

:: ORDER IN APPEAL ::

M/s. Madhu Sona Pvt. Ltd., DL IV/ Pst No. 167, Vardaj, Channagar (Hosur) (referred to as 'Appellant') first appeal against the Order (Original No. 25/Direct/Demand/2017-18 dated 31/05/2017 (hereinafter referred to as the 'Impugned order') passed by the Assistant Commissioner, Central Excise, City District, Bangalore (hereinafter referred to as the 'lower adjudicating authority').

2 Briefly stated the facts of the case are the, scrutiny of records of the Appellant for the period from April, 2015 to November, 2015 revealed that the Appellant had availed Service Tax credit in respect of various services like Architect's Services, Jan Services, Airport Services, Commercial and Industrial Construction Services, and Works Contracts Services which were allegedly not admissible as per the Show Cause Notice issued on the ground that the definition of input services provided under Rule 2(i) of the Central Excise Rules, 2004 (hereinafter referred to as 'the Rules') excluded from the purview of availment of Central credit, if those services are used for providing (i) Construction of a building or a civil structure or a part thereof, and (ii) Laying of foundation or a series of structures for support of overhead pipes.

2.2 Show Cause Notice issued to the appellant was adjudicated vide the Impugned order confirming the availment of Central credit of Rs. 2,16,174 under Rule 14 of the Rules read with Section 115A of the Central Excise Act, 1944 (hereinafter referred to as 'the Act') ordering recovery of interest under Rule 14 of the Rules read with Section 115A of the Act and imposing penalty of Rs. 2,38,124 under Rule 15 of the Rules read with Section 115C(1)(c) of the Act.

3 Being aggrieved with the impugned order, the appellant preferred the present appeal inter alia on the following grounds:

3.1 The lower adjudicating authority has wrongly stated that Central credit is not available, that input services which are directly or indirectly used in or in relation to manufacture of the final product and clearance thereof upto the place of removal is available to them. That services used in relation to modernization, renovation or repairs of a factory premises is available to them that they had received services in machine in over on and fabrication work; that they have not utilized any service, which falls under the exclusion clauses of the definition given in Rule 2(i) of the Rules and therefore Central credit of Rs. 2,16,174 is admissible to them. That the appellant service provider wise considered that they have received services which is not in contravention of the definition of final

services and therefore, Central credit of Service Tax is admissible to them.

4. Material finding in the matter was attended to so that R.O. 1996 (Chartered Accountant) reflected the grounds of appeal and submitted detailed written submissions contending that no work order had been given to different service providers for erection and construction of various plant and machineries fabricated at the factory site. This fabrication and erection of these plants and machineries and as a result were essentially required to manufacture their suitable final product. 'Prohibitio Solis' that Central credit of Service Tax paid on such services used by them needs to be allowed. No one appeared from the Department besides central hearing notices issued to the Commission etc.

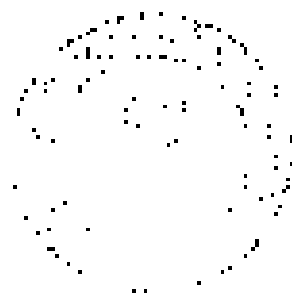
5. Appellant also submitted written submission stating that Mrs. Jagdish H. Gohel had provided labour services in relation to FD Plant and Packing Plant, and civil construction work was carried out and therefore, Central credit is admissible, that Mrs. Manoj. Nandan Tamrakar provided services in relation to fabrication of Spray dryer and holding of Hot Air duct which involved civil construction work. That Mrs. Shanti Associates provided services in relation to fabrication and erection of pipeline, No. 10 box, Air Receiver Tank which were not civil construction work and therefore, Central credit is admissible on services provided by her service provider that Mrs. L. T. Associates provided services in relation to fabrication of M.S. Structure work as their part, which also involved civil construction work and therefore, Central credit is also admissible on services provided by them.

