



::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

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रजिस्टर्ड डाक ए.डी.द्वारा:-DIN-20211064SX000000B0A0

क	अपील / फाइल नं./ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/6/GDM/2021	09/GST/AC/2020-21	30.09.2020

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

KCH-EXCUS-000-APP-237-2021

आदेश का दिनांक /

Date of Order:

20.10.2021

जारी करने की तारीख /

Date of issue:

20.10.2021

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. Friends Salt Works & Allied Inds. "Maitri Bhavan", Plot No. 18, Sector-08,, Gandhidham-370201,

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 बतलाए 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 जुर्माना, 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/- रुपये 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 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 सकती है 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 जुर्माना, 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/- रुपये 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 fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- 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/-.



- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवानी, 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 For 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.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेन्टेट) 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, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपये से अधिक न हो। केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
- धारा 11 डी के अंतर्गत रकम
 - सेन्टेट जमा की गयी संलग्न राशि
 - सेन्टेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (नं- 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होंगे। / 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 :
- amount determined under Section 11 D;
 - amount of erroneous Cenvat Credit taken;
 - 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 ईकाई, 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 on 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) मुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो झूटी 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 तरीख अथवा समयावधि 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 उत्पाद शुल्क (अपील)नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इन 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 साध्य 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। जहां 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 कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिए। इस तथ्य के होते हुए भी की लिखा पट्टी 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 Appellate 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 टिकट 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-I 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 बर्णित एवं अन्य संबंधित 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.
- (G) 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. Friends Salt Works and Allied Industries, Gandhidham (hereinafter referred to as "appellant") has filed Appeal No. V2/6/GDM/2021 against Order-in-Original No. 9/GST/AC/2020-21 dated 30.9.2020 (hereinafter referred to as "impugned order") passed by the Assistant Commissioner, Central GST Division, Gandhidham (Urban) (hereinafter referred to as "adjudicating authority").

2. The facts of the case, in brief, are that the appellant was engaged in providing storage and warehousing service and was registered with Service Tax Department having Registration No. AAFF2067NST001. During the course of Audit of the records of the Appellant undertaken by the CERA officers, it was observed that they had availed Cenvat credit of Service Tax paid for installation of RCC Casing Pipe below existing road or railway track by Jacking & Pushing method. It appeared that said service was part of laying foundation or making structure for support of capital goods i.e. pipelines, which is covered under exclusion clause (A) of Rule 2(l) of the Cenvat Credit Rules, 2004 (hereinafter referred to as "CCR, 2004") and therefore, the Appellant was not eligible to avail Cenvat credit of service tax of Rs. 1,21,800/- availed during the Financial Years 2015-16 and 2016-17.

2.1 Show Cause Notice No. IV/18-11/GDMUrban/Adj/2018-19 dated 5.12.2018 was issued to the appellant for recovery of wrongly availed Cenvat credit amount of Rs. 1,21,800/- along with interest under Rule 14 of the CCR, 2004 read with Section 73 of the Finance Act, 1944 and proposing imposition of penalty under Rule 15 of CCR, 2004 read with Section 78 of the Finance Act, 1944.

2.2 The above Show Cause Notice was adjudicated vide the impugned order which disallowed Cenvat credit of Rs. 1,21,800/- and ordered for its recovery along with interest, under Rule 14 of CCR, 2004 read with Section 73 of the Finance Act, 1944 and imposed penalty of Rs. 1,21,800/- under Rule 15 of CCR, 2004 read with Section 78 of the Act.

3. Being aggrieved, the appellant preferred the present appeal on the following grounds, *inter alia*, contending that,

- (i) The adjudicating authority has erred in law and on facts in denying the credit of service of laying of casing pipe line by treating it as a service rendered for laying of foundation or making of structure to support capital goods.



(ii) The adjudicating authority has further erred in law and on facts in invoking the extended period under proviso to Sub-section (1) of Section 73 of the Act by observing that the appellant has mis-declared/suppressed various facts wilfully for availing CENVAT credit on laying of casing pipe lines. In reality, the adjudicating authority was fully aware about the business model of the appellant. Further, they were regularly filing ST-3 returns and disclosing the details of CENVAT credit availed and utilized by them in the business of storage and warehousing.

(iii) The adjudicating authority has also erred in placing reliance upon the decision rendered by Hon'ble Supreme Court in the case of Jawahar Mills Ltd. 2001 (132) E.L.T. 3 (SC) and Bharti Airtel Ltd.- 2014 (35) STR 865 (Bombay) without fully appreciating the fact under dispute.

4. Personal hearing in the matter was conducted in virtual mode through video conferencing on 22.9.2021. Shri Manish Vora, C.A., appeared on behalf of the Appellant. He reiterated the submissions made in appeal memorandum and additional written submission dated 20.9.2021.

4.1 In additional written submission, it has, *inter alia*, been contended that,

(i) They are engaged in the manufacture of salt and providing liquid storage tank on hire /rent basis. They were paying service tax on the service charges collected from their clients for providing storage service. They had availed Cenvat credit of Rs. 1,21,800/- on the invoices issued by M/s P.J. Sood Projects Pvt. Ltd containing description "providing 1600 MM ID RCC Casing pipeline below existing road or railway track by jacking and pushing method". During audit of their records, CERA party was of the opinion that the said service provider had provided service of laying of foundation or making of structure for support of capital goods and the said service was not an input service in view of exclusion clause (A) of Rule 2(l) of CCR, 2004.

