आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क ,अहमदाबाद – उत्तर, कस्टम हॉउस, प्रथम तल, नवरंगपुरा ,अहमदावाद- 380009		OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009
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निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/15-18/OA/2019

आदेश की तारीख/Date of Order :- 26.04.2021
जारी करने की तारीख/Date of Issue :- 26.04.2021
DIN.20210464WT000000B4E5

द्वारा पारित/Passed by:- एम. एल. मीणा / *M.L.Meena*
अपर आयुक्त / Additional *Commissioner*

मूल आदेश संख्या / Order-In-Original No. 01/ADC/MLM/2021-22

जिस व्यक्ति (यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।
This copy is granted free of charge for private use of the person(s) to whom it is sent.

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरूद्ध अपील ,इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी , अहमदावाद 380015-को प्रारूप संख्या इ.ए-1 (E.A.-1) में दाखिल कर सकता है। इस अपील पर रू .2.00 (दो रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 2.00 only.

इस आदेश के विरुद्ध आयुक्त के शुल्क गये मांगे पहले से करने अपील में (अपील) 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 Commissioner (Appeal) 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)

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या इ.ए.-1 में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(1) उक्त अपील की प्रति।
(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरूद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रू) 2.00 .दो रूपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form EA-1 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(1) Copy of accompanied Appeal.
(2) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.2.00.

विषयः- कारण बताओ सूचना/ Show Cause Notice No. F No.STC/15-62/OA/2019 dated 11.02.2020 issued to M/s. Harsha Engineers Ltd, Plot No.388, Sarkhej-Bavla Road, Changodar, Dist-Ahmedabad.

Brief Facts Of The Case

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M/s Harsha Engineers Limited, Plot No.388, Sarkhej-Bavla Road, Changodar, Ahmedabad (hereinafter referred to as 'the said assessee'),a unit registered with Central Excise under number AAACH4828CXM003 and engaged in the manufacture& clearance of 'Bearing Cages' falling under Chapter 84 of the First schedule to the Central Excise Tariff Act, 1985. Further they were also registered for payment of Service Tax having Reg. No. AAACH4828CST002, under which they also functioned as Input Service Distributor. The assessee were enjoying Cenvat Credit facility.

2. During test check of records of the assessee by the Central Excise Revenue Audit (CERA) Party-V, Ahmedabad, for 2015-16 and 2016-17, it was objected that the assessee incorrectly claimed CENVAT credit of certain services and distributed the same wrongly as Input Service Distributor (Service Tax Registration no.AAACH4828CST002) to their units situated at Changodar and Moriya in violation of the provisions of Rule 7 of CENVAT Credit Rules, 2004., since the credit was attributable to services used wholly in a specific unit of the Assessee, which should have been distributed only to that specific unit and not to other units.

3. The assessee started the process of acquisition of a foreign company namely M/s Johnson Metal SA(hereinafter referred to as **"JMSA"** for the sake of brevity) situated at Sweden in 2015-16 and completed on 29th Feb, 2016. As per assessee's Annual Report for the period 2015-16, the company acquired the complete business of M/s Johnson Metall SA, a Romanian company through their subsidiaries, by way of equity and loan at a cost of around Rs.180 Crores. For the purpose of said acquisition, a new company was incorporated as a wholly owned subsidiary company in Netherland in the name of **"Harsha Engineers B.V."** The Company has also incorporated a step down subsidiary in Romania in the name of **"Harsha Engineers SRL."**, Romania. To part finance the acquisition of 100% shareholding of Target Company, the company availed a term loan of Rs.60 Crores from Exim Bank and SBLC of EUR 14.25 Million from Citibank N.A.

4. For the purpose of said acquisition the assessee procured various taxable input services from different service providers and availed CENVAT credit of input service tax paid. These Credit were then distributed in their capacity as Input Service Distributor to their units situated at Changodar and Moraiya, who in turn utilized the same.

5. From the documents furnished by the assessee, the details of various taxable input services which procured by them during the F.Y. 2015-16 & 2016-17 for the purpose of acquisition of the foreign company namely Johnson Metal SA situated at Sweden are as under :

TABLE – A

Sr	Name of Service	Category of Service Provided	NameOf Service Provider	Purpose of service	Reference no.	Total ineligible credit availed inRs
1.	Strategic and Financial Advisory Services (Copy of Engagement Letter provided)	Professional and Legal consultancy Services	Motilal Oswal Investment Advisors Pvt. Ltd.	Services in acquisition of Johnson Metall SRL (a subsidiary company of Johnson MetalI AB, Sweden from the stage of bidding process to acquisition of the company	D/N :MOIAPL-HEL-001, 16-10-2015 (56,000/-); Inv: MOIAPL-HEL-001, 07-12-2015 (7,00,000/-); Inv: MOIAPL-HEL-002, 20-01-2016 (10,50,000/-); D/N: HEL-002, 03-03-2016 (69,300/-); Inv:MOIAPL-HEL-003, 22-03-2016 (1,47,000/-)	20,22,300/-
2.	Arranger of loan facility	Banking & finance Services	Citigroup Global Markets Pvt. Ltd.	Financial advisory services in arranging loanfacilityofRs.60crorean dcreditfacilityof INR equivalent of EUR 14.25 million in acquisition of Johnson Metal, SRL (a subsidiary company of Johnson Metall AB, Sweden from the stage of bidding process to acquisition of the company	Inv: CGMIPL/34/15-16, 04-03-2016 (38,51,540/-)	38,51,540/-
3.	Professional services	Legal consultancy services	Trilegal	Financial advisory services in arranging loanfacilityofRs.60crorean dcreditfacilityof INR equivalent of EUR 14.25 million in acquisition of Johnson Metall SRL (a subsidiary company of Johnson Metal! AB, Sweden from the stage of bidding process to acquisition of the company	Inv: MUM/15-16/02/B00742, 24-02-2016 (1,43,500/-)	1,43,500/-
4.	Consulting fee	Market Research Agency/ Business Support Services	Delhi and Dublin Ventures	Consultation services towards acquisition of Johnson Metals	4,63,893/-	4,63,893/-