Findings:

1. 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. The issue is decided in the instant appeal as well as the impugned order denying Central credit of Service Tax of Rs. 2,99,12,17/- paid on the various services on the ground of non-compliance of Rule 2 (b) of the Rules is not correct.

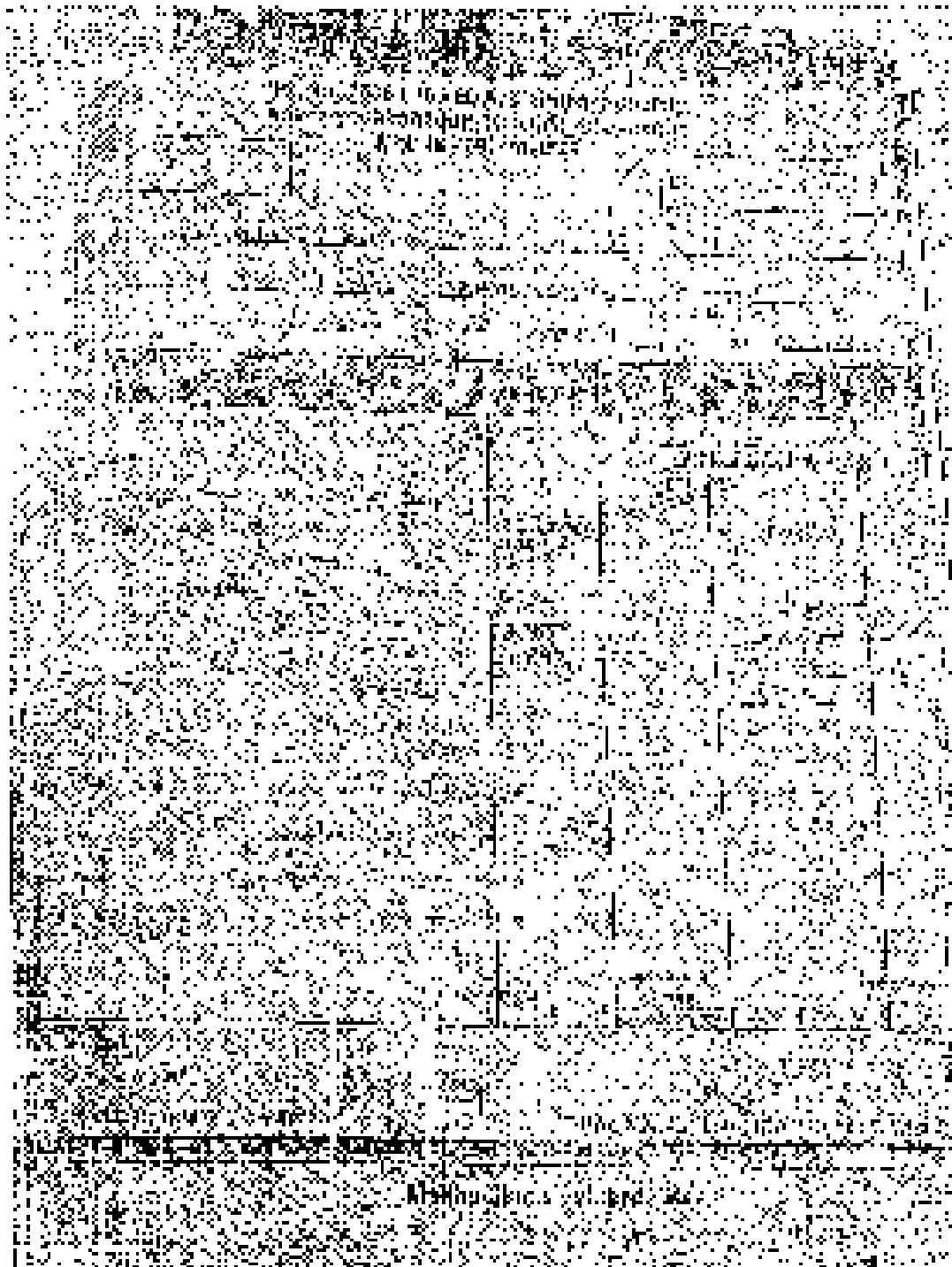
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2. The Appellant submitted that amount of Central credit of Service tax paid on various civil services was been wrongly calculated to them, even when they entered the appeal cases and relevant indices indicated that they could carry out any civil construction or any work involving foundation or making of structures for support of capital goods. Therefore, there is need to examine admissibility of Central credit paid on the lesser work orders and for services.