(ii) On going through the relevant provisions of Rule 2(l) of CCR, 2004, it is apparent that only those services which are used for the construction or execution of a work contract of a building or civil structure or service for laying of foundation or making of structure for support of capital goods are excluded from the definition of input service. On perusal of the invoices issued by the aforesaid service provider, it is clear that the aforesaid service provider has neither provided the service either towards construction or execution of a work contract of a building or civil structure nor any service for laying of foundation or making of a structure



for support of capital goods. In fact, the aforesaid service provider has provided the service of installation of RCC casing pipe lines by Jacking & pushing method as clearly mentioned in the copy of their invoice, which are used by them for transferring/transportation of cargo from the vessel anchored at berth to the tank farm or vice-a-versa and also for shifting of cargo from one terminal to another.

(iii) That the demand is barred by limitation as the SCN was issued beyond the normal period of eighteen months. The SCN dated 05.12.2018 covering the period September 2015 and June, 2016 is patently time barred and longer period of limitation under Section 73 of the Finance Act, 1994 is not applicable for recovery. Although it has been proposed in the SCN and confirmed in the OIO to cover longer period for recovery of Cenvat Credit based on records and documents of the appellant, there is no wilful mis-statement or suppression of facts with an intent to avail an ineligible credit. Their records were already audited by the Department covering the period from April, 2012 to June, 2017 and hence, there cannot be any allegation of suppression of facts. Thus, the demand is barred by limitation.

5. I have carefully gone through the facts of the case, the impugned order, and grounds raised in appeal memorandum and additional written submission. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority disallowing Cenvat credit of service tax amount of Rs. 1,21,800/- towards installation of RCC Casing Pipe by Jacking & Pushing method, is correct, proper and legal or not.

6. I find that the Appellant had availed Cenvat credit of service tax paid on services availed for installation of RCC Casing Pipe below existing road or railway track by Jacking & Pushing method. The adjudicating authority held that the said service was part of laying foundation or making structure for support of capital goods, which was covered under exclusion clause (A)(b) of Rule 2(l) of "CCR, 2004" and therefore, the Appellant was not eligible to avail Cenvat credit of service tax amount of Rs. 1,21,800/-. The impugned order denied said Cenvat credit and confirmed the demand of Rs. 1,21,800/-, along with interest, under Rule 14 of CCR, 2004 and imposed penalty of Rs. 1,21,800/- under Rule 15 ibid.

6.1 The Appellant has contended that their service provider had provided the service of installation of RCC casing pipe lines by Jacking & pushing method as mentioned in the invoices, which were used by them for transferring/ transportation of cargo from the vessel anchored at berth to the tank farm or



vice-a-versa and also for shifting of cargo from one terminal to another. Their service provider had neither provided the service towards construction or execution of a work contract of a building or civil structure nor any service for laying of foundation or making of a structure for support of capital goods. Hence, the said service was no covered under exclusion clause (A) of Rule 2(l) of CCR, 2004.

7. I find that Cenvat credit was denied by covering it under exclusion clause (A) of Rule 2(l) of CCR, 2004. It is, therefore, pertinent to examine the said provisions, which are reproduced as under:

“(l) ‘input service’ means any service, -

- (i) used by a provider of output service for providing an output service; or
- (ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,

and includes

but excludes, -

(A) service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for -

- (a) construction or execution of works contract of a building or a civil structure or a part thereof; or
- (b) laying of foundation or making of structures for support of capital goods,

except for the provision of one or more of the specified services; or

... ..”

8. I have gone through the relevant invoices as well as facts recorded in impugned order. I find that the Appellant had availed services for installation of RCC Casing Pipe below existing road or railway track by jacking & pushing method. The said service was apparently for laying/installing pipeline beneath existing road or railway track. However, it is not correct to equate the said service as laying of foundation or making structure for support of capital goods. There is nothing on records which suggests that the service provider had laid foundation or made structure for support of capital goods. The adjudicating authority has not elaborated as to how laying /installation of pipeline under road or railway track is similar to laying of foundation or making structure for support of capital goods so as to cover in exclusion clause (A)(b) of Rule 2(l) of CCR, 2004. Under the circumstances, denial of Cenvat credit of said service is not



sustainable. The impugned order covering the said service under clause (A)(b) of Rule 2(l) of CCR, 2004 is not justified. I, therefore, set aside the confirmation of demand of Rs. 1,21,800/-. Since, demand is set aside, recovery of interest and imposition of penalty of Rs. 1,21,800/- are also required to be set aside and I order accordingly.

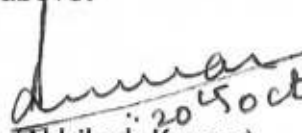
9. In view of above, I set aside the impugned order and allow the appeal.

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

10. The appeal filed by the Appellant is disposed off as above.

सत्यापित,

 किपुल शाह
 अधीक्षक (अपीलेंस)


 20 October, 2021
 (Akhilesh Kumar)
 Commissioner (Appeals)

By RPAD

To, M/s Friends Salt Works and Allied Industries, 'Maitri Bhavan', Plot No. 18, Sector 8, Gandhidham.	सेवा में, मे० फ्रेंड्स सॉल्ट वर्क्स एंड एलाइड इंडस्ट्रीज, 'मैत्री भवन', प्लॉट नंबर 18, सेक्टर 8, गांधीधाम।
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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, गांधीधाम आयुक्तालय, गांधीधाम को आवश्यक कार्यवाही हेतु।
- 3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गांधीधाम (शहरी) मण्डल, गांधीधाम को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फ़ाइल।



