



::आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE,

द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan,
रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

Tele Fax No. 0281 - 2477952/2441142 Email: commrappl3-cexamd@nic.in



सत्यमेव जयते

रजिस्टर्ड डाक ए.डी. द्वारा :-

DIN-20210764SX000000EF86

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / OIO No.	दिनांक/ Date
	V2/103/RAJ/2020	I/BB/AC/2020-21	30.09.2020

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

RAJ-EXCUS-000-APP-029-2021

आदेश का दिनांक / Date of Order:	30.06.2021	जारी करने की तारीख / Date of issue:	02.07.2021
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श्री अखिलेश कुमार, आयुक्त (अपील्स), राजकोट द्वारा पारित/
Passed by Shri Akhilesh Kumar, Commissioner (Appeals), Rajkot.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / ST / GST, Rajkot / Jamnagar / Gandhidham :

घ अपीलकर्ता & प्रतिवादी का नाम एवं पता / Name & Address of the Appellant & Respondent :-

M/s. Sims Ceramic Pvt Ltd (Unit-I) (now amalgamated with Simpolo Vitrified Pvt Ltd) Orsun Ceramic Zone, National Highway 8-A, Lakhdirpur Road, Ghuntu, District Morbi.

इस आदेश (अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में 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) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन 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 बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा 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 किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जर्माना, रुपए 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 रेखांकित 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 the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

(B) 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 सकेगी एवं उसके साथ जिस 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 मांग, ब्याज की मांग और लगाया गया जर्माना, रुपए 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 रेखांकित 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 fee of Rs. 1000/- 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/-.



- (ii) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज 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 करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी 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.

- (iii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय 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 निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की ली गई गलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा। /

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 :

- (i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) 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 पुनरीक्षणयाचिका निम्नलिखित मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी 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:

- (i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण 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

- (ii) 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 an excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

- (iii) 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.

- (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इयूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए 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.

- (v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण 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.

- (vi) 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.

- (D) यदि इस आदेश में कोई मूल आदेश का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय 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, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

- (E) 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 टिकिट 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.

- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की ओर 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.

उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी 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. Sims Ceramic Pvt. Ltd, Morbi (Now amalgamated with M/s Simpulo Vitrified Pvt. Ltd, Morbi) (*hereinafter referred to as "Appellant"*) has filed Appeal No. V2/103/Raj/2020 against Order-in-Original No. 1/BB/AC/2020-21 dated 30.9.2020 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Central GST Division, Morbi-II (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief, are that the Appellant was engaged in the manufacture of Ceramic Vitrified Tiles falling under Chapter No. 69 of the Central Excise Tariff Act, 1985 and was registered with Central Excise Department having Registration No. AAPCS3717AEM001. During the course of audit of the records of the Appellant by the officers of the Department, it was observed that they had availed Cenvat credit of service tax paid for erection, installation and maintenance of Wind Mill in April, 2017. It was observed that the said windmills was installed for generation of electricity at a location far away from the factory premises of the Appellant. It was further observed that electricity generated at Windmill situated at Jamangar District was delivered to PGVCL and an equivalent amount of electricity was set off against the power bill of factory situated at Morbi. It appeared that the transaction of delivery of power to PGVCL and supply of power by PGVCL to factory at Morbi were two independent transactions and there was no direct or indirect nexus between services of erection, installation and maintenance of wind mill and goods manufactured at the factory situated at Morbi. Hence, said services were not covered under the definition of 'input service' in terms of Rule 2(l) of the Cenvat Credit Rules, 2004 (*hereinafter referred to as 'CCR, 2004'*).

