





CONFIDENTIAL APPEAL

18. M/s. Madhu Sircar Pvt. Ltd., Dist. No. 147, Veda, Bangalore (hereinafter referred to as 'Appellant') has appeal against Order in Original No. 1366466/16649/2017-18 dated 28.04.2017 (hereinafter referred to as the impugned order) issued by the Assistant Commissioner, Central Excise, City Division, Bangalore (hereinafter referred to as 'the lower adjudicating authority').

19. The brief facts of the case are not subject of the records of the Appellate revealed that they had availed Service Tax credit in respect of various services, which were allegedly not admissible as per the definition of such services provided under Rule 2(i) of the Central Excise Rules, 2002 (hereinafter referred to as 'the Rules') on the alleged ground that the services had been used for making structures for support of capital goods and hence, are not eligible services from the purview of exemption of Central Excise.

20. Show Cause Notice No. W15-11/Debar-6871-49/2015-16 dated 08.02.2016 issued to the Appellant was adjudicated and the impugned order which confirmed demand of Central Excise of Rs. 2,45,80,20/- under Rule 14 of the Rules read with Section 116A) of the Central Excise Act, 1944 (hereinafter referred to as 'the Act') ordered recovery of interest under Rule 14 of the Rules read with Section 116A) of the Act and imposed penalty of Rs. 2,45,80,20/- under Rule 15 of the Rules read with Section 116A) of the Act.

21. Being aggrieved with the impugned order Appellant preferred the present appeal. The facts are as under:

22. The lower adjudicating authority has wrongly assumed that certain material is not available as fabrication was carried out on the material supplied by the Appellant, since the service provider had availed labour etc. and carried out fabrication of part as per design required by the Appellate and such work fall within the purview of definition of input service as provided under the Rule 2(i) of the Rules, that the service provider has neither carried out any civil construction work nor did laying or foundation or raising of structure for support of capital goods and therefore, exclusion part of the definition was not applicable. The relevant Audit Report No. Audit 116/02/00/00000-15 dated 27.11.2015 had not covered the issue of Central Excise of Service Tax paid on the supply of fabrication carried out on the material supplied by the appellant and is silent about the fabrication of capital goods carried out by the service providers; that in view of these facts, the demand for the surmountable and interest thereof and penalty imposed in the impugned order are required to be set aside.

37. It was also contended that the charges of suppression of facts are not leviable inasmuch as Cerver credit taken by them was duly reported in corresponding monthly H-1 returns. Just the ingredients of Hon'ble Supreme Court in the cases of *Chandendra Trilok Prasad* reported as 2008 (201) H-1 3 (SC) and *Rajasthan Spinning and Weaving Mills* reported as 2008 (202) H-1 3 (SC) and the laws adjudicating the matter are not applicable.

4. Persons residing in the matter was attended to by Shri R. M. Dave Consultant engineer has substantiated the grounds of appeal and submitted data for issue of the cases. It so it is held that Cerver 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 non-scapable goods have direct nexus to the manufacture of the final products; that the services provided by H-1 Associates are towards erecting and commissioning of the capital works and parts thereof.

4.1. Appellant also submitted various P-1 submissions stating that M/s. H-1 Associates provided services as per Order No. MS/PL/PROJ-002/2012-13 pertaining to the fabrication and erection of MS frame and air pipes at Matter House and H-D Planting, which defined by the app. Chf. Construction Work and therefore Cerver Credit is admissible on such services, the M/s. Kunal Khandan Fabrication has provided services of fabrication and erection of 1 of Air duct, C-5, Duct and air coil and was done, hence Cerver credit is admissible. It is M/s. Khandan Associates provided services in relation to fabrication and erection of MS Chf. Platform and MS Machine and hence Cerver Credit is admissible; and M/s. Rana Engg. and Fabrication provided services in relation to fabrication and erection of MS Chamber Platform and Rolling hence Cerver credit is admissible. And M/s. Jagdish H. Datta provided services in relation to supply of steel for FD Plant and P&OH plant and to civil work was carried out, hence Cerver credit is admissible that they relied upon the following case laws:

- (i) Jai Shakti Engg. & Constructions – 2012(27)STR331(T Alamy);
- (ii) Kunal Fabrication & Engg Services – 2014(18)STR149(T Alamy);
- (iii) Khandan Associates (India) Pvt. – 2016(33)STR228(T Alamy &);
- (iv) T.M.L. Industries Ltd. – 2017(45)STR405(T Alamy).

