System

आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हॉउस(तल प्रथम) नवरंगपुरा- अहमदाबाद ,380009		Office of the Commissioner of Central Goods & Services Tax & Central Excise, Ahmedabad North, Custom House(1st Floor) Navrangpura, Ahmedabad-380009

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निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. F.NO. V.87/15-55/OA/2018 DIN : 20211264WT000000B4EC

आदेश की तारीख़ / Date of Order : 28.12.2021

जारी करने की तारीख़ / Date of Issue : 29.12.2021

द्वारा पारित/Passed by -

उपेन्द्र सिंह यादव / UPENDRA SINGH YADAV

आयुक्त / COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR–44/2021-22

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

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2. इस आदेश से असंतुष्ट कोई भी व्यक्ति -इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार ,सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण , द्वितीय तल, बाहुमली भवन असरवा, गिरधर नगर पुल के पास, गिरधर नगर, अहमदाबाद, गुजरात 380004 को संबोधित होनी चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan Asarwa, Near Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad, Gujarat 380004.

2.1 इस आदेश के विरुद्ध अपील न्यायाधिकरण में अपील करने से पहले मांगे गये शुल्क के 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है ।

An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

(as per amendment in Section 35F of Central Excise Act,1944 dated 06.08.2014)

3. उक्त अपील प्रारूप सं .इ.ए 3.में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 ,के नियम 3 के उप नियम (2)में विनिर्दिष्ट व्यक्तियों द्वारा

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR- 44 /2021-22

M/s. Ford India Private Ltd (hereinafter referred to as MIs. FIPL or assessee), Revenue Survey No-6, Village-North Kothpura, Tal-Sanand, District-Ahmedabad-382170 were issued with SCN No. V.87/15-55/OA/2018 dated 19.08.2019 by the Commissioner, Central GST &C.Ex.; Ahmedabad North, Ahmedabad.

BRIEF FACTS OF THE CASE PERTAINING TO ISSUANCE OF THE SUBJECT SCN ARE AS UNDER:

M/s. Ford India Private Ltd (hereinafter referred to as M/s. FIPL or assessee), Revenue Survey No-6, Village-North Kothpura, Tal-Sanand, District-Ahmedabad-382170 having Central Excise Registration No. AAACM4454HEM007 and Service Tax registration No. AAACM4454HSD002 are engaged in the manufacturer of passenger cars falling under Chapter Heading 8703, engine falling under chapter 8407, components falling under chapter 8708 of the first schedule to the Central Excise Tariff Act, 1985. M/s. FIPL obtained the above said Central Excise Registration for their newly set up plant at Sanand during November, 2011. They commenced commercial production at newly set up factory on **05.06.2015.** Since M/s. FIPL had several registrations for manufacturing goods as well as for providing of services all over India, M/s. FIPL was under control of Large Tax Payer Unit, Chennai up to 30.06.2017.

2. During the preliminary scrutiny of ERI returns of the M/s. FIPL by erstwhile L TU Chennai; it was noticed that they had started availing Input Service Tax Credits (including Education Cess and Secondary and Higher Education Cess) on input services received during the period from August-2014 to May-2015. M/s. FIPL was maintaining computerised soft copy of the Input Services Register. The Taxpayer had submitted the soft copy of the register through email.

3. It appeared from the Input service register that M/s. FIPL had wrongly availed Cenvat credits total amounting to Rs. 8,18,106/-, as detailed below in Table 1, on those invoices which were invoiced 6 months prior to 01.09.2014. The said Cenvat Credit was availed beyond six months from the date of the invoices. In the budget for the year 2014-15 certain amendments were made to the Cenvat Credit Rules, 2004. One of the amendments was that from 01.09.2014 onwards, the Cenvat credit, after six months from the date of issue of any of the documents specified in sub-rule (1) of Rule 9, shall not be availed. With effect from 01.09.2014, a time limit of six months from the date of the document/invoice was introduced to avail CENVAT credit on inputs and input services. This restriction was introduced by inserting 3rd proviso to Rule 4(1) of CCR-2004 vide Notification No. 21/2014 CE NT Dt. 11.07.2014. Thus, the cenvat credit so availed by them was sought to be disallowed and appeared to be recoverable from them. The time limit of six months was enhanced to one year with effect from 01.03.2015, vide Notification No. 6/2015 CE NT Dt. 01.03.2015.

Table-1

S.No.	Invoice No.	Invoice dt.	Posting Dt.	Service Provider's Name	Sum of service tax (in Rs.)	Sum of Educ. Cess. (in Rs.)	Sum of Secondary Edu. Cess (in Rs.)
1	105	22-08-12	30-10-14	FORD TECHNOLOGY SERVICES IN@	172396	3448	1724
2	107	28-08-12	30-10-14	FORD TECHNOLOGY SERVICES IN@	36332	727	363
3	137	30-01-13	30-09-14	FORD TECHNOLOGY SERVICES IN@	7164	143.28	71.64
4	1601173180	15-08-13	30-09-14	TATA TELESERVICES LIMITED	2634	52.68	26.34
5	1625286044	15-09-13	30-09-14	TATA TELESERVICES LIMITED	3125	62.5	31.25
6	50034467	25-09-13	30-09-14	SCHNEIDER ELECTRIC IT BUSSIN	4,544	90.88	45.44
7	2.84198E+11	15-10-13	30-09-14	RCIL A/CRIS INFRASTRUCTURES	25748	514.96	257.48
8	5107801579	31-10-13	30-09-14	MAERSK LINE INDIA PRIVATE LTD	1,783	35.66	17.83
9	1653639285	07-11-13	30-09-14	TATA TELESERVICES LIMITED	3,087	61.74	30.87
10	5107840349	18-11-13	30-09-14	MAERSK LINE INDIA PRIVATE LTD	14,750	295	147.5
11	FIPLEPO01	26-11-13	30-10-14	GHAFARI PUROHIT ARCHITECTS & ENGINEERS P.LTD	60647	1212.94	606.47
12	305	27-12-13	30-10-14	OHL LOGISTICS PRIVATE LIMITED	434	9	1
13	40555482	13-01-14	30-10-14	SCHENKER INDIA PVT LTD	32185	643.7	321.85
14	1663314063	15-01-14	30-09-14	TATA TELESERVICES LIMITED	3487	69.74	34.87
15	40555688 & 40555689	15-01-14	30-10-14	SCHENKER INDIA PVT LTD	13296	265.92	132.96
16	40557204	24-01-14	30-10-14	SCHENKER INDIA PVT LTD	31553	631.06	315.53
17	13480B14	31-01-14	30-09-14	ASHAPURA FORWARDERS PVT LTD	4380	87.6	43.8
18	L22614	31-01-14	30-10-14	MAGNA ENTERPRISES	18647	372.94	186.47
19	E0098	04-02-14	30-10-14	EWIE SERVICES INDIA PVT LTD.	25480	510	255
20	134068RAB3	07-02-14	30-10-14	LARSEN & TURBO LIMITED	79727	1595	797
21	1698703056	15-02-14	30-09-14	TATA TELESERVICES LIMITED	4683	93.66	46.83
22	1700052731	19-02-14	30-09-14	TATA TELESERVICES LIMITED	84	1.68	0.84
23	140	20-02-14	30-09-14	SURE SAFETY INDIA PVT LTD	660	13.2	6.6
24	10833647	20-02-14	30-10-14	OHL LOGISTICS PRIVATE LIMITED	11928	238.56	119.28
25	140205	26-02-14	30-10-14	EFC PROJECTS PVT LTD	198000	3960	1980
26	40563071	27-02-14	30-10-14	SCHENKER INDIA PVT LTD	16581	331.62	165.81
27	20825704	28-02-14	30-10-14	SCHENKER INDIA PVT LTD	20945	418.9	209.45
				TOTAL	794280	15887.22	7939.11

4. From the list of service providers as available in the Input Service Register, it was also noticed that they had availed cenvat credit on services received from following construction and consulting companies, as shown below.

TABLE-2

S.No.	Invoice No.	Invoice Date	Service Provider's Name	Service category	Sum of Service Tax (in Rs.)	Sum of Educ. Cess (in Rs.)	Sum of Secondary Educ. Cess (in Rs.)
1	132928RA04	12-06-14	**SUNMAX CONSTRUCTIONS**	Works contract service	1620035	32401	16200
2	10103113011	27-12-13	KAJIMA INDIA PVT Ltd.	Construction management service	1344847	26897	13448

3	AN14061604	06-05-14	MUKESH & ASSOCIATES	Consulting Services	30000	600	300
				Total	2994882	59898	29948

5. Therefore, the total cenvat credit amounting to **Rs. 30,84,728/- (including Education Cess and Secondary Education Cess),** as detailed above, appeared to be ineligible Cenvat Credit and was required to be disallowed and required to be recovered from them. These credits also appeared to be ineligible and hence were required to be reversed as the same are specifically excluded from the definition of "Input Services".

6. It also appeared that M/s. FIPL had availed cenvat credit as Input services which were not admissible to them, most of such Cenvat Credit were related to Input Services, used for setting up of plant and were availed by them in relation of setting up of present factory at Sanand.

7. In order to investigate further, the above discrepancies noticed by the department were communicated to the assessee vide letter dated 12.02.2015 issued by LTU, Chennai. **M/s. FIPL, in turn, replied to letter dated 12.02.2015** vide email dated 02.03.2015 wherein they stated that they had already started the process of reversing the credits which were availed six months after the date of invoice. In respect of point no. 2 of LTU letter dated 12.02.2015 i.e. service tax credit availed for services availed from construction companies vide e-mail message, they stated that they had inadvertently taken service tax credit on (1) Construction Activities, (2) Execution of works contract and (3) Architect Fees. They further stated that they would be reversing the ineligible cenvat credit and details of reversing of cenvat credit would be provided shortly. As far as point 3 of LTU letter dated 12.02.2015 was concerned, M/s. FIPL stated that these credit were related to installation and commissioning of machinery and as such were eligible credits.

8. Further, the assessee had reversed the Cenvat Credit of **Rs. 8,18,106/-,** Table-1 above, which were invoiced 6 months prior to 01.09.2014, vide Entry No. 3 & 4 SERREG dated 04.04.2016 and reversed the Cenvat credit availed on (1) Construction Activities, (2) Execution of works contract and (3) Architect Fees i.e. as detailed below: The above amount was included in total demand raised in the SCN.

Invoice No.	Invoice Date	Service Provider's Name	Service Tax (INR)	Sum of Educ. Cess (in Rs.)	Sum of Secondary Educ. Cess (in Rs.)	Total Credit Availed (INR)	Reversal Entry No. in Service Tax Register
1010313011	27-12-13	KAJIMA INDIA PVT Ltd.	1344847	26897	13448	1385192	3746/09/09/2015
AN14061604	06-05-14	MUKESH & ASSOCIATES	30000	600	300	30900	3747/09/09/2015
132928RA04	12-06-14	SUNMAX CONSTRUCTIONS	1620035	32401	16200	1668636	3748/09/09/2015
		TOTAL	2994882	59898	29948	3084728	

9. M/s. FIPL was requested to provide copies of agreements/ Purchase orders/ invoices vide LTU letter dated 09.03.2015, M/s. FIPL vide their letter dated

23.03.2015 provided some information pertaining to 37 vendors. Some of the documents submitted were as under.