One of the input service providers being M/s Motilal Oswal Investment Advisors Private Limited, Motilal Oswal Tower, 12th Floor, Rahimtullah Sayani Road, Opposite Parel ST Depot, Prabhadevi, Mumbai 400025 (hereinafter referred to as "MOIAPL" for the sake of

brevity), who according to the assessee, provided Strategic & Financial Advisory Services for the purpose of acquisition of Johnson Metall SA, Romania ("Project Anvil"). As per the engagement letter of MOIAPL dated June 13, 2015, it appeared that the services were utilised by the assessee Company for participating in the bidding process of acquisition of M/s Johnson Metall SA, Romania (a subsidiary company of Johnson Metall AB, Sweden), a leading brass cage manufacturer in Europe, through assessee's Foreign step down subsidiary company M/s Harsha Engineers SRL, Bucharest (for the sake of brevity hereinafter referred to as "HESRL") which in turn is the subsidiary of M/s Harsha Engineers B.V., Amsterdam, Netherland (for the sake of brevity here-in-after referred to as "HEBV"). Besides, it also appeared that MOIAPL would help the assessee, from preparation and submission of financial bid under phase-1 to drafting of agreement for acquisition of the company under phase-3. For this purpose, the MOIAPL would charge Rs.50 lakh on acceptance of bidding offer by sellers and Rs.75 lakh on execution of requisite documents for acquisition of the target company. In addition, the assessee company would reimburse the pocket expenses incurred during the process of acquisition of targeted Foreign Company including those related to travelling, hotel and telephone to MOIAPL. Thus, it appeared that the Assessee paid Service Tax to the extent of Rs.20,22,300/- on procurement of the referred to services from MOIAPL & considering the amount of Service tax so paid as eligible CENVAT credit has wrongly availed credit of the same as Input Service Distributor & has then distributed such inadmissible credit to their manufacturing units at Changodar & Moraiya in violation of the provisions of Rule 7 of CENVAT Credit Rules, 2004.

7. The second service provider listed above, **Citigroup Global Markets Indian Private Limited**, 14th Floor, First International Financial Centre, G Block, Bandra Kurla Complex, Bandra (E), Mumbai 400051 together with its affiliates (hereinafter referred to as **"Citi"** for the sake of brevity), as per the engagement letter dated 26.02.2016, is an exclusive arranger of finance in connection with (i) an INR 600 Million (Rs. 60 Crore) term loan facility and (ii) an INR equivalent of EUR 14.25 Million credit facility to the Assessee, for which the Assessee would pay an Arranger Fee of INR equivalent of USD 400000. Further, in the 30thAnnual Report of the Assessee for the F.Y. 2015-16 under the heading 'Material Changes and Commitments', it is seen mentioned that the Assessee company has availed a Term Loan of Rs.60 Crores from EXIM Bank and SBLC of EUR 14.25 Millian from Citibank N.A. to part finance the acquisition of 100% shares of the shareholding of Target Company [M/s Johnson Metall SA (also referred to as **JMSA**)]. It appeared that the assessee paid Service Tax to the extent of Rs.38,51,540/- on procurement of the said services from Citi; wrongly availed credit of the same as Input Service Distributor; and then distributed the same to their manufacturing units at Changodar & Moraiya in violation of the provisions of Rule 7 of CENVAT Credit Rules, 2004.

8. Further, the assessee also hired services of M/s Trilegal, One Indiabulls Centre, 14th floor, Tower One, Elphinstone Road, Mumbai 400013 for providing professional services valued at Rs.10,25,000/- in connection with representing Citibank for the SBLC Facility and EXIM bank for the Term Loan facility, and paid Rs.1,43,500/- as Service Tax under Reverse Charge Mechanism (RCM) on procurement of the referred to services from M/s

Trilegal. Considering the amount of Service tax so paid as eligible CENVAT credit, they in their capacity as Input Service Distributor distributed to their manufacturing units at Changodar & Moraiya in violation of the provisions of Rule 7 of CENVAT Credit Rules, 2004.