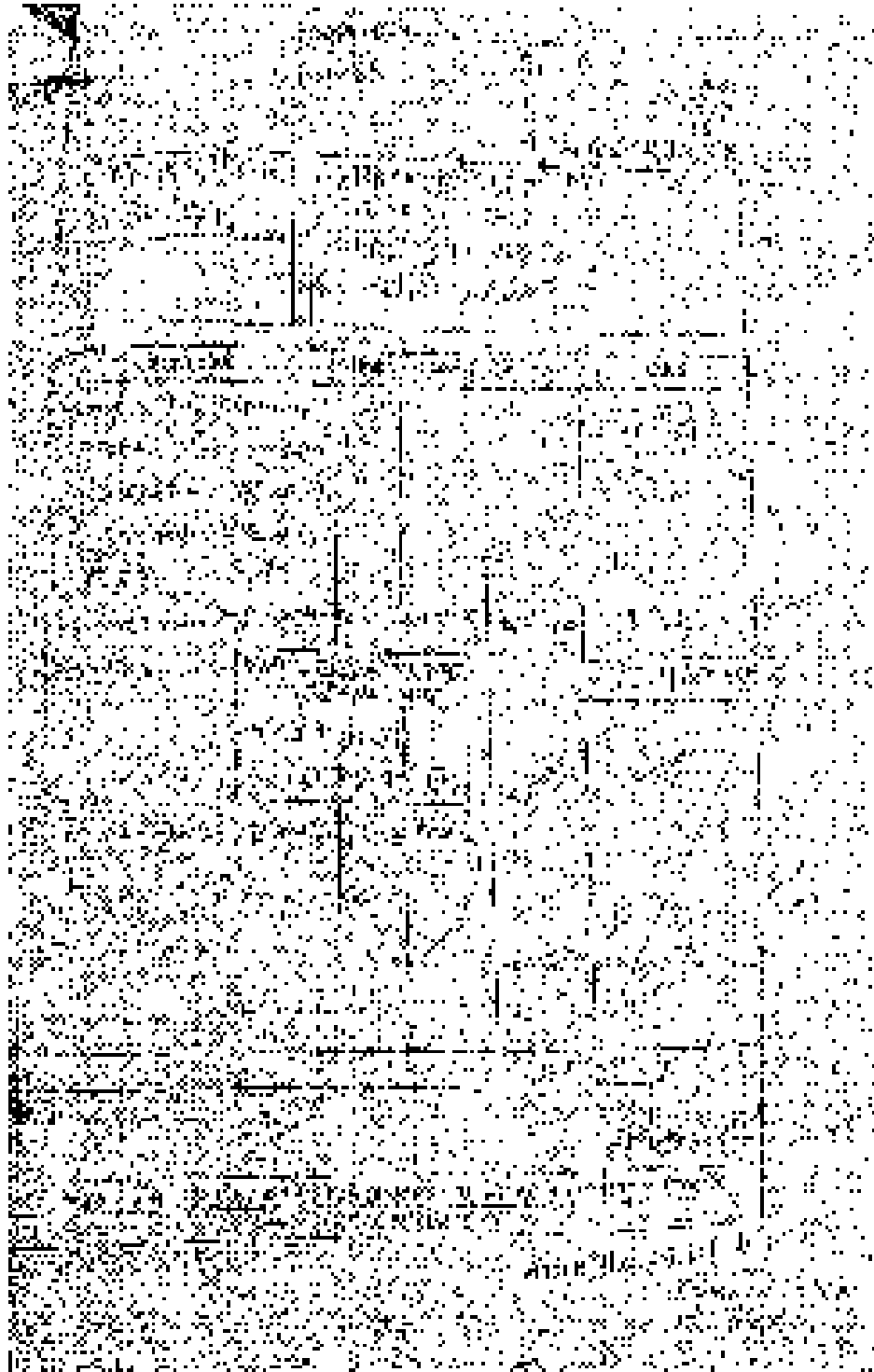


issued by each service provider. Let's examine work orders and description given in the referred invoices / Bills etc. to come to the conclusion in each case.

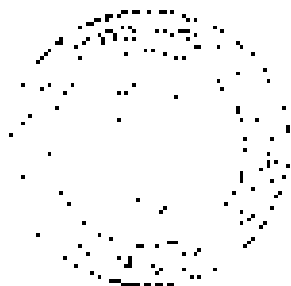
6.1 Illustrative Example: copy of receipt of M/s. Maral Nandan Fabrication, Braachnagar indicates description of services provided shown as below :-



6.1.1. Bd No. 8 dated 26.07.2016 submitted by the Appellant indicates description of services provided as fabrication and erection work at factory site pertaining to welding of Hot Air Ducting and Sub section Ducting work.



02.1 The decision given in Bill No. U7/AMGF/2015-16 dated 15.03.2015 and Bill No. U7/AMGF/2015-16 dated 3.08.2015 clearly state that the services provided were in nature of fabrication and erection of Pipelines at P-22 Ham 510 1678, Howrah, Bengal with a cost of Rs. 1,35,917/- in respect of B-Is issued by M/s. L. T. Associates is not hit by the effect of the exclusion clause (4) Rule 2(a) of this Rules.



103 Illustrative scanned copy of Bill of Materials, Glanna Associates, Ltd.,
Delalande, U.P. under a description of service covered as below:

Bill of Materials

Glanna Associates, Ltd.

Delalande, U.P.

Item No.	Description	Quantity	Unit	Rate	Total
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104 The above scanned copy of Bill No. 03 dated 03.09.2015 submitted
by the Appellant clearly indicates that it is for providing of Fabrication and

Exemption of P relines, Air Receiver Tank, Control Box and sub-box etc. and hence, Convat credit of Rs. 66,703/- is admissible and it is not hit by the exclusion clause under Rule 2(f) of the Rules.