9.1. P.O.No.N120509/13.03.2012-(Annexure-5) placed on to M/s. Shapoorji Pallonji & Company Limited - The description given in the purchase order was *'Paintshop building' and 'Paintshop General Cond & preliminary'.*

9.2. P.O.No N120243/02.02.2012(Annexure-6)placed on M/s. Larsen & Toubro Limited- The description in the purchase order was *Piling Work.*

9.3. P.O.No.N120508/13.03.2012(Annexure-7)placed on M/s. Shapoorji Pallonji & Company Limited - The description given in the purchase order was *'Paint Shop FIPL2 Road Works'.*

9.4. P.O.No.N111837/01.11.2011 placed on M/s. Durr India Private Limited - The description given in the purchase order was *'Installation and Commissioning of Paint Shop'.*

9.5. On going through the above P.O.s, it appeared that the services received by the assessee from the above mentioned service providers was falling **under the exclusion category of the Input Services"** defined under **Rule 2(1) of the CENVAT Credit Rules, 2004.** Further, these services had been rendered by the service provider during course **of setting up of the plant** at Sanand and were in relation to setting up of the factory. The amendment dated 01.04.2011 to definition of the· "Input Services" made under Cenvat Credit Rules, 2004 excludes the credits availed in relation to setting up of the factory and hence appeared to be ineligible.

10. Prior to April, 2011, Input Service was defined under Rule 2(1) of the CCR, 2004 as under., ***"Input service"*** *means any service,*

"(i) used by a provider of taxable service for providing an output service; or (ii) used by the 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 services used in relation to setting up,*** *modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal;"*

10.1. The above definition was substituted with a new one vide Notification Number 3/2011 (w.e.f. 01.04.2011] dated 01.03.2011. Accordingly, from April, 2011, onwards, the definition of input service was as follows:

*Rule 2(l)- "**inputs service**" means any service,*

(i) used by a provider of taxable 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 services used in relation to modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place . of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal, but excludes services.

(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), is so far as they used for,

(a) construction 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
(B) .....;or

(C) ....."}"

11. M/s. FIPL had totally availed Input Services Credit to the tune of **Rs.26,96,75,793/**(Rupees Twenty-Six Crores Ninety-Six Lakhs Seventy-Five Thousand Seven Hundred and Ninety Three only during the period **from August 2014 to May-2015 i.e.** before commencement of commercial operations and as such these credits appeared to have been availed in relation to setting up of the Sanand Factory, which was not allowable as per Cenvat Credit Rules, 2004. The month wise cenvat credit availed on input services are as under:

TABLE-3

MONTH	Credit Availed (in Rs.)
August-2014	193165080
September-2014	11475897
October-2014	19602320
November-2014	27028781
December-2014	16890814
January-2015	61621
February 2015	315356
March-2015	565193
April-2015	257757
May-2015	312974
Total	26,96, 75,793/

12. M/s. FIPL had submitted the details of Cenvat Credit i.e. date-wise, invoice-wise, service-wise etc. vide their email dated 31.01.2019. The input service tax credit availed and reversed by them during the period from 01.08.2014to31.05.2015 were as under:

TABLE-4

S.No.	Description of service	Credit availed	Credit Reversal
1	Installation &Commissioning at Sanand Plant	122721783	53482.75
2	Construction Management Service	1385192	0
3	Travel Agency	9787	0
4	Works Contract service road in plant	1668636	0
5	Preparation of Structures for support of capital goods along with Electrical Installation	5975021	1640742.8
6	MEP Design Consultancy Service	497447	62466.41
7	Services received prior to commencement of operations at Sanand plant	136847195	7713100.2

8	Assessee has not provided description of services in some invoices	570732	0
9	GRAND TOTAL	269675793	9469792

12.1 Service tax credit availed by the M/s. FIPL at Sr. No.-1 amounting to **Rs.12,27,21,783/-** of the above mentioned Table-4 was ineligible, because the credit availed appeared to be **in relation to building the new plant, laying of foundation, piling work etc. The 'Input Service' definition as per rule 2(1) of CCR 2004 clearly excludes the service on account of laying of foundation or making of structures for support of capital goods.** M/s FIPL had reversed the credit of Rs. 53,482/- including Educational Cess and Secondary Higher Education Cess in respect of Sr. No. I of Table no.4 (reversed credit of Rs. 19,886/- for those invoices which were prior to six months, credit of Rs. 12060/- for availing credit on wrong invoices and Rs. 21536/- for those invoices on which the assessee had taken double credit).

12.2 Service tax credit availed by the M/s. FIPL at Sr. No.2 of the above mentioned Table-4, amounting to **Rs.13,85,192/-** was ineligible as per definition of Input Services mentioned in the Rule 2(1) of CCR 2004. The 'Input Service' **definition clearly excludes the service of construction of a building or a civil structure or a part thereof.**

12.3. Service tax credit availed by the M/s. FIPL at Sr. No. 3 of the above mentioned Table-4, amounting to **Rs.9,787/-** was ineligible as per definition of Input Services mentioned in the Rule 2(1) of CCR 2004, because the assessee had provided **the travel agency services to employees for personal use. The** 'Input Service' **definition clearly excludes the service of travel benefits extended to employees on vacation such as leave or home travel concession for personal** use.

12.4. Service tax credit availed by the M/s. FIPL at Sr. No.-4 of the above mentioned Table-4, amounting to **Rs.16,68,636/-,** was ineligible as per definition of Input Services mentioned in the Rule 2(1) of CCR 2004. The 'Input Service' **definition clearly excludes the service of work contract of building of or a civil structure or a part thereof.**

12.5. Service tax credit availed by the M/s. FIPL at Sr. No.5 of the above mentioned Table-4, amounting to **Rs.59,75,020/-** was ineligible as per definition of Input Services mentioned in the Rule 2(1) of CCR 2004. The 'Input Service' definition clearly excludes the services which were used for making of structures for support of capital goods. It appeared that **structures were constructed along with electrical installations/panels for support of capital goods** to be used for production of excisable **goods. Thus the structures were prepared for support of capital goods which is specifically excluded in the definition of "Input Services".** Therefore, the credit availed by the assessee was required to be reversed/ recovered. M/s. FIPL had reversed the credit of Rs. 16,40,742/- in respect of Sr. No.-5 of the table 4 (reversed

credit of Rs. 82,119/- for those invoices which were prior to six months, credit of Rs. 15,58,624/- for wrong invoices on which the assessee had taken credit).

12.6. Service tax credit availed by the M/s. FIPL at Sr. No.6- amounting to **Rs. 4,97,446/-**of the above mentioned Table-4, was ineligible as per definition of Input Services mentioned in the Rule 2(1) of CCR 2004. **The 'Input Service' definition clearly excludes the services received from the architect companies, which includes MEP designing &consultancy service, hence service received from the architect companies by the assessee was not eligible for availing Cenvat Credit** and hence the same was required to be recovered from the assessee. M/s FIPL had reversed the credit of Rs.62,466/- in respect Sr. No.-6.(reversed credit of Rs. 62,466/- for those invoices which were prior to six months.)

12.7. It appeared from the above changes made in definition of the 'input service' that prior to 01.04.2011, Cenvat credit of input services used in relation to setting up of a factory or office premises or relating to such factory or premises was allowed as eligible credit. However, after amendment w.e.f. 01.04.2011 made in definition of 'input service', service tax credit availed for setting up of factory or office or in relation to setting up of factory or office had been dropped from inclusive part. From the scrutiny of the soft copy of service tax credit register provided by M/s. FILP, it appeared that they had availed input service tax credit mentioned in serial no. 7 of the above mentioned Table-4, amounting to **Rs.13,68,47,196/-**,which was not allowable as all the credit availed by them pertained to the period prior to commencement of operation at Sanand Plant, i.e before **05.06.2015.** The Services mentioned at Sr. No. 7 of Table 4 above qualify as input Services, as per definition of Input Services mentioned in the Rule 2(l) of Cenvat Credit Rules, 2004; however, since all these services were used prior to commencement of operation at Sanand plant, the same were ineligible as per the new definition, wherein the words ***services used in relation to "setting up"*** were removed. Hence, as per the amended definition of Input services. the assessee was not entitled to take/avail Service Tax credit taken on these services. *M/s.* FIPL had reversed the credit of Rs.77,13,100/- in respect of Sr. No.7 (reversed credit of Rs. 5,88,729/- for those invoices which were prior to six months, credit of Rs. 1,78,798/- for wrong invoices and Rs. 69,45,572/- for those invoices on which the assessee had taken double credit). The random scrutiny of invoice Number 10/3480 B/13-14 dated 31.01.2014 of *M/s.* Ashapura Forwarders Pvt. Ltd had been undertaken. The input credit availed on said services i.e Clearing and Freight Forwarding CHA Services appeared eligible as per definition of input Services mentioned in Rule 2(1) of Cenvat Credit Rules, 2004, however, since the said credit of service Tax availed by the assessee was prior to Setting of their plant at Sanand, the assessee was not eligible to availed the credit of Service Tax credit as per new definition.

12.8 Service tax credit availed by the M/s. FIPL at Sr. No.8 of Table-4 amounting to Rs.5,70,732/- appeared ineligible as the **assessee had not provided the description of services in their soft copy of register provided vide aforesaid**

mail and had only furnished details of invoices under which they had received/ availed services.

Rule 9(2) of the Cenvat Credit Rules,2004,stipulates as under:

"(2). No CENVAT credit under sub-rule(1) shall be taken unless all the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994, as the case may be, are contained in the said document:"

***Provided** that if the said document does not contain all the particulars but contains the details of duty or service tax payable, description of the goods or taxable service, assessable value, Central Excise or Service tax Registration number of the person issuing the invoice, as the case may be, name and address of the factory or warehouse or premises of first or second stage dealers or provider of taxable service, and the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, is satisfied that the goods or services covered by the said document have been received and accounted for in the books of the account of the receiver, he may allow the CENVA T credit;*

12.8.1. Therefore, as per the Rule 9(2) of Cenvat Credit Rules,2004, without proper description of the services in the invoices/ register, the assessee cannot avail the service tax credit on the services provided received or availed; and it was also not possible to decide as to whether the services were eligible or otherwise. Hence, the Service Tax credit amounting to **Rs.5,70,732/-**appeared ineligible and therefore, the Service Tax credit availed without mentioning the description of the services on the invoices were required to be recovered from the assessee **in light of Rule 9(2) of CCR 2004 and eligibility as per the definition of "Input Services".**

13. In view of the above, input service tax credit availed by M/s. FIPL to the tune of **Rs. 26,96,75,793/-** was required to be disallowed and recovered from M/s. FIPL under Rule 14 of Cenvat Credit Rules, 2004 read with Section 11A of Central Excise Act, 1944. From the above discussion, it appeared that the assessee had availed ineligible Cenvat Credit of Input Services amounting to **Rs.13,28,28,598/-(Rs. 26,96,75,793- Rs.13,68,47,195/-), which were clearly excluded** from the definition of Input Services, as discussed in Paras 12.1 to12.6 and Para 12.8. The Cenvat Credit amounting to **Rs. 13,28,28,598/-,** had been availed on such services which did not qualify as eligible Input Services and was required to be recovered from the assessee. It appeared that the assessee was not entitled to the Cenvat Credit of Rs. 13,28,28,598/-, even if it was supposedly availed after the commencement of the plant. The remaining Cenvat Credit amounting to **Rs. 13,68,47,195/-,** mentioned in Para 12.7 above, was availed on eligible Input Services as per definition of Input Services mentioned in the Rule 2(1) of CCR 2004, however, since all these services were used prior to commencement of operation at Sanand plant, the same were ineligible as per the new definition wherein the word ***services used in relation to "setting up" was removed.*** Hence, as per the amended definition of Input services. the assessee appeared to be not entitled to take/avail Service Tax credit taken on

these services and the Cenvat Credit amounting to **Rs. 13,68,47,195/-** appeared to be recoverable from the assessee.