9. The assessee also hired services of M/s Delhi & Dublin Ventures LLC., 11501, Brymer Lane, Northridge, CA 91326, USA (hereinafter referred to "D&D" for the sake of brevity) for providing professional services valued at Rs.10,25,000/- in connection with representing Citibank for the SBLC Facility and EXIM bank for the Term Loan facility. In this specific case, it appeared that the place of provision of service and receipt of service is outside India. Section 64 of the Finance Act, 1994, makes it clear that the Act applied to India. Foreign territories cannot be brought under the taxable jurisdiction of the Indian Government. The services provided and procured both in non-taxable territory are not chargeable to service tax, however, here the Assessee under the impression that the services so procured are liable to service tax, paid Service tax and availed credit of the same wrongly. The Assessee paid Rs.4,63,893/- Service tax under Reverse Charge Mechanism (RCM) on procurement of the said services from M/s D&D, and wrongly availed credit of the same as Input Service Distributor, and then further distributed the same to their manufacturing units at Changodar & Moraiya in violation of the provisions of Rule 7 of CENVAT Credit Rules, 2004. Further, the value of such service where the place of receiving the taxable service as well as that of providing of taxable service is outside India is to the extent of Rs.33,13,518. It also appeared that the Assessee has wrongly availed inadmissible/ineligible Credit of Service Tax wrongly paid thereof to the extent of Rs.4,63,893/-. However, the assessee willingly reversed an amount of Rs.4,63,893/- later as per their GSTR-3B for the month of March 2019.

10. Further, during the test check of records of the Assessee, it was also observed that during the year 2016-17, the assessee has made payment to Registrar of Companies towards factory license fees of Rs.46,087/-. On this charge, the assessee was required to pay service tax under reverse charge mechanism in terms of Notification 30/2012-ST dated 20.06.2012. Any service provided by Government or a local authority to a business entity has been made taxable w.e.f. 1st April, 2016. Further, it has been clarified vide Circular No. 192/2016 dated 13.04.2016, that any activity undertaken by Government or a local authority against a consideration constitutes a service and the amount charged for performing such activities is liable to Service Tax. It is immaterial whether such activities are undertaken as a statutory or mandatory requirement under the law and irrespective of whether the amount charged for such service is laid down in a statute or not. As long as the payment is made (or fee charged) for getting a service in return (i.e., as a *quid pro quo* for the service received), it has to be regarded as a consideration for that service and taxable irrespective of by what name such payment is called. It is also clarified that Service Tax is leviable on any payment, in lieu of any permission or license granted by the Government or a local authority. The service tax liability on the said amount of licence fee was calculated to Rs.6,913/-. It appeared that they did not fulfil their Service tax obligation against such payment of Factory license fee as pointed out hereinabove. Therefore, it appeared that they are required to pay the same along with interest.

11. A statement of Shri Manoj Bhikhabhai Bhavsar, the authorised person and also officiating as Manager - Commercial & Legal – GST at the registered office of the Assessee was recorded on 11th February 2019 wherein he has confirmed the facts and stated that the services were availed by them for acquiring a company based at Romania.

12. Thus, it appeared that the services as mentioned above were specifically meant for the purposes of acquiring one Company based at Romania namely M/s Johnson Metall SRL, Romania by the assessee; that the referred acquisition was made through assessee's Foreign step down subsidiary company M/s Harsha Engineers SRL, Bucharest which in turn is the subsidiary of M/s Harsha Engineers B.V., Amsterdam, Netherland, which means the acquisition is made by M/s Harsha Engineers SRL, Bucharest and not by the assessee; that the assessee has through the statement recorded on 11-02-2019 under Section 14 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 and Section 174 of CGST Act, 2017 confessed that the acquisition of M/s Johnson Metall SRL was made by them through their Netherland subsidiary company; that a permanent establishment in India and permanent establishment outside India are treated as two separate legal persons for taxation of Service tax; that a foreign unit is treated as a separate entity in terms of Section 66A, accordingly the services rendered to such a separate entity outside of India's jurisdiction, cannot be subjected to tax in India; that the services that has been procured for the specific purpose of acquisition of a foreign company from various service providers had no role in connection with the manufacturing of the products by the units of Assessee situated in India i.e, at Changodar and Moraiya; that finance arranged through term loan and credit facility was towards the acquisition of a foreign company, not for the units situated in India, hence, these services were ineligible input services under Rule 2(1) of CCR2004; that from the statement recorded under section 14 of the Assessee it appeared that the Assessee was well aware that the services that are procured was specifically for the purpose of acquisition of foreign based company through one of its affiliate company based outside India and further that they were well aware about the fact that the services procured were to be used wholly by a unit based outside India still they preferred to take credit of service tax paid for such services and distributed them to their other units though they were well aware that the credit of service tax attributable to service [used wholly by a unit] shall be distributed only to that unit and here is where their ill-intent gets unearthed; that the Assessee appeared to have gambled upon by taking the credit of referred to credit of service tax paid that if it remains un-detected /suppressed / concealed they could very well enjoy the benefit of wrong credit worth Rs.64,81,233/- and move ahead with it; the Assessee appeared to have willfully committed a default by wrongly taking the CENVAT Credit in respect of in-admissible input services, distributing it wrongly and also utilizing it wrongly; and hence it appeared that the CENVAT credit of these services were required to be reversed which was not done by the Assessee; further that there appeared to be incorrect distribution of service tax credit belonging to foreign company; that it appeared that the assessee Company is acting as an input service distributor registered with Service tax under registration no.AAACH4828CST002 and if the above services (though ineligible input services under Rule 2(1) of CCR2004 as pointed