6.4 Illustration scanned copy of Bill of M/s. Jagdish H. Gohel indicates description of the services provided as below:

Sl. No.	Description of Services	Rate	Quantity	Total
1	Supply of P relines	1000	10	10000
2	Supply of Air Receiver Tank	5000	1	50000
3	Supply of Control Box	1500	1	15000
4	Supply of sub-box	1000	1	10000
5	Supply of P relines	1000	10	10000
6	Supply of Air Receiver Tank	5000	1	50000
7	Supply of Control Box	1500	1	15000
8	Supply of sub-box	1000	1	10000
9	Supply of P relines	1000	10	10000
10	Supply of Air Receiver Tank	5000	1	50000
11	Supply of Control Box	1500	1	15000
12	Supply of sub-box	1000	1	10000
13	Supply of P relines	1000	10	10000
14	Supply of Air Receiver Tank	5000	1	50000
15	Supply of Control Box	1500	1	15000
16	Supply of sub-box	1000	1	10000
17	Supply of P relines	1000	10	10000
18	Supply of Air Receiver Tank	5000	1	50000
19	Supply of Control Box	1500	1	15000
20	Supply of sub-box	1000	1	10000
21	Supply of P relines	1000	10	10000
22	Supply of Air Receiver Tank	5000	1	50000
23	Supply of Control Box	1500	1	15000
24	Supply of sub-box	1000	1	10000
25	Supply of P relines	1000	10	10000
26	Supply of Air Receiver Tank	5000	1	50000
27	Supply of Control Box	1500	1	15000
28	Supply of sub-box	1000	1	10000
29	Supply of P relines	1000	10	10000
30	Supply of Air Receiver Tank	5000	1	50000
31	Supply of Control Box	1500	1	15000
32	Supply of sub-box	1000	1	10000
33	Supply of P relines	1000	10	10000
34	Supply of Air Receiver Tank	5000	1	50000
35	Supply of Control Box	1500	1	15000
36	Supply of sub-box	1000	1	10000
37	Supply of P relines	1000	10	10000
38	Supply of Air Receiver Tank	5000	1	50000
39	Supply of Control Box	1500	1	15000
40	Supply of sub-box	1000	1	10000
41	Supply of P relines	1000	10	10000
42	Supply of Air Receiver Tank	5000	1	50000
43	Supply of Control Box	1500	1	15000
44	Supply of sub-box	1000	1	10000
45	Supply of P relines	1000	10	10000
46	Supply of Air Receiver Tank	5000	1	50000
47	Supply of Control Box	1500	1	15000
48	Supply of sub-box	1000	1	10000
49	Supply of P relines	1000	10	10000
50	Supply of Air Receiver Tank	5000	1	50000
51	Supply of Control Box	1500	1	15000
52	Supply of sub-box	1000	1	10000
53	Supply of P relines	1000	10	10000
54	Supply of Air Receiver Tank	5000	1	50000
55	Supply of Control Box	1500	1	15000
56	Supply of sub-box	1000	1	10000
57	Supply of P relines	1000	10	10000
58	Supply of Air Receiver Tank	5000	1	50000
59	Supply of Control Box	1500	1	15000
60	Supply of sub-box	1000	1	10000
61	Supply of P relines	1000	10	10000
62	Supply of Air Receiver Tank	5000	1	50000
63	Supply of Control Box	1500	1	15000
64	Supply of sub-box	1000	1	10000
65	Supply of P relines	1000	10	10000
66	Supply of Air Receiver Tank	5000	1	50000
67	Supply of Control Box	1500	1	15000
68	Supply of sub-box	1000	1	10000
69	Supply of P relines	1000	10	10000
70	Supply of Air Receiver Tank	5000	1	50000
71	Supply of Control Box	1500	1	15000
72	Supply of sub-box	1000	1	10000
73	Supply of P relines	1000	10	10000
74	Supply of Air Receiver Tank	5000	1	50000
75	Supply of Control Box	1500	1	15000
76	Supply of sub-box	1000	1	10000
77	Supply of P relines	1000	10	10000
78	Supply of Air Receiver Tank	5000	1	50000
79	Supply of Control Box	1500	1	15000
80	Supply of sub-box	1000	1	10000
81	Supply of P relines	1000	10	10000
82	Supply of Air Receiver Tank	5000	1	50000
83	Supply of Control Box	1500	1	15000
84	Supply of sub-box	1000	1	10000
85	Supply of P relines	1000	10	10000
86	Supply of Air Receiver Tank	5000	1	50000
87	Supply of Control Box	1500	1	15000
88	Supply of sub-box	1000	1	10000
89	Supply of P relines	1000	10	10000
90	Supply of Air Receiver Tank	5000	1	50000
91	Supply of Control Box	1500	1	15000
92	Supply of sub-box	1000	1	10000
93	Supply of P relines	1000	10	10000
94	Supply of Air Receiver Tank	5000	1	50000
95	Supply of Control Box	1500	1	15000
96	Supply of sub-box	1000	1	10000
97	Supply of P relines	1000	10	10000
98	Supply of Air Receiver Tank	5000	1	50000
99	Supply of Control Box	1500	1	15000
100	Supply of sub-box	1000	1	10000

6.4.1 On going through Bill No. 34 dated 18.03.2015, I find that the services provided were in relation to Filter Press Drain Line, Air Lushing