14. M/s. FIPL had not submitted complete details regarding availment of Cenvat Credit of Rs. 26,96,75,793/-,accordingly the assessee was served with summons dated 10.12.2018 to submit the required details and to give oral statement on the issue. Accordingly, Shri Uday K Kulkarni, Deputy Manager & Authorised Signatory of M/s. Ford India Limited, Sanand appeared to submit some of the details and to give his truthful statement. His statement was recorded under Section 14 of Central Excise Act, 1944 on 30.01.2019.

14.1. Shri Uday K Kulkarni, Deputy Manager & Authorised Signatory of *M/s.* Ford India Limited, Sanand was asked to explain each of the point as discussed in foregoing paras. On specifically asked with regard to Point No. 1 of the letter dated 12.02.2015 i.e. of availing Cenvat credit of **Rs. 8,18,106/-, which** were invoiced 6 months prior to 01.09.2014, he stated that they had already reversed the said Cenvat Credit of Rs.8,18,110/- vide Entry No. 3 & 4 SER-REG dated 04.04.2016. On being further asked, he stated that they had not availed/ re-credit in respect of the reversal made in this regard subsequently. He furnished the copies of invoices (except the Invoice No. 140 dated 20.02.2014) along with the summary sheet for wrongly availed cenvat credit by them. On being further asked, he stated that the said Cenvat credit had not been availed by them, the said credit had been availed by FIPL, Sanand only which had already been reversed.

14.2. On being asked as regard to Point No.2 of the letter dated 12.02.2015 i.e. of availing Cenvat credit of **Rs. 30,84,728/-,** he stated that they had availed the Cenvat Credit from Service provided by construction companies, and after observation by the department, they had reversed the cenvat credit availed in relation to construction services as mentioned in below table and further stated that they had not availed re-credit in respect of the reversal made in this regard subsequently. He also furnished copies of invoices alongwith the details of debit entries made by them in their Service Tax Credit **Register.**

TABLE-5

Invoice No.	Invoice Date	Service Provider's Name	Service Tax (INR)	Sum of Educ. Cess (in Rs.)	Sum of Secondary Educ. Cess (in Rs.)	Total Credit Availed (INR)	Reversal Entry No. in Service Tax Register
1010313011	27-12-13	KAJIMA INDIA PVT Ltd.	1344847	26897	13448	1385192	3746/09/09/2015
AN14061604	06-05-14	MUKESH & ASSOCIATES	30000	600	300	30900	3747/09/09/2015
132928R A04	12-06-14	SUNMAX CONSTRUCTIONS	1620035	32401	16200	1668636	3748/09/09/2015
		TOTAL	2994882	59898	29948	3084728	

14.3 As regard to Point No.3 of the letter dated 12.02.2015 and 09.03.2015 of LTU Chennai, he was shown the details of Service Tax Credit availed by them on or before 31.12.2014. And on being asked that the cenvat credit as mentioned in the said letter were ineligible credit, he stated that as per Rule 2(1) of CENV AT Credit Rules, 2004,

'input service' means any services used by the manufacturer whether directly or indirectly relating to manufacture of final products and clearance of final products upto the place of removal and includes services in relation to various activities. The definition of the input services as provided under the said rule is inclusive definition with specific exclusion i.e. any services is treated as input services unless the same is specifically excluded from the definition of input services.

14.4, Further on specifically being asked about all the Service Providers as stated in letter dated 09.03.2015, he furnished the sample copies of the invoices issued by service providers mentioned in list dated 9th March 2015 issued by LTU Chennai. He also furnished the statement showing the details of service providers from whom the services were availed along with the remarks showing details of services (based on the sample copies of invoices). In the said statement he stated that they had mentioned details of reversal of CENVAT credit of service tax made by them as stated hereinabove. He stated that CENVAT credit of services availed were eligible as per provisions of CENV AT Credit Rules, 2004.

15. Further, the assessee vide his letter dated 28.01.2019 stated that since the number of invoices are large, it was very difficult to provide copy of invoices and therefore only sample copies of invoices have been submitted. However, they had provided soft copy of the register maintained by them for availment of cenvat credit for the period August 2014 to May 2015 and on the basis of the same, M/s. FTPL had availed the total Cenvat Credit of **Rs. 26,96,75,793/-**prior to commencement of operation at their Sanand Plant.

16. On going through the details of input service tax credit availed by M/s. FIPL during the period from 01.08.2014 to 31.05.2015, it appeared that they had wrongly availed credit of ineligible and inadmissible 'input service', violating the provisions of law. Investigation was carried out and during the investigation, M/s. FIPL also reversed some part of 'input service tax' credit availed wrongly by them.

17. M/s. FIPL is a well-known established firm and fully aware about the provisions of Cenvat Credit Rules, the Central Excise Act, 1944 and the Finance Act. 1944; and rules made there-under, and they were legally bound to follow the mandatory and regulatory requirements prescribed under the said rules. It is well established law that in the era of self assessment, the burden of following the provisions of law, shall always lie upon the person paying Service Tax/ Central Excise duty and taking eligible credit thereof. Whereas the said assessee had not disclosed full, true and correct information about availment of ineligible Cenvat Credit and thus, it appeared that there was a deliberate withholding of essential and material information from the department. In the present era of self assessment, it is the sole responsibility of the assessee to assess correct taxable value, calculate their service tax liability correctly, discharge the same properly, and declare all the details correctly in their returns. The assessee in spite of having knowledge of the various provisions of Central Excise and Service Tax, had deliberately availed Cenvat Credit wrongly and hence suppressed the

facts from the Department. Therefore, in this case, all essential ingredients existed to invoke the extended period.

18. It further appeared that such Cenvat Credit, as discussed above, had been taken by the assessee by way of suppression of facts and in contravention of the provisions of the Cenvat Credit Rules, 2004 and definition of Input Services, with an intention to evade payment of duty. It appeared that it was known to the assessee that the services in respect of which they had taken Cenvat Credit, were either ineligible Input Services, which were specifically excluded from the definition of Input Services or; the Cenvat Credit of the Input Services were ineligible because they were availed prior to commencement of plant i.e, **the input services pertained to "setting up" of plant,** which is clearly inadmissible as per the amended definition of Input Services, as it has been removed from the inclusive clause. It is the responsibility of the assessee to take cenvat credit only if the same is admissible to them. This act of wrong availment of cenvat credit by the assessee was never disclosed to the department in details except that of the total amount of credit availed. The details of the Input Services and the Cenvat Credit availed thereof, was not disclosed to the department until called for. This fact of wrong availment of Cenvat Credit on ineligible services was suppressed by the assessee; and therefore the said amount of wrong credit was recoverable from them by invoking extended period of 5 years under the provisions of Section 1AA (4) of the Central Excise Act,1944 read with Rule 15(2) of the Cenvat Credit Rules 2004.

18.1. It appeared that M/s. FIPL had contravened the provision of Rule 2(l) of Cenvat Credit Rules,2004 and had wrongly availed credit of Input services amounting to Rs. 26,96,75,793/- during the period from August-2014 to May-2015. In view of the above facts, it appeared that the assessee had violated the provisions of Cenvat Credit Rules, 2004 by wrongly availing inadmissible Cenvat credit, as discussed in the foregoing paras. Therefore the wrongly availed Cenvat credit was liable to be recovered from them along with interest under Rule 14 (1) (ii) of CCR, 2004 read with Section 11A (4) of the Central Excise Act. 1944. It also appeared that all these acts of contravention on the part of the assessee had rendered them liable for penal action under Rule 15(2) of the Cenvat Credit Rules 2004 read with Section 11AC of the Central Excise Act, 1944; and interest was liable to be recovered from the assessee under Rule 14 of the Cenvat Credit Rules, 2004, read with Section 11AC of the Central Excise Act, 1944.

18.2 The assessee was accorded pre-show cause notice consultation on 07.08.2019 as per instruction issued by the Board, vide F.No.1080/09/DLA/Misc/15, dated 21.12.2015, Shri Vishrut Thakore, Tax Manager and Shri Uday Kulkarni, appeared on behalf of the assessee. They reiterated their earlier submissions.

19. Therefore, M/s. Ford India Private Ltd, were called upon to show cause to the Commissioner of Central GST, Ahmedabad North Ahmedabad, as to why:

(i) Service Tax Credit of **Rs.26,96,75,793/-**(Rupees Twenty-Six Crores Ninety Six Lakhs Seventy-Five Thousands Seven Hundred and Ninety-Three only) wrongly availed by them as discussed **in para 18.1** above, during the

period from August-2014 to May-2015, should not be demanded from them under Rule 14 (1)(ii) of the CENVAT Credit Rules 2004 read with Section 11A(4) of the Central Excise Act 1944.

(ii) Cenvat Credit amounting to Rs. 94,69,792/- (including Educ. Cess& S.H. Edu. Cess), reversed by the assessee, should not be appropriated against the total demand ofRs.26,96,75,793/- as detailed in Annexure-10.

(iii). Cenvat Credit amounting to Rs.8,18,106/- vide Entry No. 3 & 4 SER-REG dated 04.04.2016, as detailed in Para 14.1 above; and Rs. 30,84,728/- as detailed in Para No. 14.2 above, reversed/debited vide entry No. 3746,3747 & 3748 dated 09.09.2015 should not be appropriated against the total demand of Rs. 26,96,75,793/-wrongly availed Cenvat credit.

(iv) Interest .at the prescribed rate should not be charged and recovered from them under the Provisions of Rule 14(1)(ii) of the CENVAT Credit Rules, 2004 read with provision of Section 11 AA of the Central Excise Act, 1944;

(v) Penalty under the Provisions of 15 (2) of the CENVAT Credit Rules, 2004 read with provision of Section 11 AC(1)(c) of the Central Excise Act, 1944 should not be imposed upon them.

DEFENCE REPLY:

20. The assessee have forwarded their written defence reply vide letter dated 26.12.2019, wherein they have, interalia, stated as follows:

A. The impugned services procured by them squarely falls within the definition of input service under Rule 2(l) of the CCR and thus, the Cenvat credit availed on such services is in order.

- They have denied all the charges levelled against them vide SCN dated19.08.2019(Except Service covered under Sr. No. 4 of the table -1 of their reply i.e works contract service)

- They stated that the allegation made in SCN is not tenable that they were right in availing the eligible cenvat credit. As per "means" clause of the definition of input service, tax paid on services which are used directly or indirectly in or in relation to manufacturing operations is eligible for credit. The definition also contains an inclusive part which enumerates certain services to fall specifically within the ambit of input services. Further, the definition specifically excludes certain services from its ambit.

- The amendment made in the definition of "input service" w.e.f. 01.04.2011, has formed the fundamental of the subject SCN. The phrase "setting up" was deleted from the definition post amendment in the definition. The said phrase "setting up", which prefixed services in relation to factory or an office relating to such factory (sic).

- They stated that specified services when used for construction of a building or a civil structureor a part thereof; or laying of foundation or making of structures for support of capital goods, were excluded from the definition.

- They also stated that the means-clause of the definition of input service remained unaltered/ was not amended by virtue of the aforesaid amendment.