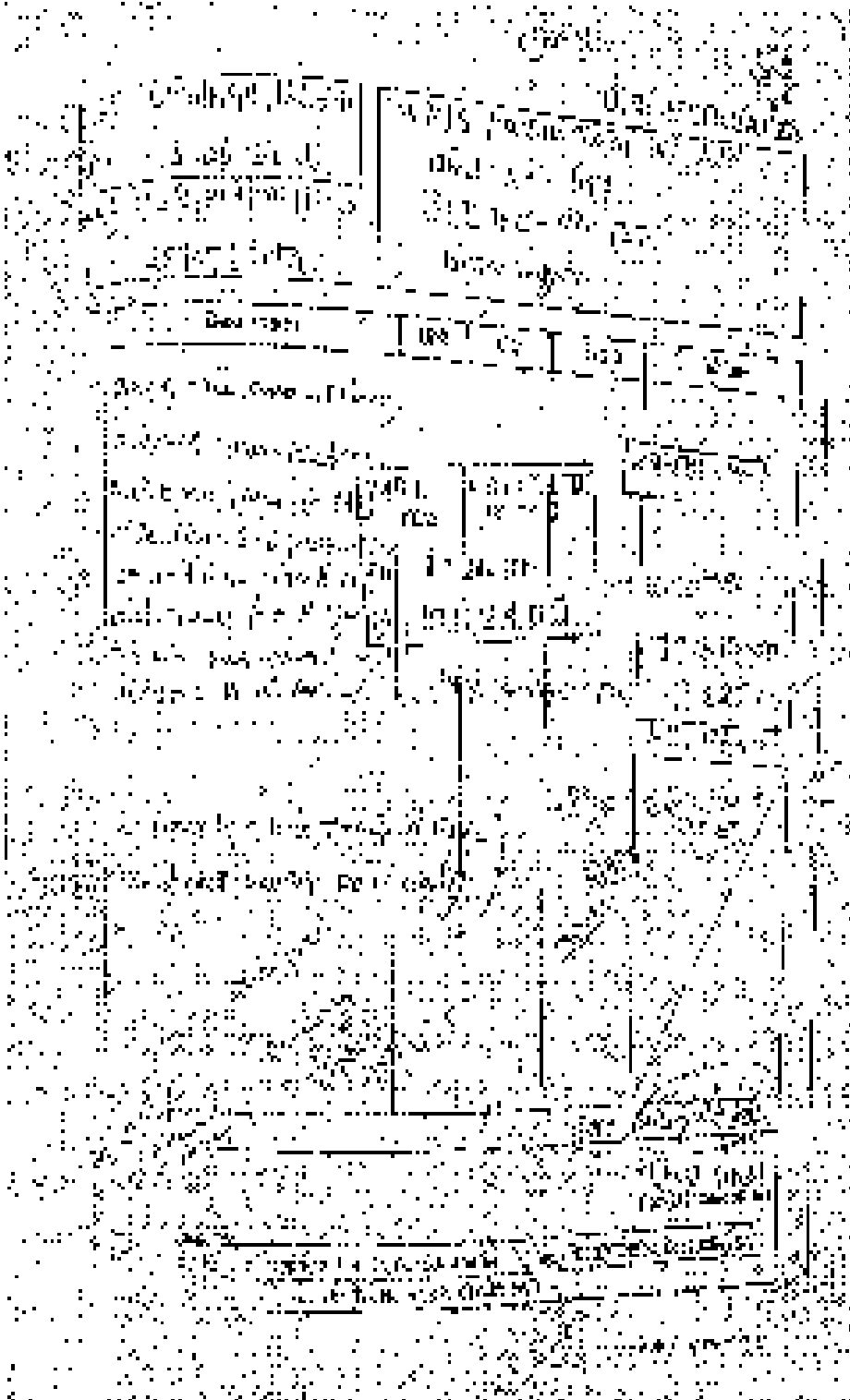
### Findings:-

5. I have carefully gone through the facts of the case, the impugned order, the grounds of appeal, written and oral submissions made by the Appellant. I find that the Appellant has filed this Appeal delaying it by one day along with Application for condonation of delay on the ground that the delay has occurred in delivery of appeal papers from courier to the court. I condone delay of 1 day in filing appeal under Section 20 of the Act and would proceed to decide the appeal on merits.

6.1 The issue to be decided in the instant appeal is as to whether the impugned order denying Credit credit of Service Tax of Rs. 4,00,000/- paid on the various services on the ground of non-compliance of Rule 6(b) of the Rules is correct or not.