out above) somehow is considered as eligible input services, even then there was wrong distribution of CENVAT credit because as per Rule 7 of CENVAT Credit Rules, 2004 as amended from time to time, the input service distributor shall distribute the CENVAT credit in respect of service tax paid on the input service to its manufacturing units or units providing output service, as defined in Explanation 4 (c) **credit of service tax attributable to services used wholly in a unit shall be distributed only to that unit;** that by distributing the entire credit of above services to the units situated at Changodar and Moraiya, the assessee as an ISD had violated the above Rule, hence, the service tax credit of Rs.64,81,233/- exclusively attributable to services utilized by Foreign Company (already established above), but distributed to units at Changodar and Moraiya was incorrect and the same was required to be reversed which was not done by the Assessee; that Omission to do so resulted into incorrect distribution of credit of Rs.64,81,233/- with consequent availment of credit by Changodar and Moraiya units which is required to be reversed along with interest.

13. Further, as per Assessee's 30th Annual Report for the F. Y. 2015-16 at page 8, under the sub-head 'Outlook' under the head Board's Report that it is mentioned specifically addressing the members as under:

> *"Your company has been continuously seeking various opportunities for the expansion of its business keeping in sight the demands of the cage & brass industry, market receptiveness and other economic factors and evaluations. Your Company has taken a number of steps to sustain its leadership position in the market and has been strengthening its relationships with its customers. In its strategy to pursue inorganic growth for further accelerating its progress and expanding its presence in select geographies, the Company has through its **affiliates** acquired the complete business of M/s Johnson Metall SA, a Romanian company by way of equity and loan at a cost of around Rs.180 Crores. The acquisition was successfully completed on 29th February 2016."*

14. Moreover, the word *'Affiliates'* means associate companies. **"Associate company"**, in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

*Explanation.—For the purposes of this clause, "**significant influence**" means control of at least twenty per cent of total share capital, or of business decisions under an agreement;*

Besides, in the same report under the sub-head **'Subsidiary Companies'** it can be seen specifically mentioned as under :

> *"During the year under review, the following changes have taken place in subsidiaries :*
>
> 1. *Harsha Engineers B.V. **Netherland** was incorporated as Wholly Owned Subsidiary of the Company.*
> 2. *Harsha Engineers SRL, **Romania** was incorporated as subsidiary of Harsha Engineers B.V. **Netherland** (holding 99.999958% of shares in it).*
> 3. *Acquisition of complete business of Johnson Metall S. A. **Romania** by Harsha Engineers SRL by way of acquiring its 100% shares."*

15. Further, at Page 11 under the sub-heading **'Material Changes and Commitments'**, it is clearly mentioned that during the said financial year, their company has extended its business in Netherland and Romania and that their Company has **through its affiliates/subsidiaries** acquired the complete business of M/s Johnson Metall SA, a Romanian Company by way of equity and loan at a cost of around Rs.180 crores. The acquisition was successfully completed on **29th February, 2016. For the purpose of said acquisition a new company has been incorporated as a wholly owned subsidiary company in Netherland in the name of "Harsha Engineers B.V."** The company has also incorporated a step-down subsidiary *{Step Down Subsidiary : Meaning / Definition: A step down subsidiary company means the subsidiary company* (here M/s Johnson Metall SA, Romania) *of a company* (here M/s Harsha Engineers SRL, Romania) *which is subsidiary of another company* (here M/s Harsha Engineers B. V., Amsterdam)*}*in Romania in the name of Harsha Engineers SRL, Romania. To part Finance the acquisition of 100% shares of the shareholding of Target Company, the Company availed a Term loan of Rs.60 crores from EXIM Bank and SBLC of EUR 14.25 Million from Citibank N.A. **From the above, it appeared that 100% shares of M/s Johnson Metall SA was acquired by M/s Harsha Engineers SRL, Romania on 29-02-2016 and not by the Assessee.** Subsequently, as mentioned in Assessee's 31st Annual Report for the F. Y. 2016-17 at page 45 in notes under the head **'Particulars of Holding, Subsidiary & Associate Companies'**, the name and form of the Johnson Metal S.A. has been changed to M/s Harsha Engineers Europe SRL effective from 14th June 2016 and M/s Harsha Engineers SRL, Romania has been merged with M/s Harsha Engineers Europe SRL on 30-11-2016. As a result of merger, M/s Harsha Engineers SRL is no more in existence with effect from 30-11-2016.