- They stated that from the term 'input service' as defined under Rule 2(1) of the CCR, it can be inferred that the definition has three parts-(i) the 'means' part which is the main part of the definition and (ii) 'inclusive' part which is illustrative and

certainly not exhaustive part of the definition and (iii) 'excludes' part which contains the list of services on which no Cenvat credit is admissible.**The "means" part of the definition is widely worded and will cover the impugned services procured. (sic)**

- They stated that the impugned services procured by them will qualify as an input service in terms of Rule 2(1) of the CCR as they squarely fall within the ambit of the means-clause of the said definition itself.

- They further stated that the scope of the term "in or in relation to" as mentioned in the means parts of the definition of 'input service' is very wide and expansive. In their support they have relied upon the following decision of Hon'ble Supreme Court/ High Court/ Tribunal in the case of:

    - Collector of Central Excise v. Rajasthan State Chemical Works [1991 (55) E.L.T. 444 (S.C.)]
    - Union Carbide India Ltd. v. CCE, Calcutta. [1996 (86) ELT 613 (Tribunal)],
    - Deepak Fertilizers & Petrochemicals Corpn. Ltd. [2013 (32) STR 532)
    - J.K. Cotton Spinning & Weaving Mills Company Limited Vs Sales Tax Officer. [1997 (91) ELT 34 (S.C.)]

- They have stated that in view of the above-cited cases and considering the wide amplitude of the term "used in or in relation to manufacture", a manufacturer will be entitled to take Cenvat credit on all those input services which are integrally connected with the process of manufacture and without which such manufacture would be impossible or commercially inexpedient.

- With regard to the allegation that the credit availed in respect of certain input services were not allowable as such credit pertained to period prior to commencement of operations, they have stated that Courts in several cases have recognised that services procured prior to initiation of commercial production of products are eligible input services so long as the said services have a nexus with the future activity of manufacture. In their support they have relied upon the following decision of Hon'ble Supreme Court/ High Court/ Tribunal.

    - Dy. General Manager, Tata Motors Ltd. [2015 (40) STR 269 (Tri. Mumbai)]
    - CCE Vs. Cadila Healthcare Ltd. [2013 (30) STR 3 (Guj.)].
    - CCE v Bellsonica Auto Components India Pvt Ltd. [2015 (7) TMI 930 - P&H].
    - Ultratech Cement Limited v. Commissioner of Central Excise and Service Tax [2017 (52) STR 423 (Tri -Chennai)].
    - C.C.E. v. Chettinad Cement Corporation Limited [2015 (40) STR 485 (Tri - Chennai)]
    - Automotive Coaches &Components Ltd. v. Commissioner [2015 (6) TMI 913-CESTAT]

- They have stated that the services were essentially procured for setting up of the manufacturing unit and were hence integrally connected to manufacturing of the final products. Therefore, the said services qualify as 'input services' under the means portion of the definition itself. Thus, the allegation of the Department denying such credit is not sustainable. Cenvat credit eligibility on impugned services is not hit by the removal of the phrase 'setting up of the factory'

- They have further contended that input service credit availed to the tune of Rs. 13,68,47,195/- has been sought to be denied solely for the reason that the impugned services have been procured prior to the date of commencement of commercial production at the new factory. The impugned SCN has solely placed

reliance on the amendment introduced to the definition of input service which deleted the term "setting up" from the definition.

- They have also stated that the SCN has proceeded on the basis of an erroneous assumption that deletion of the said terms implies that all services procured prior to commencement of production at the factory will not be eligible for Cenvat credit. Since there was no amendment whatsoever carried out in the means clause of the definition, the Cenvat credit availed by them was in order.

- They have stated that the purpose of deletion of the term 'setting up' was different and was of no consequence to the dispute in question what was excluded from the definition of input services were only those services used in the execution of a works contract and construction services in so far as they were used for construction or execution of works contract of a building or civil structures or parts thereof or laying of foundation or making of structures for support of capital goods. The amendments have to be read conjointly. The omission of expression "setting up" w.e.f. 01.04.2011 cannot be read in isolation. The legislative intention to remove "setting up" from the definition is to exclude actual construction services from the definition of input service which is clear from the exclusion portion added in the definition from 2011 onwards.

- They have also stated that in setting up a factory, the services related to construction play a major role, and so, if the word 'setting up' was not removed from the inclusion clause, the said construction services will apart from being excluded from the definition will also be covered by the includes clause, thereby resulting in absurdity.

- They have further stated that the expression "setting up" was omitted only to exclude from the scope of 'input services', the services of construction received by a manufacturer for the purpose of setting up of the factory. The deletion of the phrase 'setting up' was not intended to exclude each and every service procured in connection with setting up of a new manufacturing unit from the scope of input services'.If the intention of the law was to deny credit on all other services in relation to setting up of a factory, the same would have been specifically excluded in the excludes portion and not just those services which are used in relation to construction of civil structure or making of support structures. In this regard, they have relied on the decisions of Tribunal/ High Court as under:

  - Nuvoco Vistas Corporation Limited [2019 (2) TMI 1292 - CESTAT Chandigarh] While pronouncing the said judgement, the Hon'ble Tribunal relied on the decision of the Hon'ble Punjab and Haryana High Court in the case of Bellsonica Auto Components India P. Ltd. wherein it was held as under:, *input services used in relation to setting up, modernization, renovation or repairs of a factory will be allowed as credit, even if they are assumed as not an activity relating to business as long as they are associated directly or indirectly in relation to manufacture of final products and transportation of final products upto the place of removal.*

  - Shiruguppi Sugar Works Ltd. [2019 (3) TMI 667 -CESTAT Bangalore]

  - Uni Abex Alloy Products [2019 (2) TMI 569 -CESTAT Bangalore]

  - Narpatchand A. Bhandari Vs. Shantilala Moolshankar Jain[(1993) 3 SCC 351]. Wherein it is held that the limited exclusion of a thing may suggest that other categories of that thing which are not excluded would fall in the apparently wide or inclusive definition.

They therefore, stated that it can be inferred that when the definition of "input

service" provides for specific exclusions, the said exclusions are limited only to those services which are mentioned in the exclusion cause. Therefore, the services procured by them are not covered under any of the exclusion clauses of the definition of input service supra.

- They have stated that the SCN has alleged that the credit in respect of services amounting to Rs. 13,05,79,443/- (as determined under S. No. 2 of Table- 3 of their letter) was ineligible since the services are specifically excluded from the definition of 'input services' as these are services which had been used for construction of building or a civil structure or part thereof and building the new plant, laying of foundation, piling work for support of capital goods. They have submitted that in this case, the impugned services procured by them were not covered under the exclusion clause of the definition in view of the following analysis/reasoning.

- It can be seen from the exclusion clause that the same is restricted to pure construction services which are used for construction of either a building or a civil structure or laying foundation for support of capital goods.

- They submitted that as per the dictionary meaning of construction, construction means erecting a building or similar structure. Thus, what is excluded under clause (a) of the exclusion clause was only pure service of construction of building or civil structures.

- They have argued that the Clause (b) of the exclusion clause only excludes those construction services which are used for laying foundation or making structures for support of capital goods i.e., the services which are procured in relation to erection, installation and commissioning of the capital goods *per* se are not covered under the exclusion clause and only construction services used for erection of structure for supporting the capital goods are excluded.

- In this regard, they have placed reliance on the decision of the bench of Hon'ble Hyderabad Tribunal in the case of Phalnax Labs Pvt. Ltd. v CCT, Visakhapatnam GST (2018 (11) TMI 68).

- They have stated that from the above decision, it can be inferred that only construction services directly related to laying of foundation or making structures for support of capital goods are excluded from the definition of input services and all other ancillary services such as fixing/ installation and erection of capital goods qualify as input services thereby, the credit pertaining to such services would be eligible for availment.

- They stated that in their case, the impugned services were procured for setting up their new manufacturing unit. Further, they submitted that without there being a factory, it was impossible to undertake the manufacturing operations in the first place.

- The input services viz. Installation & commissioning services, Construction Management service and Design & engineering services were not used for construction of any building /civil structure or support service for capital goods.

B. Cenvat credit pertaining to travel agency services.

- In this regard the assessee have stated that the services procured from the service providers were related to business travel undertaken by the employees in the course of business and are not in the nature of travel benefits extended to employees for personal use as contended by the Department. The services excluded under the definition of input services are only those services which are used primarily for personal use or consumption of any employee and does not include the business travel of employees The assessee has referred to the decision of Goodluck Steel Tubes Ltd. vs. Commissioner of C. Ex., Noida2013 (32) S.T.R. 123 (Tri. - Del.).

- They have also relied upon the following decisions of the tribunal.

  - Carrier Air conditioning & Refrigeration Ltd. vs. C.C.E., Delhi-IV 2016 (41) S.T.R. 824 (Tri. - Chan.)
  - Jindal Pipes Ltd. vs. Commissioner of Central Excise, Meerut-II 2013 (31) S.T.R. 588 (Tri. - Del.)
  - Robert Bosch Engg. & Business Solutions Ltd. vs. C.C.E., C. & S.T., Bangalore LTU 2017 (51) S.T.R. 329 (Tri. - Bang.)

- In their case, since the impugned services were not used for personal purposes, they are not excluded from the definition of input service. Therefore, they are entitled to the Cenvat credit relating to the travel agency services and hence demand to reverse the credit on the said services is not sustainable.

C. The invoices based on which the Noticee had availed Cenvat credit of Rs.5,70,732/- are proper documents as envisaged in Rule 9(2) read with Rule 9(1) of the CCR.

- In the instant case, the invoices based on which the credit has been availed by them contained all the prescribed particulars including the description of services. The fact that the description of services had not been captured in the service tax register does not automatically make them ineligible to avail the credit pertaining to such services.

- They have stated that Rule 9(2) of CCR provides that the Cenvat credit on the basis of the invoice/bill/challan is allowable to the assessee provided it contains all the particulars prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994. CCR which provides the conditions for availing credit prescribes the details to be shown in the invoice and does not necessitate/ mandate disclosure of details in the service tax register.

- They without prejudice to the above have stated that, the substantial benefit of Cenvat credit cannot be denied for such procedural irregularities. They have placed reliance on the following decisions.

  - Kamakhya Steel Ltd. vs. CCE, Meerut [2000 (121) ELT 247 (Tri-LB)]
  - Twenty First Century Printers Ltd v. CCE [2009 (234) ELT 277 (Tri-Ahm)]
  - Chrome Chemical Industries v. CCE [2001 (135) ELT 405 (Tri-Kol)]
  - Hegal Capsul Indus Ltd. v. CCE [2001 (137) ELT 374 (Tri-Bom)]
  - Modern Petrofils v. CCE [2010 (20) S.T.R. 627 (Tri. -Ahmd.)]

- The impugned SCN proposing to deny Cenvat credit of Rs. 5,70,732/- on the ground that the same was not backed by proper documents as envisaged under Rule 9 (2) read with Rule 9 (1) of the CCR is bad in law and therefore, merits to be dropped.

D. Credit availed beyond the period of six months/one year (Rs. 8,18,106). The issue is no longer *res integra*. Various tribunals have held that the period of limitation cannot be applied to invoices issued on or before the date on which the amendment came into effect.