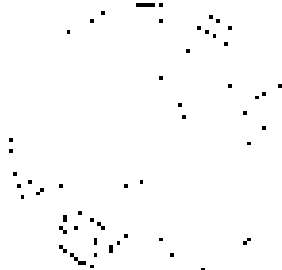
6.2 The Appellant has submitted that exemption of Credit credit of Service tax paid on various input services has been wrongly disallowed to them, even when work orders (for) have order and relevant invoices (invoice and bill) have been carried out any civil construction or any work in laying of foundation or making of structures for support of vessel goods. The issue, thus, is as to whether claimability of Credit credit availed on the basis of work orders and invoices issued by each service provider. I affix following work orders and receipts given in the relevant invoices/ Bills etc. to come to the conclusion in respect of

6.3 Illustrative scanned copy of invoice in respect of M/s. U. T. Associates. Invoice description of the service as shown below:-



2015-10-10

6111 - The description of 26 observations in 7126 (IT4020PL18015-18 dated 10/05/2015) clearly state fabrication and erection of Pipeline, Tank, Equipment etc. which do not fall under exclusive causes and hence General credit of Rs 2403424 in Revised Tax paid for the services provided by M/s. U. T. Associates is required to be held as add-on costs to the Appellant.



3.2 Scanner copy of Bill of Mr. Manoharan Fabrication. Description of the work done on the services provided by them as per Bill No. 326284.

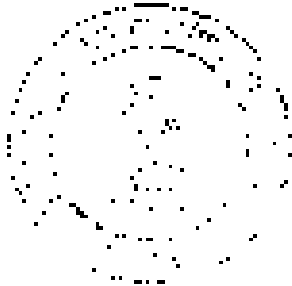
Bill No. 326284 - B, Akharsanjan Ganga  
 Near Akharsanjan, Katankul, Bhadrachalam  
 Phone: 807010/81

Sl. No.	Description of Work	Quantity	Rate	Total
1	...	...	...	...
2	...	...	...	...
3	...	...	...	...
4	...	...	...	...
5	...	...	...	...
6	...	...	...	...
7	...	...	...	...
8	...	...	...	...
9	...	...	...	...
10	...	...	...	...
11	...	...	...	...
12	...	...	...	...
13	...	...	...	...
14	...	...	...	...
15	...	...	...	...
16	...	...	...	...
17	...	...	...	...
18	...	...	...	...
19	...	...	...	...
20	...	...	...	...
21	...	...	...	...
22	...	...	...	...
23	...	...	...	...
24	...	...	...	...
25	...	...	...	...
26	...	...	...	...
27	...	...	...	...
28	...	...	...	...
29	...	...	...	...
30	...	...	...	...
31	...	...	...	...
32	...	...	...	...
33	...	...	...	...
34	...	...	...	...
35	...	...	...	...
36	...	...	...	...
37	...	...	...	...
38	...	...	...	...
39	...	...	...	...
40	...	...	...	...
41	...	...	...	...
42	...	...	...	...
43	...	...	...	...
44	...	...	...	...
45	...	...	...	...
46	...	...	...	...
47	...	...	...	...
48	...	...	...	...
49	...	...	...	...
50	...	...	...	...
51	...	...	...	...
52	...	...	...	...
53	...	...	...	...
54	...	...	...	...
55	...	...	...	...
56	...	...	...	...
57	...	...	...	...
58	...	...	...	...
59	...	...	...	...
60	...	...	...	...
61	...	...	...	...
62	...	...	...	...
63	...	...	...	...
64	...	...	...	...
65	...	...	...	...
66	...	...	...	...
67	...	...	...	...
68	...	...	...	...
69	...	...	...	...
70	...	...	...	...
71	...	...	...	...
72	...	...	...	...
73	...	...	...	...
74	...	...	...	...
75	...	...	...	...
76	...	...	...	...
77	...	...	...	...
78	...	...	...	...
79	...	...	...	...
80	...	...	...	...
81	...	...	...	...
82	...	...	...	...
83	...	...	...	...
84	...	...	...	...
85	...	...	...	...
86	...	...	...	...
87	...	...	...	...
88	...	...	...	...
89	...	...	...	...
90	...	...	...	...
91	...	...	...	...
92	...	...	...	...
93	...	...	...	...
94	...	...	...	...
95	...	...	...	...
96	...	...	...	...
97	...	...	...	...
98	...	...	...	...
99	...	...	...	...
100	...	...	...	...

Bill No. 326284 dated 28/04/2010 submitted by the applicant in respect of description of services provided as labour charges for fabrication and erection of Hooter area, MS Railway work (part 1), therefore, find that Category 3 bill no. 326284 in respect of the services provided by Mr. Manoharan Fabrication is not in breach of exclusion clause of Rule 21(i) of the Rules.

6.2 Scanned copy of Dil of Mr. Ganna Prasad, Dist. Subdivision, J.F. indicate discrepancy of the service provided as below:-

Sl. No.	Description of the work	Remarks
1	[Illegible text]	[Illegible text]
2	[Illegible text]	[Illegible text]
3	[Illegible text]	[Illegible text]







**NADEN SINGH PVT. LTD.**

10, Park Road, Sector 17, Gurgaon, Haryana  
 India - 122002

**DECLARATION**

With reference to the above mentioned Es-14  
 Date: 11.09.2016.