16. All the above mentioned contraventions on the part of the assessee appeared to have been committed by reasons of willful mis-statement, suppression of facts and contravention of various provisions of the said act and rules made there under with an intent to avail wrong benefit of CENVAT Credit that appeared to be not admissible to the Assessee and to further distribute such wrongly availed CENVAT Credit to their units at Changodar and Moraiya channeling it through their ISD registration and thereby facilitating ineligible funds for further illegal utilization by their units at Changodar and Moraiya for payment of Central Excise duty, in gross violation of Rule 7(c) of CENVAT Credit Rules, 2004. Further, it appeared that the assessee had taken inadmissible CENVAT Credit of Service tax by willful default, and further distributed the same wrongly. Moreover, it also appeared that the said credit was also utilized wrongly by reason of fraud, wilful mis-statement, suppression of facts and deliberate contravention of the provisions of Rule 2(1) and Rule7 of CENVAT Credit Rules, 2004 and the same appeared recoverable from them under the provisions of Rule 14 of CENVAT Credit Rules, 2004 read with Section 11 A & Section 11AA of the Central Excise Act, 1944 and Section 73 and Section 75 of the Finance Act, 1994. Further it appeared that the interest at the appropriate rate was also required to be recovered from them under the provisions of Rule 14 of Cenvat Credit Rules, 2004 read with Section 11 AA of the Central Excise Act, 1944. It was also felt that the assessee was also liable for penal action under the provisions of Rule 15 (2) of Cenvat Credit Rules, 2004 read with Section 11AC of Central Excise Act, 1944.

17. Pre-Show Cause Notice consultation opportunity was given to the party on 06.02.2020, wherein Sh. Manoj Bhavsar, Manager and Sh. Chetan P. Shah, C.A appeared for the pre SCN consultation and disagreed with the incorrect availment and distribution of service tax credit and non-payment of service tax liability for the period April 2015 to March 2017 as raised by the CERA Audit. They stated that they have correctly availed & utilized the said Cenvat Credit.. Therefore the assessee was issued a show cause notice by the Additional/ Joint Commissioner, Central Excise& CGST, HQ., Ahmedabad North asking them to show cause as to why:

(a) Inadmissible CENVAT Credit of Service tax to the extent of Rs.64,81,233/- wrongly taken, distributed & utilized by the Assessee as discussed in the paras hereinabove should not be disallowed to them and should not be recovered from the Assessee along with interest under the provisions of Rule 14 of CENVAT Credit Rules, 2004 read with Section 11 A & Section 11AA of the Central Excise Act, 1944,and Section 73 and Section 75 of the Finance Act, 1994, and amount of Rs 4,63,893/- already reversed willingly by the Assessee (through debit entry in their GSTR-3B for March 2019) should not be appropriated.

(b) Service tax not paid to the extent of Rs.6,913/- as discussed at Para 10 hereinabove should not be recovered from them along with Interest at the appropriate rate as per the provisions of Section73 &Section 75 of the Finance Act, 1994/Finance (No.2) Act, 2004 read with Section 11 A & Section 11AA of the Central Excise Act, 1944;

(c) Penalty should not be imposed upon them under the provisions of Rule 15 (2) of CENVAT Credit Rules, 2004 read with Section 11AC of Central Excise Act, 1944;

(d) Penalty should not be imposed upon them under the provision of Section 78 of the Finance Act, 1994 read with Section 11AC of Central Excise Act, 1944.

Defence Reply

18. The assessee submitted their defence reply vide their letter dated 28-12-2020, wherein they argued that the show cause notice is not maintainable on various grounds, as mentioned below:

A) Not maintainable after repeal of Act from 01-07-2017;

The assessee argued that the SCN issued on 11-02-2020 is illegal and without authority of law, after implementation of GST. They also relied upon the decision of Hon'ble Delhi High Court in the cases reported at 2019(24)GSTL 176(Del.)-T.R.Sawhney Motors Pvt. Ltd. Vs. UOI and 2019(25)GSTL-28(Jhar)-Sulabh International Social Service Organisation Vs. UOI.

B) Not sustainable on merits;

They had procured services of legal Consultancy service from M/s.Motilal Oswal Investment Advisors Pvt. Ltd. and availed cenvat credit of Rs.20,22,300/-. They also availed cenvat credit of Rs.38,51,540/- on availing service of Banking and Financial Service from M/s.Citi Group Global Markets India Pvt. Ltd. Further on availing legal consultancy service from M/s.Trilegal, they availed cenvat credit of Rs.1,43,500/-. They

also availed Market research for sales promotion and business support service from M/s.Delhi & Dublin Ventures and Copes and availed cenvat credit f Rs.4,63,893/- as the service tax for the same was paid by them under Reverse Charge Mechanism. All these credit have been proposed to be denied in the Show cause notice.

In this regard the assessee stated that as per Rule 3 of the Cenvat Credit Rules, 2004, a manufacturer or output service provider assessee, who has paid duty or service tax on their inputs or input services received is eligible to take credit of such duty/tax for making their payment of duty/tax on their manufactured final products or output services. Therefore, it would not be just and fair to deny credit when all mandatory requirements have been fulfilled. Further, they also stated that the credit has been correctly distributed to their units as per their turn over according to Rule 7 of Cenvat Credit Rules, 2004.

C) Not sustainable considering place of provision of service provider as invoices raised by service providers who have provided services as "Agent".