- In this regard they have stated that vide Notification No. 21/2014-CE(NT) dated 11.07.2014, 5 proviso had been inserted under Rule 4(7) vide which time limit for availment of CENVAT Credit on input services was introduced and it was stated that credit must be availed within 'six months' from the date of issue of invoice/ bill/ document w.e.f. 01.09.2014. The said time limit was subsequently extended to 'one year' vide Notification no. 06/2015-CE(NT) dated 01.03.2015.

- They have contended that the time-limit of six months for availment of CENVAT Credit the amendment under Rule 4(7) was made vide Notification No. 21/2014-CE(NT) dated 11.07.2014 which came into effect from 01.09.2014.

Since the said amendment was not retrospectively applicable, the time-limit of six-months cannot be made applicable in respect of invoices issued and services received. They have relied on the following decision of the tribunal:

- *Voss Exotech Automotive Pvt. Ltd v. CCE, Pune-I, 2018-TIOL-985-CESTAT-MUM*
- *M/s. Indian Potash Limitedv. CCR, Meerut, 2019-TIOL-120-CESTAT-ALL.*
- *M/s. Suryadev Alloys and Power Limited v. Commissioner of GST and Central Excise, Chennai Outer, MANU/CC/0294/2018.*
- *Hariprabha Chemicals Private Limited v. Commissioner of GST and Central Excise, Kolhapur, 2018-TIOL-2635-CESTAT MUMBAI.*
- *CCE v. Vijayasri Organics Limited, MANUICH/0153/2018.*

- They have further sated that the credit cannot be denied on the grounds of delay in availment as there was no time limit prescribed under the rules.
  - *Balakrishna Industries Limited v. CCE, Jaipur, 2016 (335) ELT 559 (Fri - Delhi.),*
  - *Mahindra and Mahindra Limited v. CCE, Jallandhar, 2017 (349) ELT 496 (Tri Chennai).*
  - *SAIL v. CCE [2001 (129) ELT 459 (Tr-Del),*
  - *Coromandel Fertilizers v. CCE [2009 (239) ELT 99 Tri-Bang)].*

- They have stated that CENVAT Credit is a vested right and it cannot be taken away by an amendment to the CCR. Reliance in this regard, is placed by them on the following decisions:
  - *Collector of Central Excise, Pune vs. Dai Ichi Karkaria Ltd [1999 (112) ELT 353 (SC)]* SC
  - *Eicher Motors Ltd. v. Union of India, 1999 (I 06) EL.T.3 (S. C)*

- CCR specifies the manner in which credit is to be availed; more specifically, there is no provision which states that credit will be deemed to have been availed only when it is reflected/ disclosed in the returns. They had made entries in the register maintained by them as soon as the invoices were received. They have submitted that effecting entries in the Cenvat Register should be taken as substantial compliance and must be deemed as availment of credit. In this regard, they have placed reliance on the decision of *Voss Exotech Automotive Pvt. Ltd v. CCE, Pune-I,* wherein the Hon'ble Mumbai Tribunal has held that even if the credit was not availed in RG23A- Part 2 but recorded in the books of account, it will be considered as credit being recorded. Thus, it can be held that there is no delay in availing the credit. Therefore, the credit availed was eligible to them.

E. The Pre-SCN consultation conducted on 07.08.2019 was a mere empty formality and SCN has been issued in a pre-determined manner.

- They have submitted that without appreciating all the relevant factual and legal submissions made by them during the course of Pre-SCN consultation, Department issued the impugned SCN. The said fact was also evident on reading of the impugned SCN. In the SCN only a passing reference is made about the Pre-SCN consultation held on 07.08.2019 and the Department has not analysed or considered the oral and written submissions made by them.

F. Extended period of limitation under Rule 14 of the CCR read with Section 11A (4) of the Act not invokable. The entire demand to the extent of Rs.26,96,75,793/- is barred by limitation.

They had not suppressed any information from the Department with an intention to evade payment of duty. They have always cooperated with the Department in their proceedings and have always provided the details

required. In this regard, the details pertaining to availment of credit was disclosed to Department vide various correspondences in the early part of 2015 itself. In fact, they had submitted its input service register to Department for verification. By virtue of the above correspondences in 2015, the Department was in possession of the copies of invoices and purchase orders based on which credit was availed by them. Further, they have disclosed the details of the credit availed in the statutory returns filed during the impugned period.

- Therefore, there being no suppression of facts with an intent to evade payment of excise duty, the present demand of Rs.26,96, 75, 793/- for the period from August 20 I 4 to May 201 5 is barred by limitation. They have made references to the following judgments, wherein it has been held that extended period is not invokable where there has been no wilful suppression of facts to evade payment of tax/ duty by the Noticee.

  - *Anand Nishikawa Co. Ltd. v. Commissioner of Central Excise, Meerut,* 2005 (188) E.L.T. 149 (S.C.),

  - *Continental Foundation Jt. Venture v. CCE. Chandigarh-I. 2007 (216) E.L.T. 177 (S.C.):*
  10. The expression "suppression" has been used in the proviso to Section 11A of the Act accompanied by very strong words as 'fraud' or "collusion" and, therefore, has to be construed strictly. Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty. Suppression means failure to disclose full information with the intent to evade payment of duty. When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression. When the Revenue invokes the extended period of limitation under Section 11A the burden is cast upon it to prove suppression of fact. An incorrect statement cannot be equated with a willful misstatement. The latter implies making of an incorrect statement with the knowledge that the statement was not correct.

  - *CCE. Mumbai IV v. Damnet Chemicals Pvt.Ltd..*2007 (216)EL.T 3 (S.C.):
  - *Padmini Products Limited v CCE,* 1989 (43) ELT 195 (SC)
  - CCE **v.** Chemphar Drugs and Liniments, 1989 (40) ELT 276 (SC),
  - *Gopal Zarda Udyog v. CCE, 2005 (188) ELT 251 (SC);*
  - *Lubri-Chem Industries Ltd. v. CCE, 1994 (73) ELT 257 (SC);*
  - *Cosmic Dye Chemical v. CCE, 1995 (75) ELT 721 (SC).*

- They have also stated that the onus to prove mens rea is on the Revenue which has not been proved in their case. SCN does not bring on record any positive evidence in support of its allegation that they deliberately suppressed the fact of nonpayment of duty, especially with an intention to evade payment of duty. They have relied on decision of the Hon'ble Apex Court in the case of Uniworth Textiles Ltd. vs. Commissioner of Central Excise, Raipur, 2013 (288) E.L.T. 161 (S.C.).

- All relevant details were submitted to the Department. Failure of the Department to scrutinize the documents cannot be construed as suppression by Noticee

- They have also contended that they have been regularly submitting the statutory returns, and their books of accounts and related documents were regularly being audited, it was for the Department to scrutinize the same as per the stipulations contained in the CBEC Manual. The Department has alleged deliberate withholding of essential and material information by them based on the mere fact that they have not disclosed full, true and correct information about availment of ineligible Cenvat credit.

- They have placed reliance on the decision of the *CCE, Raipur v. Orion Ferro Alloys (P) Ltd. [2010 (259) ELT 84) wherein it was held that when the Noticee had bonafide belief that they are eligible for Cenvat credit and when all the information*

required under law have been furnished, question of suppression or misstatement does not arise.

- They have stated that the self-assessment is only a facility and not a substitute for Authorities' responsibility to scrutinize the returns filed by the assessee. This position has been clarified in Kelkar committee on indirect taxation. They have reproduced the extract of the report which states as follows:

  3.1. 3 It is the view that assessment should be the primary function of the Central Excise officers. Self assessment on the part of the tax payer is only a facility and cannot and must not be treated as a dilution of the statutory responsibility of the central excise officers in ensuring correctness of duty payment. No doubt Audit and Anti-Evasion have their roles to play but assessment or confirmation of assessment should remain the primary responsibility of the Central Excise officers.

  3.1.4 It is recommended that the officers should be made responsible for assessments of ER 1 returns. and for this purpose clear cut instructions should be issued. Some monetary limit may be fixed for confirmation of assessment by each level of Central Excise officer upto Additional Commissioner."

- They have stated that Chapter 3 of the CBEC Manual for Supplementary Instructions, 2005 clearly lays down that the responsibility for scrutinizing the returns is on the Department.

- They have further stated the self-assessment regime does not take away the responsibility of the Department to scrutinise the returns and books of accounts of the assessee. Further, the failure of the Department to scrutinize in time cannot be converted into suppression on the part of assessee to invoke larger period of limitation.

- Therefore, there was no mala fide intention, which can be attributed to them in the present matter. In the absence of any mala fide intention on their part, extended period cannot be invoked under Section 11A (4) of the Act.

- They have also relied on the following decision:
  - Hindalco Industries Limited [2019 (5) TMI 1620-CESTAT New Delhi]
  - CCE v. Sanmar SpecialityChemicals Ltd., reported in [2016 (43) S.T.R. 347 (Kar.)]

- They have further stated that non-disclosure of the information which is not required to be disclosed by law or required by the statutory provision or prescribed proforma does not amount to suppression or concealment. They have relied on the decision of Gujarat High Court in the case of Prolite Engineering Co. v. Union of India - [1995 (75) E.L.T. 257 (Guj.)].

- They have also placed reliance on the following decisions of the High Court / Tribunal:
  - Apex Electricals Pvt. Ltd. v. Union of India [1992 (61) ELT 413 (Guj.)]
  - Unique Resin Industries v. Commissioner of Central Excise, Baroda [1995 (75) ELT 861 (Tri. - Del.)]
  - CCE v. Orion Ferro Alloys [2010 (259) ELT 84 (Tri. Del)]
  - Saboo Coating v. CCE [2014 (36) STR 447 (Tri. Del)]
  - Gufic Pharma Pvt. Ltd. v. Collector of Central Excise, Vadodara [1996 (85) ELT 67 (Tri. - Del.)], affirmed by the Supreme Court in [1997 (93) E.L.T. Al 86].

G. No penalty can be imposed since the demand is itself legally not sustainable.

They have further contended that their issue involved interpretation of the complex legal provisions of the Central Excise Act, 1944 and the rules made thereunder. Therefore, imposition of penalty is not warranted in the present case. In this regard, they have place reliance on the following judgments:

- *Secretary, Town Hall Committee v. CCE 2007 (8) S.T.R. 170 (Tri.-Bang.)*
- *Haldia Petrochemicals Ltd. v. CCE 2006 (197) E.L.T. 97 Tri. - Del)*
- *Siyaram Silk Mills Ltd. v. CCE 2006 (195) E.LT. 284 Tri. - Mumbai)*
- *Fibre Foils Ltd. v. CCE 2005 (190) E.L.T 352 (Tri. - Mumbai)*
- *ITEL Industries Pvt. Ltd. v. CCE 2004 (163) E.L.T 219 (Tri. - Bang.)*
- *CCE, Mumbai v. Godrej Industries Limited 2006 (200) ELT 348 (Tri-Mum.)*
- Hindustan Steel Ltd. v. State of Orissa, [1978 (2) ELT (J159) (SC)),

H: Interest is not payable- They have also stated that no interest is payable since the availment of Cenvat credit in respect of the impugned services and goods is in order.

- Lastly, they have requested to drop the proceedings initiated against them.

PERSONAL HEARING:

21. Personal Hearing was granted to the noticee on 14.10.2021, but the noticee had sought extension of the date of PH citing the short time in which the notice was received, Dussera etc. Therefore, a fresh personal hearing was granted and fixed on 22.11.2021. Shri R. Raghavan, Advocate, Shri Vishrut Thakor, Manager Taxation and others appeared for personal hearing through video conferencing. They referred to their earlier written submission and stated that they had explained each and every aspect pertaining to the subject demand. They also assured to submit an additional submission within ten days from the date of hearing. Lastly, they requested to decide the case on the basis of facts, legal precedents and on merits.