2.1 The Show Cause Notice No. CGST. Audit/Circle-II/ST/AC-04/2019-20 dated 17.10.2019 was issued to the Appellant calling them to show cause as to why Cenvat credit of service tax for an amount of Rs. 28,94,549/- should not be demanded and recovered from them along with interest under Rule 14 of the Cenvat Credit Rules, 2004 (*hereinafter referred to as 'CCR, 2004'*). The SCN also proposed penalty under Rule 15(2) of CCR, 2004 read with Section 11AC of the Central Excise Act, 1944.

2.2 The above Show Cause Notice was adjudicated by the Adjudicating



Authority vide the impugned order who disallowed the CENVAT Credit availed and confirmed demand of wrongly availed Cenvat credit amounting to Rs. 28,94,549/- and ordered for its recovery along with interest under Rule 14 of CCR, 2004 and imposed penalty of Rs. 28,94,549/- under Rule 15(2) ibid read with Section 11AC of the Central Excise Act, 1944.

3. Being aggrieved, the Appellant has filed the present appeal, inter alia, contending that,

(i) The adjudicating authority has passed the impugned order by relying upon irrelevant decisions of the Hon'ble Supreme Court/ High Court and ignored decisions of Hon'ble High Court and Larger bench of Tribunal which are on the issue and hence, the impugned order is not sustainable and liable to be set aside.

(ii) That the definition of 'input service' under Rule 2(l) of the Cenvat Credit Rules, 2004 not only covers services which are used directly or indirectly in or in relation to manufacture of final products but also includes the services which are provided outside the factory premises. The adjudicating authority erroneously found that due to inclusive definition only services stated in the definition is admissible but actually as per settled position of law inclusive definition means it cannot be limited to the items listed but on the contrary it expands scope of the nature of services.

(iii) That the contention of the department that windmill is located at a faraway from the factory premises and CENVAT Credit of services tax paid on service related to wind mill cannot be allowed as the said services were not used in the manufacture either directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal, is without appreciating the facts available on record. The adjudicating authority failed to appreciate that power generated by windmill was utilized for manufacture of final product only. The power generated by the windmill owned by appellant was compensated by PGVCL inasmuch as the same was periodically adjusted against electricity consumption of it. Besides, PGVCL had raised periodical bills only in relation to the power consumed by appellant within its manufacturing unit after deducting the amount of energy



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generated by its windmill and the same is also specifically mentioned in such bills. The Department cannot dispute these factual aspects which are on record. In other words, it is very much evident that power generated by windmill owned by appellant was always used by it directly/indirectly in or in relation to manufacture of final products. Therefore, the service of erection and maintenance of windmill falls under the definition of input service and relied upon following case laws:

- (a) Ashok Leyland Ltd. - 2019 (369) E.L.T. 162 (Mad.)
- (b) Endurance Technology Pvt Ltd - 2017 (52) STR 361 (Bom.)
- (c) Parry Engg & Electronics Pvt Ltd- 2015(40) STR 243

(iv) As regards findings of the adjudicating authority that input service was used at different place other than place of manufacture of final product, it is pertinent note that there is no mandate in law that it should be used in the factory like inputs as provided under Rule 4(1) and 4(7) of the CENVAT Credit Rules, 2004.

(v) The impugned notice is issued beyond normal period of 2 years from relevant date i.e. from the date of filing return ER-1 as provided under Section 11A of the Central Excise Act, 1944, therefore, same is badly time barred. Appellant had filed ER-1 return for the period April, 2017, in which Input Service Credit was availed, on 10.05.2017. Therefore, SCN was required to be issued on or before 09.05.2019 but same is issued on 17.10.2019. Though demand is made under Section 11A(4) of the Central Excise Act, 1944, there is no allegation etc. about suppression of facts etc. Therefore, demand is liable to be quashed on this ground too. It is settled position of law that when there is no allegation of suppression etc. such notice beyond normal period is liable to be quashed; that it is not matter of suppression etc. but matter of interpretation as discussed in detailed in para infra, therefore, demand is time barred and liable to be quashed.