The service provider M/s. Motilal Oswal Investment Advisors Pvt. Limited as agent and the service receiver, the assessee is located in the taxable territory, they are entitled for the Cenvat Credit.

D) Not sustainable in law on allowing credit of "Legal Services

In the case of legal consultancy service availed from M/s.Trilegal, they availed Cenvat Credit of Rs.1,43,500/-, as they had paid the same.

E) Not sustainable in facts where assessee has paid service tax on forward charge basis, credit thereof not to be denied as per the settled law

The assessee has stated that it is settled law under Cenvat Credit Rules, 2004 that when any service tax is charged under invoices by the service provider on input services and paid against the invoices on forward charge basis by the assessee, credit of such service tax paid becomes eligible credit for the recipient of service who has also borne the incidence of the service tax paid by him.

F) Not sustainable in settled position of law considering decisions.

The assessee stated that it is settled law under Cenvat Credit rules, 2004 that any manufacturer or output service provider can take credit of service tax paid on any specified input or input service received in the factory against specified documents as referred to in Rule 9 of the Cenvat Credit Rules, 2004.

G) Not sustainable on time limitation to issue SCN

The assessee has stated that they were registered in Central Excise department and they had filed periodical ER-1 returns under Central Excise law from time to time, wherein all production, clearance, facts of availment of cenvat credit, assessable value and payments of duty on clearances including through cenvat credit had been reflected in respective months. They had prepared and filed balance sheets and provided the same to the excise department from time to time. Thus they had complied with the statutory procedure and

they had also complied with the provisions of various acts as well as income tax Act. In this background the extended period of limitation could never be invoked against them, and any demand should have been issued within the permitted time limit of one year.

H) Penalty proposed not sustainable in settled position of law

The assessee has stated that the proposal for imposition of penalty under Rule 15 of CCR 2004 read with Sec 11AC of C.Excise Act, 1944 also deserves to be vacated as there is no justification in demand of duty in their case. They also stated that there is no cogent and reliable evidence in support of charges; and that penalty would not be justified on assumptions and presumptions. They further stated that they had not acted dishonestly; and that there is no deliberate violation of the prescribed excise rules related to credit. They also stated that when the credit is not demandable the question of imposing penalty does not arise.

I) Services also used in relation to manufactured and export of goods.

They have stated that they had manufactured and exported goods to the said company at Romania, which has been also proved that services are used in relation to manufacture of goods. They also provided the details of goods exported in 2015-16 to 2017-18.

Personal Hearing.

19. Personal Hearing in this matter was held on 06-02-2021, during which Shri Manoj B. Bhavsar, Authorised signatory of the assessee and Shri P. P. Jadeja, Authorised representative of the assessee appeared before me and reiterated the arguments raised in their written submission dated 28-12-2020. They also stated that in this case show cause notice is not sustainable as the service provider and service receiver are located in India; that the service providers in India raised their invoices showing the amount of service tax, SBC etc. and the assessee after making payment of the value and taxes took the admissible credit of Service Tax. They also stated that they would like to submit additional written submission within a week, and the same was permitted.

20. Thereafter, the assessee vide their letter dated 23-02-2021 filed an additional written submission. The arguments raised in the said submission briefly are as under:

- The demand of service tax of Rs.6913/-, raised in para-10 of the SCN is not sustainable as the said payment was made to Registrar of Companies towards factory license fees, and they are entitled for exemption extended vide Not. 25/2012-ST, dated 20-06-2012 (sl. No.58).
- The SCN is not maintainable after repeal of Act with effect from 01-07-2017in view of Sec 174(2)(a) of the CGST Act, 2017. In support of their claim, the relied upon the decision dated 29-01-2021of Hon'ble Mumbai High Court in the case of Kiran Gems Private Limited Vs. UOI.
- Further, with regard to the proposals for denial of Cenvat Credit totally amounting to Rs.58,73,840/-, the assessee reiterated their arguments that the service provider in these

cases and the service receiver, both are in the taxable territory and their company has paid the value and tax, and rightly availed the credit.

- They also requested to withdraw the SCN on the grounds of the arguments raised by them.

Discussions & Findings

21. I have carefully gone through the show cause notice and the defence replies filed by the assessee. I have also gone through the documents available on record relating to this case.

22. I find that the following proposals have been made in the show cause notice.

(a) To disallow and recover inadmissible CENVAT Credit of Service tax to the extent of Rs.64,81,233/- wrongly taken, distributed & utilized by the assessee with interest under the provisions of Rule 14 of CENVAT Credit Rules, 2004 read with Section 11 A & Section 11AA of the Central Excise Act, 1944 and Section 73 and Section 75 of the Finance Act, 1994, and to appropriate the amount of Rs 4,63,893/- already reversed willingly by the Assessee.

(b) Recovery of Service tax not paid to the extent of Rs.6,913/- under reverse charge mechanism on factory licence fee paid, along with interest at the appropriate rate as per the provisions of Section73 &Section 75 of the Finance (No.2) Act, 2004 read with Section 11 A & Section 11AA of the Central Excise Act, 1944;

(c) Imposition of penalty under the provisions of Rule 15 (2) of CENVAT Credit Rules, 2004 read with Section 11AC of Central Excise Act, 1944;

(d) Imposition of penalty under the provision of 78 of the Finance Act, 1994 read with Section 11AC of Central Excise Act, 1944.