They also submitted synopsis dated 19.11.2021 through e-mail on 19.11.2021. The synopsis basically contains the summary of the their written submission tendered earlier.

DISCUSSION AND FINDINGS:

22. I have carefully gone through the facts of the case and records available in the case file, which include the SCN, the defence reply dated 26.12.2019, documents submitted and oral submission made by the assessee during the personal hearing.

23. On going through the SCN, I find that the SCN has been issued on the basis of Preliminary Scrutiny of the ER-1 Returns by the LTU Chennai, during the preliminary scrutiny of ER-1 Returns filed by the assessee. I find that the SCN alleges that the input services used in relation to "setting up of factory" are not eligible input services w.e.f 01.04.2011. The phrase "setting up" was removed from the scope of input service as defined under Rule 2(l) of the Cenvat Credit Rules. Therefore, the SCN has alleged that the credit of Rs. 26,96,75,793/-availed on input services which were used by the assessee in relation to setting up of the plant during the period from August 2014 to May 2015,was not eligible cenvat credit. The plant had commenced its operation from 05.06.2015. The SCN as per para 6.1 to 6.6 and 6.8, also alleges that the assessee had availed the Cenvat credit of Rs.13,28,28,598/- on input services which were covered under the exclusion clause of inputs service. The SCN also alleges

that the remaining cenvat credit of Rs. 13,68,47,195/- was availed on eligible input services, but the same was also ineligible as the same were used prior to commencement of operation of the plant.

24. Accordingly, service wise credit given under table -4 of the SCN can be grouped into two categories/allegation(I) Cenvat credit of Rs.13,28,28,598/- on inputs service which are covered under the exclusion clause and also availed prior to commencement of operation. (II) Cenvat Credit of Rs. 13,68,47,195/- on eligible input services but prior to commencement of plant.

Category /allegation	S.No. in Table 4 of SCN	Description of service	Credit availed	Credit Reversal
		Cenavt credit on input services which are covered under the exclusion clause of definition and availed prior to commencement of the operation		
I	1	Installation &Commissioning at Sanand Plant	122721783	53482.75
	2	Construction Management Service	1385192	0
	3	Travel Agency	9787	0
	4	Works Contract service road in plant	1668636	0
	5	Preparation of Structures for support of capital goods along with Electrical Installation	5975021	1640742.8
	6	MEP Design Consultancy Service	497447	62466.41
	8	Assessee has not provided description of services in some invoices	570732	0
	Sub total		13,28,28,598	
		Cenvat credit availed on input service prior to commencement of the operation.		
II	7	Services received prior to commencement of operations at Sanand plant (as the phrase "services used in relation to "setting up" has been removed from the definition of input service, w.e.f 01.04.2011, hence do not qualify to be input service).	136847195	7713100.2
	Sub total		13,68,47,195	
		GRAND TOTAL	26,96,75,793	9469792

25. Accordingly, the issue before me for determination is the eligibility or otherwise of the cenvat credit under the definition of input service as defined under the Rule 2(l) of the Cenvat Credit Rules 2004 (CCR,2004), More specifically the decision is to be arrived at, with reference to the amendment carried out with effect from 01.04.2011 in the definition of Input Service as the said amendments had discarded the phrase **"setting up".** Under such situation, the definition of "input service" as per Rule 2(l) of CCR, 2004, needs to be looked at. The definition is reproduced hereinunder for ready reference:

Prior to 01.04.2011, it reads as under:

"Rule 2(l) defines "input services" to mean any service,-

(i) used by a provider of output service for providing an output service; or

*(ii) used by the 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 **services used in relation to setting up,** modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit*

rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal."

From 01.04.2011, it reads as under to till further amendment vide Notification No. 28/2012-CE(NT) dated 20.06.2012:

Rule 2(l) defines " Inputs service" 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 services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal;

[but excludes], Services, -

(A) specified in sub-clauses (p), (zn), (zzl), (zzm), (zzq), (zzzh) and (zzzza) of clause (105) of section 65 of the Finance Act (hereinafter referred as specified services), in so far as they are used for-

(a) construction 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

(B) .....

(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;"

The definition of Input Service was further amended clause A, B and new clause BA was inserted vide Notification 18/2012-CE(NT) dated 17.03.2012 and 28/2012-CE(NT) dated 20.06.2012, which read as under:

[(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]

[(B) .....

[(BA).....

(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;]

*[**Explanation**. - For the purpose of this clause, sales promotion includes services by*

way of sale of dutiable goods on commission basis.]

26. From the perusal of the above definitions, I find that the definition of "input service prior to 01.04.2011 had two parts- Main part of the definition and an inclusive part of the definition. This inclusive part specifically included the service availed for setting up the factory. After 01.4.2011, it has three parts, Main part, an inclusive part and an exclusive part. After such amendment, the services used for setting up of the factory are neither in the inclusive part of the definition nor in the exclusive part of the definition. Therefore, such services have been neither specifically included nor have been specifically excluded

(I) Cenvat credit of Rs.13,28,28,598/- on input services which are covered under the exclusion clause of definition and availed prior to commencement of the operation.

27.1 I find that the in this regard the SCN states that the cenvat credit has been availed on inputs services which do not qualify as inputs services as such services have been clearly excluded from the definition under Rule 2(l) of CCR, 2004. The SCN has also stated that even if it were supposedly availed after the commencement of the plant, the same would not be eligible.

27.2 The service wise charges have been levelled vide para **6.1 to 6.6 and 6.8 of the SCN, which are as under:**

(1) Service tax credit total amounting to Rs.12,27,21,783/-availed by the assessee on input service of "Installation and Commissioning" was ineligible, because the credits availed were in relation to building the new plant, laying of foundation, piling work etc. The 'Input Service' definition as per rule 2(1) of CCR 2004 clearly excludes the service on account of laying of foundation or making of structures for support of capital goods.

(2). Service tax credit total amounting to Rs.13,85,192/- availed by the assessee on input service of "Construction Management Service" was ineligible, because the 'Input Service' definition clearly excludes the service of construction of a building or a civil structure or a part thereof.

(3) Service tax credit total amounting to Rs.9,787/-availed by the assessee on input service of "Travel Agency" was ineligible, because the 'Input Service' definition clearly excludes the service of travel benefits extended to employees on vacation such as leave or home travel concession for personal use

(4) Service tax credit total amounting to Rs.16,68,636/-availed by the assessee on input service of "Works Contract service for road in plant" was ineligible, because the 'Input Service' definition clearly excludes the service of work contract of building of or a civil structure or a part thereof.

(5) Service tax credit total amounting to Rs.59,75,020/-availed by the assessee on input service of "Preparation of Structures for support of capital goods along with

Electrical Installation" was ineligible, because the 'Input Service' definition clearly excludes the services which is used for making of structures for support of capital goods.

(6) Service tax credit total amounting to Rs.4,97,446/- availed by the assessee on input service of "MEP Design Consultancy Service" was ineligible, because the 'Input Service definition clearly excludes the services received from the architect companies, which includes MEP designing & consultancy service, hence service received from the architect companies by the assessee is not eligible for availing Cenvat Credit.

(7) Service tax credit of Rs. 5,70,732/- which was availed by the assessee, without mentioning proper description of the services in the invoices/ register, are ineligible to the Assessee as it was not possible to decide as to whether the services were eligible or otherwise. The credit was ineligible in light of Rule 9(2) of CCR 2004 and eligibility as per the definition of "Input Services".

27.3 In this regard the assessee has contended that the services procured by them were not covered under the exclusion clause of the definition. Restriction has been provided to pure construction services which are used for **construction** of either a building or a civil structure or laying foundation for support of **capital goods.** They have also rendered the arguments the as per dictionary meaning, construction means erecting of a building or similar structure. Thus, what is excluded under clause (a) of the exclusion clause is only pure service of construction of building or civil structures. Similarly, they have stated that Clause (b) of the exclusion clause only excludes those construction services which are used for laying foundation or making structures for support of capital goods i.e., the services which are procured in relation to erection, installation and commissioning of the capital goods *per* se are not covered under the exclusion clause and only construction services used for erection of structure for supporting the capital goods are excluded.

27.4 The assessee has also put forth the arguments that Installation & commissioning services were actually required for installing the various plant & machineries in the factory for setting up the body shop, paint shop, stamping shop, waste water treatment plant etc. These plants are fundamental requirements for functioning of the manufacturing plant and manufacture of final products would not be possible without installation of the said plant and machinery. Construction Management service was pertaining to the management related services and were not the actual services of construction of the factory/ building. These services are provided by technical experts and relate to assessment and supervision of work done by the contractors with regard to setting up of plant. Further, the said services are essential for setting up of factory which in turn is the foundation for manufacturing the final products. Hence the services would qualify as input services under the means portion of the definition as they are indirectly related to manufacture of final products. For Design & engineering services, they have stated that without finalising the design of a particular plant & machinery one cannot actually proceed for installation. Therefore, the important pre-requisite for installation of plant & machinery was the

finalised design of such machinery. Consequently, the said services were procured by them for arriving at the design of the various plant & machineries to be installed in the factory. Hence the above referred services would qualify as input services under the means portion of the definition as they are indirectly related to manufacture of final products.

27.5 The assessee has also stated that service tax credit in respect of Travel agency servicewere related to business travel undertaken by the employees in the course of business and are not in the nature of travel benefits extended to employees for personal use.

27.6 In respect of the cenvat credit of Rs. 5,70,732/-, the assessee have contended that CCR 2004 provides the conditions for availing credit, which prescribes the details to be shown in the invoice and does not necessitate/ mandate disclosure of details in the service tax register. Fact is that the invoice contained all the details but the same have not been captured in the service tax credit register. For this procedural requirements, the credit should not be denied.

27.7 On perusing the exclusion clause (A) under the definition of "Input service" under Rule 2(l) of CCR, 2004 reproduced hereinabove, services which have been excluded under clause (A) are **(i)** Service Portion in the execution of a works contract **(ii)** Construction Services including services listed under clause (b) of Section 66E of the Finance Act **used** for construction or execution of works contract of a building or a civil structure or a part of thereof **or** laying of foundation or making of structures for support of capital goods. Here, it is pertinent to note that exclusion clause mentions **"Construction Services"**, i.e. this refers to all allied services required for construction. I therefore find that all services which are used for *"construction or execution of works contract of a building or civil structure"* or *"laying of foundation or making structure for support of capital goods"* have been specifically excluded. It is relevant to note that there is no list of services which are mentioned, and hence, the exclusion includes all those services which are used for the above referred services.

27.8 I find that the term construction, in its most widely used context, covers the processes involved in delivering buildings, infrastructure, industrial facilities and associated activities. It typically starts with planning, financing, and design, and continues until the asset is built and ready for use; construction also covers repairs and maintenance work, any works to expand, extend and improve the asset.

27.9 A factory, manufacturing plant or a production plant is an industrial site usually consisting of buildings and machinery or more commonly, a complex having several buildings where workers manufacture goods operate machines processing one product into another. The word factory generally refers to a production site where a specific item is produced whereas a plant refers to a site where a specific process takes place. The terms Factory and Plant are generally used interchangeably. A factory can be a small room, whereas plants are usually with multiple building as well as exposed equipments organised as per production process.