(vi) The penalty under Rule 15(2) can be imposed in this case only when it is proved that the CENVAT credit in respect of input services was taken or utilised wrongly by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of the Excise Act, or of the rules made thereunder with intent to evade payment of duty as also envisaged under Section 11AC. Contrary



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to this statutory requirement, it submits that there is no allegation about fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of the Excise Act, or of the rules made there under with intent to evade payment of duty. In fact, the impugned notice does not describe any valid reason to form such allegation. Thus, penalty under Rule 15(2) is not sustainable and required to be set aside.

4. Personal Hearing in the matter was conducted in virtual mode through video conferencing on 8.6.2021. Ms. Drashti Sejpal, C.A. appeared on behalf of the Appellant. She reiterated the submission made in appeal memorandum as well as additional written submission.

5. I have carefully gone through the facts of the case, the impugned order, appeal memorandum and submission made by the Appellant at the time of hearing. The issue to be decided in the present appeal is whether the impugned order confirming demand for wrong availment of Cenvat credit amounting to Rs. 28,94,549/- along with interest and imposing penalty of Rs. 28,94,549/- is correct, legal and proper or not.

6. On perusal of the records, I find that the Appellant had availed Cenvat credit of service tax for an amount of Rs. 28,94,549/- paid on erection, installation and maintenance of Wind Mill during April, 2017. The adjudicating authority denied the said Cenvat credit on the ground that Wind Mill was installed for generation of electricity at a location far away from the factory premises of the Appellant and that services availed for windmill has no nexus with manufacturing activities of the Appellant and not used directly or indirectly, in or in relation to manufacture of final product and hence, were not covered under the definition of 'input service' in terms of Rule 2(l) of 'CCR, 2004'.

7. I find that the Appellant had availed services for erection, installation and maintenance of Wind Mill and had availed Cenvat credit of service tax paid on such services. It is on record that the electricity so generated from the said Wind Mill was fed into grid of PGVCL and equal number of units of electricity were received by them in their factory for manufacture of their excisable goods, as per findings recorded at Para 13 of the impugned order. Though, Wind Mill was installed at a far away location from the factory where erection, installation



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and maintenance services were availed but there is no bar in availing services beyond factory premises. There is no dispute that the electricity generated from Wind Mill was utilized by the Appellant in their factory for manufacturing of goods and therefore, the erection, installation and maintenance services availed in respect of said Wind Mill by the Appellant has nexus with the manufacturing activities of the Appellant and electricity so generated at windmill was utilised in relation to manufacturing of final products. I, therefore, hold that erection, installation and maintenance services were 'input service' for the Appellant in terms of Rule 2(l) of CCR, 2004 and Cenvat credit of service tax was correctly availed by them. I rely on the decision rendered by the Hon'ble Madras High Court in the case of Ashok Leyland Ltd. reported as 2019 (369) E.L.T. 162 (Mad.), wherein it has been held that,

"25. As already pointed out, there is no dispute that the electricity generated by the windmills are exclusively used in the manufacturing unit for final products, there is no nexus between the process of electricity generated and manufacture of final products and there is no necessity for the windmills to be situated in the place of manufacture. Further, as already noticed, the definition of "input service" is wider than the definition of "input". Furthermore, if one takes a look at the Rules, more particularly Rule 2(k), as it stood prior to 1-4-2011, which defines "input", the following has been specifically inserted.

"within the factory of production".

However, these words are physically missing in Rule 2(l), which defines "input service" and it would mean any service used by a provider of taxable service for providing an output service or used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from the place of removal. Though the definition of "input service" has to be widely construed, and in terms of Rule 3, which allows the manufacturer of final products to take the credit of service tax inputs or capital goods received in the factory of manufacture of final products, insofar as any input service is concerned, the only stipulation is that it should be received by the manufacturer of final products. Therefore, this would be the correct manner of interpreting Rule 2(l) of the Rules.

