000mm dia. steel reinforcement bars	1000	3150000000000	3150000000000000
97	Supply of 1000 nos. of 40000000000mm dia. steel reinforcement bars	1000	4000000000000	4000000000000000
98	Supply of 1000 nos. of 50000000000mm dia. steel reinforcement bars	1000	5000000000000	5000000000000000
99	Supply of 1000 nos. of 63000000000mm dia. steel reinforcement bars	1000	6300000000000	6300000000000000
100	Supply of 1000 nos. of 80000000000mm dia. steel reinforcement bars	1000	8000000000000	8000000000000000

62.1 The description of services shown in Bill No. UT/MS/2007/5-36 dated 12.12.2015 and Work Order UT/MS/2002/12-13 dated 20.01.2015 clearly state fabrication and erection of Hot Air Tank, Gadiing, Drilling, Tugging, MS structure in Bill No. 201 site, no inclusion of (a) three exclusion clauses and hence, General credit of Rs. 88,856/- on Service Tax will be for the services provided by M/s. U. T. Associates is requested to be held as admissible with the Appellant.


63. In view of above facts, I allow General credit of Service Tax paid on the services provided by M/s. Mandi Banshi Fabrication (Rs. 24,913/-), M/s. Sharma Associates (Rs. 1,88,27/-) and M/s. U. T. Associates (Rs. 63,856/-) adding to Rs. 88,856/- and find that General credit claimed by the Appellant is admissible to them and hence, I have no option but to set aside the demand confirmed by the impugned order and I do so. Since the demand has been set aside, the delivery of interest, and imposition of penalty will not arise.




6. In view of above, I set aside the impugned order confirming demand, interest and imposing penalty and allow the appeal.

9. अपीलकर्ता द्वारा दिये गये कौल का खेद से असोका तरीके से किया जाता है।

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


निदेशक, सिविल प्रशासन
वर्धमान (वर्धमान)


मुख्य सचिव
आयुक्त (वर्धमान)


By R.E.A.C.

To,

M/s. Madhu Sirox Pvt. Ltd.,
30 V,
Plot No 117,
Vardaj,
Dharampur - 461020

सेटिंग्स का; सिविल प्रशासन
निदेशक,
आयुक्त (वर्धमान) का. 142,
वर्धमान का. 461020

Copy for information and necessary action to :-

1. The Chief Commissioner GST & Central Excise, Ahmednagar Zone Ahmednagar for his and information.
 2. The Commissioner, GST & Central Excise, Dharampur Commissionerate, Dharampur.
 3. The District Commissioner, GST & Central Excise District, Dharampur.
 4. The Assistant Commissioner GST & Central Excise, City Region, Dharampur.
-  (Signature)