27.10. On perusing the Invoice wise details of service tax provider (Annexure-9 of the SCN) and assessee's defence reply dated 26.12.2019, I find that the major service provider are as under:

Sr. No. Of Table -4 of SCN	Description of service	Credit availed	List of Major Service Vendors
1	Installation &Commissioning at Sanand Plant	122721783	1.M/s. Durr India Pvt Ltd. 2. M/s. Sterling & Wilson Pvt Ltd. 3. M/s. Herotech India P Ltd 4.M/s. ABB India Ltd.
2	Construction Management Service	1385192	M/s. Kajima India P Ltd.
3	Travel Agency	9787	M/s. American Express Global Business Travel
4	Works Contract service road in plant	1668636	M/s. Sunmax Constructions
5	Preparation of Structures for support of capital goods along with Electrical Installation	5975021	M/s. Larsen & Toubro Ltd.(L&T)
6	MEP Design Consultancy Service	497447	M/s. Ghafari Purohit Architects &Engg. P Ltd
8	Assessee has not provided description of services in some invoices	570732	1.M/s. American Express Global Business Travel 2. M/s. Integrated Power
		Rs. 13,28,28,598/-	

27.11 In order to perceive nature of service procured by the assessee, I have perused the following sample Invoices or Purchase Order issued by the aforementioned vendors, as produced by the assessee.

1. Installation and commissioning

M/s. Durr India Pvt. Ltd.

Invoice No. Inv. FIPL/INST/016 dt. 30.06.2014 describes the invoice for "Installation and Commissioning FIPL#2 JPH Paint Shop". The invoice does not show specific machinery or equipments to be installed or commissioning.

PO No. N111837 dt. 01.11.2011 mentions the said PO is for "Service portion of the local portion order for the FIPL#2 68JPH paint shop"

M/s. Sterling & Wilson P Ltd

Invoice No. GJSW-14/0199 dt. 05.08.2014 has been issued for Erection, Testing and Commissioning, the Invoice also mentions it is for Body Shop CMI-1 MEPF Works (Supply + Installation), invoice has charged VAT and Service Tax. The invoice includes electrification, plumbing, ventilation and other works.

PO No. N130176 dt. 21.01.2013 mentions "MEPF Works for Utility", it also mentions "erection , supply of materials" as well.

M/s. Hirotech India P Ltd

PO No. 134353 dt. 12.11.2013 mentions the PO for "Installation & Commissioning SVAP BODY Training Cell", which also mentions the delivery of equipment terms at SANAD Plant.

INV No. CBE/2014-15/ST05 dt. 16.06.2014 describes invoice for "Installation & Commissioning SVAP BODY TRAINING Cell". The invoice does not show specific machinery or equipments to be installed or commissioned.

M/s. ABB India Pvt. Ltd.

PO No. N133201 dt. 30.08.2013 mentions PO for "Installation & Commissioning B562 BODY SIDE TOOLING", which also mentions the said PO for "Service Portion of B562 BODY SIDE" and supply of BODY SIDE Plants by ABB China & ABB INDIA. The PO does not show specific machinery or equipments to be installed or commissioned.

2. Construction Management Service

Service Level Agreement dated 25.04.2012 entered by the assessee with M/s. Shapoorji Pallonji & Company Ltd, shows that it was made for "Civil Work for Body Shop Stamping and Stamping Piling Work", which also refers M/s. Kajima India (P) Ltd as a Construction manager and M/s. Mukesh Associates to be Architect Design Consultant.

4. Works Contract service

M/s. Sunmax Constructions

Invoice N132928 dtd. 12.06.2014 has been issued for Test Tracks and Pavement Works, Service tax has been paid on 40% value

PO No. N132928 dtd 07.08.2013, Works assigned is construction of Test Tracks and Pavement works

5. Preparation of Structures for support of capital goods along with Electrical Installation

M/s. Larsen & Toubro Limited

Invoice No. N140200/RAB-1 dt. 21.02.2014 describes invoice for "Engine Plant MEPF WORKS CMI -2 (Supply + Erection)" and PO No. N140200 dt. 21.01.2014which also mentions Supply of materials

PO N120243 dtd. 02.02.2012 has been issued for "Piling Works –FIPL -2 For Paint Shop"

Larsen Toubro Limited PO No. N120495 dtd. 12.03.2012 ...mentions Engine Shop Buildings ....and Engine Shop General Construction & Preliminary ....

6. MEP Design Consultancy Service

M/s. GHAFARI Purohit Architects & Engineers P L.

Invoice No. FIPL –EP005 dt. 22.09.2014 has been issued for Consulting Engineer and MEP Design Consultancy and it is for "For MEP Design activity for FORD Engine Plant – Process Equipment Fitup work at Sanad".

Invoice No. FIPL-EP-001 dt. 26.11.2013 has been issued for "MEP Design activity for FORD Engine Plant – Process Equipment Fitup work at Sanad".

27.12 From the above documents, I find that the invoices have been issued for service portions only, however, from the PO, it transpires involvement of supply of material as well by the vendors either by themselves or by their associated firms. I also find that the Purchase Orders also refers to observance of terms and conditions of some main contract /agreement. Therefore, PO produced appears to be meant for part supply of service/materials envisaged under main contract. From this the factual position that emerges, reveals that the contract entered with vendors could be for supply of service and materials. I therefore find that the contract is in the nature of Works Contract.

27.13 As discussed in foregoing para, a production plant usually consists of buildings and machinery or more commonly, a complex having several buildings where workers manufacture goods or operate machines processing one product into another. The plant can be building , structure or even exposed equipment in open. As per the overview (annexure-6 to the defence reply) submitted by the assessee, the body shop, Paint shop, stamping shop, Engine plants are for specific manufacturing process, which consist of structure, machinerybuildings, or equipments. This fact invariably lead me to the conclusion that all these services have been utilised for the construction of whole plant. I therefore find that the services have been utilised in construction of civil structure and their thereof parts. The services provided by M/s. Larsen Toubro are in nature of laying of foundation for structure. The architects service and constructions management service is nothing but part of the construction service utilised in construction of plant. The assessee has not denied the charges in respect of works contract service provided (Sr.No. 4 of the above table and para 29 of defence reply) by M/s. Sunmax Construction service, which is in the nature of construction service of Road and building. Therefore, I find that input services appearing at Sr. No. 1,2,4,5 and 6 above referred table, fall within the purview of exclusion clause of input service. I also find that the case laws cited by the assessee are not applicable as the input services fall within the ambit of the exclusion clause. As regard meaning of 'exclusion', I draw support from the decision taken by the tribunal in re M/s. HEAVY ENGINEERING CORPORATION LTD[1990 (49) E.L.T. 531 (Tribunal -Cal), wherein the tribunal has held in para 7 that *what are excluded from the scope of an expression in a legal provision by such an exclusion clause are only those items mentioned specifically in the exclusion clause. This cannot be stretched by analogy to other items not so specifically mentioned, unlike an inclusion clause where the items covered by the expression would not be confined to those so included. The items included are illustrative and not exhaustive. Contrarily, the items excluded are exhaustive and not illustrative*. Thus, I hold that the assessee is not eligible to the cenvat credit availed on such services. The assessee has already reversed the cenvat credit of Rs. 17,56,692/- (Rs. 53483/- + Rs. 1640743/- + 62466/-) as per Table -4 of the SCN. I find that the same is required to be appropriated against the liability.

27.14 Now moving to the issue of non mentioning of description of inputs services in their soft copy of credit register submitted to the department, (Sr. No.8). I find that the SCN has alleged that the without description of the service in the invoice/ register it was not possible to decide eligibility or otherwise of the cenvat credit of Rs. 5,70,732/-. I find that the department could not decide the eligibility of service within the definition of "input service". In this regard the assessee has stated in their defence reply that as they were eligible to avail the credit, the substantive right can not be denied. I find that the assessee has not come up with copy of the invoices and has tendered a general plea without adducing any tangible & concrete evidence. The sample copies of invoices submitted are not figuring in this list. I find that the proviso to Rule 9(2) also stipulates the requirement of such basic information. I also find that the Rule 9(5) and 9(6) of CCR, 2004, cast upon the burden of proof regarding admissibility on manufacturer/ provider of service. I therefore, find that the assessee has failed in proving their case thus leaving me with no recourse but to reject the assertion of the Assessee in this regard.

27.15 As regards the issue of availing cenvat credit of Rs. 9,787/- on travel agency service (Sr. No. 3 of the above table), SCN has alleged that the said service were procured for the employee's personal use, therefore, the same having been in exclusion clause of the definition of Input Service, was not eligible. In this regard, I find that the assessee has contested that the input service was availed in relation to the business travel, therefore they were entitle to avail the credit. Here again, I find that the assessee's plea is without any tangible & concrete evidence, hence, I am left with no option but to reject the reply. I find that it is assessee's responsibility to prove their claim in terms of Rule 9(5) and 9(6) of CCR 2004.

27.16 From the above facts, legal position and records available, I find that the cenvat credit of Rs. 13,28,28,598/-is liable to be disallowed to them as discussed hereinabove at length. I therefore hold that the cenvat credit of Rs. 13,28,28,598/- has been wrongly availed and thus is liable to be demanded and recovered from the Assessee under Rule 14(1)(ii) of CCR, 2004 read with Section 11A(4) of the Central Excise Act, 1944. I also find that Rule 14(1)(ii) mandates levy of interest alongwith the cenvat credit availed wrongly. Therefore, the assessee is also liable to pay interest on the Credit of Rs. Rs. 13,28,28,598/- under Rule 14(1) (ii) of CCR, 2004 read with Section 11AA of Central Excise Act, 1944.

(II) Availment of ineligible Cenvat Credit of Rs. 13,68,47,196/- as the same was availed prior to commencement of operation of plant.

28. In this regard, I find that the SCN mentions that upto 01.04.2011, the credit of input services used in relation to setting up of a factory or office premises was allowed as eligible credit. However, after amendment w.e.f. 01.04.2011, service tax credit availed for setting up of factory or office had been dropped from inclusive part of the definition, therefore credit availed on input service used prior to commencement of plant was ineligible credit.

28.1 The assessee in his defence reply has stated that the cenvat credit availed by them was covered under "means" clause of the definition of input service, tax paid on services which were used directly or indirectly in or in relation to manufacturing operations was eligible for credit. They have further stated that the "means" clause of the definition of input service remained unaltered/ was not amended by virtue of the aforesaid amendment. They have further stated that the scope of the term "in or in relation to" as mentioned in the means parts of the definition of 'input service' is very wide and expansive. They have therefore stated that considering the wide amplitude of the term "used in or in relation to manufacture", a manufacturer will be entitled to take Cenvat credit on all those input services which are integrally connected with the process of manufacture and without which such manufacture would be impossible or commercially inexpedient. In view of the same, they are entitled to avail subject credit. They have further stated that the department has also accepted this fact as can be seen from the SCN at para 6.7 and 7.

28.2 In this regard, I would like to reproduce the relevant extract of Para 6.7 of the SCN as follows:

" From the scrutiny of the soft copy of service credit register provided by M/s. FIPL, it appears that they have availed input service tax credit mentioned in Serial No. 7 of the above table mentioned table, amounting to Rs. 13,68,47,196/-, which is not allowable as all the credit availed by them pertained to the period prior to commencement of operation at Sanad Plant. i.e. before 05.06.2015. The services mentioned at Sr. No. 7 of table-4 (of SCN) qualify as input services, as per definition of input services mentioned in the Rule 2(l) of Cenvat Credit Rules 2004; however, since all these service are used prior to commencement of operation at Sanand Plant, the same are ineligible as per the new definition, wherein the words services used in relation to Setting up have been dropped (sic)".