26. In the light of the above, we are of the considered view that the decision in the case of *Ellora Times Ltd.* (supra) does not lay down the correct legal position and we agree with the decision of the High Court of Bombay in *Endurance*



Technology Pvt. Ltd. (supra), which has been followed by the Larger Bench of the Tribunal in *Perry Engg. & Electronics P. Ltd.*”

8. I have examined various case laws relied upon by the adjudicating authority. I find that facts involved in the case of *Maruti Suzuki Ltd - 2009 (240) ELT 641 (S.C.)* decided by the Hon'ble Supreme Court were entirely different. The Hon'ble High Court in the case of *Ashok Leyland Ltd supra* distinguished the said case law of *Maruti Suzuki Ltd* by giving findings as under:

“24. The decision in the case of *Maruti Suzuki Ltd. (supra)* cannot be applied to the facts of the present case, as it was a case where the Court was considering as to whether electricity can be construed as an input. The facts in the case would be very important because, the allegation against the assessee therein was that they had generated electricity in their factory and wheeled out portion of the electricity to its joint ventures and the question was whether the extent of the clearance of excess electricity outside the factory to the joint ventures, vendors, grid etc., would be admissible for Cenvat credit, as it is cleared for a price. This question was answered against the assessee. However, the facts of the case on hand are totally different and therefore, the Revenue would not be justified in referring to the observations of the Hon'ble Supreme Court in the said judgment about the concept of generation of electricity, as we have to test the correctness of the impugned order on the given facts and circumstances of the case.”

8.1 Similarly, in the case of *Gujarat Heavy Chemicals Ltd - 2011(22) STR 610 (Guj.)* decided by the Hon'ble Gujarat High Court, facts involved were also different. In that case, the assessee provided residential quarters for its workers and provided security services for such residential quarters. The Assessee availed Cenvat credit of service tax paid on such security service, which was denied by the Department. The Hon'ble Court held that there was no connection between the security service provided by the manufacturer in the residential quarters maintained for the workers as having any direct or indirect relation to the activity of manufacture of the final product.

8.2 As regards reliance placed on the Hon'ble CESTAT's orders passed in the years 2008, 2009 and 2010, I find that divergent views were prevailing at material time, which resulted in constitution of Larger Bench in the case of *Perry Engg. & Electronics P. Ltd* reported as 2015 (40) S.T.R. 243 (Tri. - LB). The Larger Bench of the Tribunal decided the issue in favour of the assessee.



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9. In view of above discussion, I hold that the Appellant had correctly availed Cenvat credit of service tax paid on erection, installation and maintenance services in respect of Wind Mill. The confirmation of demand of Rs. 28,94,549/- is not sustainable and required to be set aside and I order to do so. Since, demand is set aside, recovery of interest and imposition of penalty of Rs. 28,94,549/- under Rule 15(2) of CCR, 2004 are also set aside.

10. I set aside the impugned order and allow the appeal.

11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

11. The appeal filed by the Appellant stand disposed off in above terms.

सत्यापित,

[Signature]
विशुद्ध शासक
राजकोट, गुजरात

[Signature]
30 June, 2021.
(AKHILESH KUMAR)
Commissioner (Appeals)

By RPAD

To, M/s. Sims Ceramic Pvt Ltd (Unit-I) (now amalgamated with Simpolo Vitrified Pvt Ltd) Orsun Ceramic Zone, National Highway 8-A, Lakhdirpur Road, Ghuntu, District Morbi.	सेवा में, मैसर्स सिम्स सिरेमिक प्राइवेट लिमिटेड) यूनिट -I) (अब सिम्पोलो विट्रिफाइड प्राइवेट लिमिटेड के साथ एकीकृत) ओरसन सिरेमिक जोन, राष्ट्रीय राजमार्ग 8-ए, लखधीरपुर रोड, घुंटू, जिला मोरबी।
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प्रतिलिपि :-

- 1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट को आवश्यक कार्यवाही हेतु।
- 3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, मोरबी-1 मण्डल, को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फ़ाइल।