23. Before going into the merit of each of the above proposals, I find it appropriate to discuss the fundamental argument raised by the assessee in their written submissions with regard to maintainability of the show cause notice in the wake of repeal of Central Excise Act, 1944 with effect from 01-07-2017, quoting the provisions of Sec 174(2)(a) of the CGST Act, 2017. The assessee has also quoted decisions of various forums in support of their arguments.

24. In order to examine the issue in detail, let me quote the provisions of sub-sec (2) and (3) of Sec 174 of the CGST Act, 2017 here:

(2) The repeal of the said Acts and the amendment of the Finance Act, 1994 (hereafter referred to as "such amendment" or "amended Act", as the case may be) to the extent mentioned in the sub-section (1) or section 173 shall not—

a) revive anything not in force or existing at the time of such amendment or repeal; or

b) affect the previous operation of the amended Act or repealed Acts and orders or anything duly done or suffered thereunder; or

c) *affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts:*

Provided that any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded on or after the appointed day; or

d) *affect any duty, tax, surcharge, fine, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed against the provisions of the amended Act or repealed Acts; or*

e) *affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed;*

f) *affect any proceedings including that relating to an appeal, review or reference, instituted before on, or after the appointed day under the said amended Act or repealed Acts and such proceedings shall be continued under the said amended Act or repealed Acts as if this Act had not come into force and the said Acts had not been amended or repealed.*

(3) The mention of the particular matters referred to in sub-sections (1) and (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal.

25. It is also important to look into the provisions of Sec 6 of the General Clauses Act, 1897, referred in Sec 174(3) of the CGST Act, 2017. Sec 6 of the General Clauses Act, 1897 states that,

6. <u>Effect of repeal</u>.—Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

a) *revive anything not in force or existing at the time at which the repeal takes effect; or*

b) *affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or*

c) *affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or*

d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

26. Here, I find that clause (d) of Sec 174 of the CGST Act, 2017 saves any duty, tax, surcharge, fine, penalty, interest as are due or may become due, or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed against the provisions of the amended Act or repealed Acts. There is nothing to suggest that the "duty, tax, surcharge" etc. should relate to proceedings initiated under, inter alia, Chapter V of the Finance Act, 1994 before the coming into force of the CGST Act, and not to proceedings initiated under the enactments after the coming into force of the CGST Act. Clause (e) expressly empowers the Competent authorities to initiate and institute even fresh proceedings under the omitted chapter V of the Finance Act, 994 and the rules framed thereunder. Clearly, the intention of the Parliament was to save not only ongoing investigation, inquiry, verification etc. but also to specifically enable the initiation of fresh verification such as audit in respect of acts and omissions relating to the erstwhile service tax regime.

27. Further, as per clause (b) of Section 6 of the General Clauses Act, 1897 also, the "effect of repeal" shall not affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder.

28. I also find that the assessee has relied upon what is mentioned at clause (a) sub-section (2) given above. They have also relied on the judgment of the Apex Court in the case of 2000(119)ELT 257 (SC)-Kolhapur Canesugar Works Ltd, Vs. UOI.

29. I have gone through the judgment in the case reported at of 2000(119)ELT 257 (SC)-Kolhapur Canesugar Works Ltd, Vs. UOI., as quoted by the assessee. The basic facts of that case is relating to a rebate of Central Excise duty on sugar produced in excess during the season 1973-74. The rebate was sanctioned and credited to the appellant in their personal ledger account. On re-examination of facts and circumstances connected with the said rebate claim, the department had contended that the Appellant was not eligible for the rebate and the same was erroneously sanctioned and credited. A show-cause notice was issued under the then existing Rule 10A of the Central Excise Rules for recovery of the rebate amount. Before the order could be passed by the Assistant Collector, Central Excise, Rule 10 and 10A were deleted/omitted with effect from 06.08.1997, and a new provision was introduced as Rule 10. The assessee being unsuccessful before the adjudicating authorities, finally approached the High Court and raised the contention that since Rule 10 and 10A stood deleted, the effect thereof was that the Rules under which the show-cause notice was issued, ceased to exist, and thereafter, further

proceedings were without jurisdiction. The High Court rejected the contentions and dismissed the petition, and the appellant filed an appeal before the Supreme Court.

30. The context of the said judgement in the case of Kolhapur Canesugar Works Ltd, Vs. UOI is entirely different, and the facts of the case are clearly distinguishable with the present one in our hand. The aforesaid case dealt with the omission and replacement of two rules namely Rule 10 and 10A, by one rule, under which rebate was credited. The basic differences in the facts of the cases are as follows:

- The deletion and substitution of the old rules was brought by way of a notification and not by a Central Act or regulation.
- The Constitution Bench judgment of Rayala Corporation Vs. Director of Enforcement, New Delhi, AIR (1970) SC 494:1970 Cri LJ 588, wherein it was said that "Section 6 only applies to repeals and not to omissions, and applies when the repeal is of a Central Act or Regulation and not of a Rule".
- Since there was no saving provision in favour of pending proceedings, the Court held that the realization of refund can be taken under the new provision in accordance with the terms thereof.
- Section 6 of General Clauses Act was held to be inapplicable as it was a case of omission and not repeal.