**SHRI N. SINGH**  
 Fabricator and Engineer  
 VI - Sherbadli Post - Haryana  
 Dist. - Bhiwani  
 Pin Code - 126111  
 Mob. 9810337444, 9810337444

Subject: Work Done on the installation of 50 HP Diesel Engine  
 Power Unit.

For the work done on the above mentioned

Installation of 50 HP Diesel Engine Power Unit.

I hereby declare that the above mentioned work has been done as per  
 the bill of material for the above mentioned work and the amount of  
 Rs. 10,000/- is the correct amount for the above mentioned work and  
 I am not claiming any other amount for the above mentioned work.

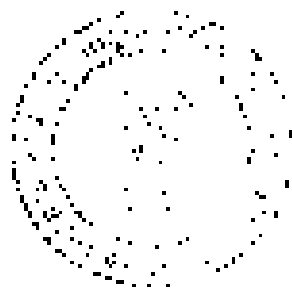
Sr. No.	Description	Quantity	Rate	Total
1	Supply and installation of 50 HP Diesel Engine	1	10,000/-	10,000/-
2	Supply of fuel	100	100/-	10,000/-
3	Supply of oil	100	100/-	10,000/-
4	Supply of spare parts	100	100/-	10,000/-
5	Supply of labour charges	100	100/-	10,000/-
6	Supply of transport charges	100	100/-	10,000/-
7	Supply of other charges	100	100/-	10,000/-
8	Supply of other charges	100	100/-	10,000/-
9	Supply of other charges	100	100/-	10,000/-
10	Supply of other charges	100	100/-	10,000/-

B.1.1 The above stated invoice No. 1 dated 26.08.2016 clearly indicates that the services had been rendered on a completion of Bill of Material for a diesel engine. Hence credit of Rs. 10,000/- is awarded to the Appellant as per Rule 2(i) of the Rules.



6.5 Summary Copy of Bill of M/s Jagdish H Gulal indicates description of services provided as below

6.5.1 The description of services in the bill, indicates manpower supply for fabrication and erection of Platform railing Work etc. and hence Grant credit of Rs. 27,643/- on bill of M/s Jagdish H Gulal is not by mischiefs of the exclusion clause of Rule 2(f) of the Rules.




7. In view of above facts, I allow Demand credit of Rs. 3,75,683/- of Service Tax paid on the services rendered by M/s. J.T. Associates (Rs. 2,00,409/-) and M/s. Sankar Industries (Rs.1,08,104/-) Harwar. I set aside the demand and interest thereon as mentioned by the impugned order.


8. I allow Demand Credit credit of Rs. 16,405/- taken on the invoices of M/s. Jaiti Hardwar Fabrication (Rs.62,625/-); M/s. Ram Engineering and Fabrication (Rs. 715/-) and M/s. Jagdish B. Gehlot (Rs. 17,665/-) and add the Demand credit of Rs. 67,425/- has been correctly denied by the lower authority. Thus, I direct the Appellant to pay Rs. 67,425/- along with interest as per Rule 14 of the Rules read with Section 11A of the Act.

9. As the Demand credit of Rs. 37,425/- has been taken incorrectly, there is a case for imposition of penalty as per Rule 15(1) of the Rules read with Section 11A(1)(c) of the Act, though there is no case for imposition of penalty equal to demand credit denied under Section 11A(1)(c) of the Act as there is no suppression of facts etc. Consequently, having been stated in their respective writ petitions, I impose penalty of Rs. 37,425/- on the appellant in this regard.

10. प्रत्येककर्ता द्वारा दत्त की नई प्रतियाँ का निम्नानुसार संशोधन करके न सिखा जाय है।

11. This appeal filed by the appellant is disposed of in above terms.

  
श्री. एस. श्रीनिवास  
अधीक्षक (अपीलें)

  
अधीक्षक (अपीलें)  
आयुक्त (अपीलें)

TO :  
M/s. Madhu Sica. Pvt. Ltd.,  
20/3,  
Colaba, 407  
Mumbai.  
Bhav Nagar - 404 300.

श्री. एस. श्रीनिवास पाण्डे  
अधीक्षक,  
आयुक्त (अपीलें) सी. 107,  
तारोड, भावनगर - 404 300.

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 Commissioner, Bhavnagar.
3. The Additional Commissioner, GST & Central Excise Bhavnagar.
4. The Assistant Commissioner, GST & Central Excise, - West City Bhavnagar, Bhavnagar.