Similar narration is also found at para 7 of the SCN. The relevant extracts of para 7, which read as:

"The remaining Cenvat credit amounting to Rs. 13,68,47,195/-, mentioned in Para 6.7, above, have been availed on eligible Input Services as per definition of Input Services mentioned in the Rule 2(l) of CCR, 2004, however, since all these services are used prior to commencement of operation at Sanad Plant, the same are ineligible as per the new definition wherein the word services used in relation to 'setting up" has been removed. (sic)"

On going through the above extracts of para 6.7 and 7 of the SCN, I find that the SCN seeks denial of cenvat credit, because the same was availed on inputs services which were not eligible as per the new definition (amended), wherein the word services used in relation to "setting up" was removed. I find that the issue on the hand, harps on term "setting up", which was removed w.e.f 01.04.2011, from the definition of "input service" as defined in Rule 2(l) of CCR, 2004, I consider it pertinent to look into the definition of Input Service which existed prior to 01.04.2021

and after 01.04.2011, which has been reproduced in forgoing para. I find that prior to amendment the definition of Input service specifically included the service used in relation to "setting up" of a factory which was in the inclusive part of the definition. I also find that the SCN has not brought out the explicit reasons for denying the credit. On the contrary, it states that the credit was availed on eligible input services, but the availment of the credit was prior to commencement therefore the same was not eligible. I find the SCN seeks denial of cenvat credit on input service availed prior to commencement of operation of the factory, considering these services ineligible for having been used in setting up of the factory. Careful reading of the definition, makes it clear that the definition as it existed at the relevant time, did not define the eligibility of the credit with reference to availment of credit prior to or after commencement of operation. I find that the definition must not be read in restrictive interpretation, one has to look at carefully at what is said in the definition. In this regard, I draw support from the decision of the Hon'ble High Court of Kanataka in the case of Kluber Lubrication (i) P Ltd reported at 2021 (376) E.L.T. 218 (Kar.), wherein, the Hon'ble high court relying on various Apex Court's decision observed at para 18 that *"It is equally well settled legal position that in a taxing Act, one has to look at merely what is clearly said. There is no rule for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing has to be read in, nothing is to be implied, one can only look fairly at the language used. [See : 'Union of India v. Ind-Swift Laboratories Ltd.', (2011) 4 SCC 635 = 2011 (265) E.L.T. 3 (S.C.) and 'Bansal Wire Industries Ltd. v. State of Uttar Pradesh', (2011) 6 SCC 545 = 2011 (269) E.L.T. 145 (S.C.) 'CIT v. Calcutta Knitwears', 2014 (6) SCC 444] [See : Principles of Statutory Interpretation, Justice G.P. Singh, 14th Edition, Page 879]."*

28.3 As discussed in forgoing para, I find that after amendment in the definition of input service, the services used for setting up of the factory are neither in the inclusive part of the definition nor in the exclusion part of the definition. Therefore, such services have been neither specifically included nor have been specifically excluded. Therefore, I find that the eligibility of cenvat credit must be examined in terms of the definition in force at the relevant time. I also find that the SCN explicitly states that the credit has been availed otherwise on eligible inputs service. The only ground for seeking to deny the credit by the department vide the SCN is that the services were used prior to commencement of operation of the plant. I however do not find much ground for denying credit in the definition. I therefore find that the department has failed to substantiate and buttress its case with any concrete/tangible evidence. I find that the assessee has already reversed the credit of Rs. 77,13,100/- (Rs. 5,88,729/- on invoices issued prior to six months; Rs. 1,78,798/- for wrong invoices and Rs. 69,45,572/- for double credit taken) out of total cenvat credit of Rs. 13,68,47,195/-. Accordingly, I am of the view that the assessee is very much eligible to avail the remaining Cenvat credit of Rs. 12,91,34,095/- and Rs. 77,13,100/-only is liable to be appropriated against the liability as demanded in the SCN.

28.4 From the above facts, legal position and records available, I find that the cenvat credit of Rs. 12,91,34,095/- is admissible to them and Cenvat Credit of Rs.

77,13,100/- is liable to be disallowed to them as discussed hereinabove at length. I therefore hold that the cenvat credit of Rs. 77,13,100/- has been wrongly availed by the Assessee and thus is liable to be demanded and recovered under Rule 14(1)(ii) of CCR, 2004 read with Section 11A(4) of the Central Excise Act, 1944. I also find that Rule 14(1)(ii) mandates levy of interest alongwith demanding the cenvat credit availed wrongly. Therefore, the assessee is also liable to pay interest on the Credit of Rs. 77,13,100/- under Rule 14(1) (ii) of CCR, 2004 read with Section 11AA of Central Excise Act, 1944.

(III) Appropriation of Cenvat Credit Reversed by the Assessee:

29. I find that the SCN proposes the appropriation of Cenvat Credit of Rs. 8,18,106/- which was availed beyond the period of six months /one year provided under Rule 4(7) of CCR,2004 and Cenvat Credit of Rs. 30,84,728/- which was availed in respect of Works Contract Service, Consulting Service and Construction Management service this being ineligible credit in terms of "Input Service" under Rule 2(l) of CCR, 2004. On being pointed out by the department, the assessee had reversed the credit. However, I find that, the assessee has contested that the Cenvat credit of Rs. 8,18,106/- is admissible to them, and stated that the time limit for availing cenvat credit within six months in terms of proviso to Rule 4(7), on input service was introduced with effect from 01.09.2014 onwards. The same amendment is not applicable to invoices which were issued prior to this date. In their support they have cited various case laws. I also find that applying the ratio of case laws, one has to show each and every aspects of the case to be similar to the given case. I take support of the decision of the Hon'ble Apex court in the case of *Alnoori Tobacco Products* [2004 (170) E.L.T. 135 (S.C.)], wherein the Hon'ble Apex Court has held that *"a precedent followed had to be shown to fit factual situation of a given case. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusion in two cases".* I find that the proviso to Rule 4(7) of CCR,, 2004, clearly stipulates the availment of credit on input services within six months/ one year from the date of invoice. Therefore, from such factual position, the plea of the assessee is found to be not acceptable. I therefore hold that the credit of Rs. 8,18,106/- is not admissible to the assessee and the same is liable to be appropriated against the service tax liability. The assessee has not contested the appropriation of Cenavt credit of Rs. 30,84,728/-, Therefore, the same is also liable to appropriation against the service tax liability.

30. From the facts and discussion aforementioned, I find that the assessee had availed cenvat credit wrongly, though the same was falling within the ambit of exclusion clause of definition of "input Service". The assessee has knowingly and intentionally availed such credit. Further, Cenvat Rules cast upon the burden of proof regarding admissibility of credit on the manufacturer/provider of output service. Had the department not investigated the fact of such wrong avaliment of credit by the assessee, the wrong availment of credit would not have been revealed. Moreover, the government has from the very beginning placed full trust on the assessee, accordingly

measures like self assessment etc. based on mutual trust and confidence are in place. Further, the assessees are not required to maintain any statutory or separate records under the Excise / service tax law as considerable amount of trust is placed on the assessee and private records maintained by them for normal business purposes are accepted for purpose of excise law. Moreover, returns are also filed online without any supporting documents. All these operates on the basic and fundamental premise of honesty of the assessee; therefore, the governing statutory provisions create an absolute liability on the assessee when any provisions is contravened or there is breach of trust placed on them. Such contravention on the part of the assessee tantamounts to willful misstatement and suppression of facts with an intent to evade the payment of the duty/ tax. It is evident that such facts of contravention of Cenvat Credit Rules by availing inadmissible credit, as discussed earlier, on the part of the assessee came to the notice of the department only when the department inquired into the matter. I find that in the case *of Mahavir Plastics versus CCE Mumbai, 2010 (255) ELT 241,* it has been held that if facts are gathered by department in subsequent investigation extended period can be invoked. In *2009 (23) STT 275, in case of Lalit Enterprises v CST Chennai,* it is held that extended period can be invoked when department comes to know of service charges received by appellant on verification of his accounts. Therefore, I find that all essential ingredients exist in this case to invoke the extended period of Five years under Section 11A(4) of the Central Excise Act, 1944 read with Rule 14(1)(ii) of Cenvat Credit Rules 2004. Thus, by invoking the extended period of time of 5 years, the cenvat credit of Rs. 14,05,41,698/- (Rs. 13,28,28,598/- + Rs. 77,13,100/-) wrongly availed is required to be recovered under Section 11A(4) of the Central Excise Act, 1944 read with Rule 14(1)(ii) of Cenvat Credit Rules 2004along with applicable interest under Section 11AA read with Rule 14(1)(ii) of Cenvat Credit Rules, 2004. And for the same reasons, all ingredient for imposing penalty under Section 11AC(1)(c) read with Rule 15(2) of Cenvat Credit Rules 2004 exist, therefore the assessee is also liable for penal action under the provisions of Section 11AC(1)(c) read with Rule 15(2) of Cenvat Credit Rules 2004.

In view of the above discussion and findings, I hereby pass the following order:

ORDER

(i) I disallow the Cenvat Credit of Rs.14,05,41,698/- (Rs. 13,28,28,598/- + Rs. 77,13,100/-) (Rs. Fourteen Crore Five Lakh Forty One thousand Six hundred ninety eight only) out of the total demand of Cenvat Credit of Rs, 26,96,75,793/-, wrongly availed on input service as discussed hereinabove, during the period from August-2014 to May- 2015, and order to recover the same form the assessee under Rule 14 (1)(ii) of the CENVAT Credit Rules 2004 read with Section 11A(4) of the Central Excise Act 1944;

(ii) I order to appropriate the Cenvat Credit amounting to Rs. 94,69,792/- (including Educ. Cess & S.H. Edu. Cess), reversed by the assessee, should not be appropriated against the total demand of Rs.14,05,41,698/- as above (i);

(iii). I order to appropriate the Cenvat Credit amounting to Rs.8,18,106/- and Rs. 30,84,728/- as reversed by the assessee the total demand of Rs. 14,05,41,698/-as above (i);

(iv) I order to charge Interest at the prescribed rate on the demand of Rs. 14,05,41,698/- and order to recover from the assessee under the Provisions of Rule 14(1)(ii) of the CENV AT Credit Rules, 2004 read with provision of Section 11 AA of the Central Excise Act, 1944;

(v) I allow the Cenvat Credit of Rs. 12,91,34,095/- to the assessee under Cenvat credit Rule, 2004 as admissible as discussed in Para 28.3 hereinabove;

(vi) I order to impose Penalty of Rs. 14,05,41,698/- (Rs. Fourteen Crore Five Lakh Forty One thousand Six hundred ninety eight only) on the assessee under the Provisions of 15 (2) of the CENVAT Credit Rules, 2004 read with provision of Section 11 AC(1)(c) of the Central Excise Act, 1944.

(Upendra Singh Yadav)
Commissioner,
Central Excise & CGST,
Ahmedabad North.

By Regd. Post AD./Speed Post

F.No. V.87/15-55/OA/2018 Date: .12.2021

To.
M/s. Ford India Private Ltd
Revenue Survey No-6,
Village-North Kothpura,
Tal-Sanand,
District-Ahmedabad-382170

Copy to:
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