31. Here, I would like to refer to a recent judgment passed on 03-11-2020 by the Hon'ble Delhi High Court in the case of Vianaar Homes Private Limited Vs Assistant Commissioner CGST in Appeal Number : W.P. (C) 2245/2020, wherein a similar view has been taken. The Court in its judgment stated in para-34 that:

> *"The obligation to pay service tax arose at the time of rendering taxable service, which fell during the disputed period, at which time Chapter V was very much in force. The service tax is levied on providing of taxable service and is paid by the assessee on self-assessment basis. Therefore, the liability and obligation to pay tax accrued in terms of the provisions of the Finance Act whenever a taxable event occurred. If service tax has not been paid or short paid, the Service Tax Department would acquire the right to recover the said tax. This is done inter alia on the basis of the best judgment assessment under section 72, and by initiating recovery proceedings under section 73 of the Finance Act, 1994. Therefore, 'such duty' cannot be construed to mean only that which forms the subject matter of proceedings under section 72 and 73 of the Finance Act. The necessary corollary is that the investigation, inquiry, verification (including scrutiny and audit) that falls within the ambit of section 174(2) of the Act would include proceedings that were initiated prior to action under section 72 and 73 of the Finance Act, 1994. We also find merit in the submission of Mr. Harpreet Singh that a contrary interpretation would mean that all cases of duty evasion, where the adjudicatory process has not commenced, have to be ignored. That is clearly not the intent of the saving clause."*

32. Thus, I find that there is no merit in the arguments raised by the assessee in their written submission questioning the maintainability of the show cause notice in the wake of repeal of Central Excise Act, 1944 with effect from 01-07-2017.

33. Now, I will examine each of the proposals made in the show cause notice and the replies given by the assessee. It is alleged in the show cause notice that the assessee incorrectly claimed CENVAT credit of certain services and distributed the same wrongly in their capacity as Input Service Distributor, to their units situated at Changodar and Moriya in violation of the provisions of Rule 7 of CENVAT Credit Rules, 2004, as the credit of was attributable to services used wholly in a specific unit of the assessee, which should have been distributed only to that specific unit and not to other units.

34. Looking to the background of the case, the assessee started the process of acquisition of a Romanian company namely M/s Johnson Metal SA, situated at Sweden in 2015-16 and completed the process on 29th Feb, 2016 through their subsidiaries, by way of equity and loan at a cost of around Rs.180 Crores. For the purpose of the said acquisition, a new company was incorporated as a wholly owned subsidiary company in Netherland in the name of "Harsha Engineers B.V." The Company also incorporated a step down subsidiary in Romania in the name of "Harsha Engineers SRL.", Romania. To part finance the acquisition of 100% shareholding of target company, they availed a term loan of Rs.60 Crores from Exim Bank and SBLC of EUR 14.25 Million from Citibank N.A. For the purpose of the said acquisition, the assessee procured various taxable input services from different service providers, and availed CENVAT credit of input service tax paid. These credits were then distributed in their capacity as Input Service Distributor to their units situated at Changodar and Moraiya, who in turn utilized the same. All these facts have never been disputed by the assessee. These Cenvat Credits were proposed to deny in the show cause notice.

35. I find that the assessee availed input service of Strategic & Financial Advisory Services for the purpose of acquisition of Johnson Metall SA, Romania from M/s Motilal Oswal Investment Advisors Private Limited, ("MOIAPL"). I also find that these services were utilised for participating in the bidding process of acquisition of M/s Johnson Metall SA, Romania, through assessee's Foreign step down subsidiary company M/s Harsha Engineers SRL, Bucharest ("HESRL") which in turn is the subsidiary of M/s Harsha Engineers B.V., Amsterdam, Netherland ("HEBV"). As per the agreement, Besides, MOIAPL would also help the assessee from preparation and submission of financial bid under phase-1 to drafting of agreement for acquisition of the company under phase-3. For this purpose, the MOIAPL would charge Rs.50 lakh on acceptance of bidding offer by sellers and Rs.75 lakh on execution of requisite documents for acquisition of the target company. In addition, the assessee would reimburse the pocket expenses incurred during the process of acquisition of targeted Foreign Company including those related to travelling, hotel and telephone to MOIAPL. Thus, the assessee paid Service Tax to the extent of Rs.20,22,300/- on procurement of the said services from MOIAPL and distributed such inadmissible credit to their manufacturing units located at Changodar & Moraiya in their capacity as Input Service Distributor.

36. Secondly, I find that M/s.Citigroup Global Markets Indian Private Limited, arranged finance in connection with (i) an INR 600 Million (Rs. 60 Crore) term loan facility and (ii) an INR equivalent of EUR 14.25 Million credit facility to the assessee, for which the assessee would pay an Arranger Fee of INR equivalent of USD 400000. Further, in the 30th Annual Report of the Assessee for the F. Y. 2015-16 under the heading 'Material Changes and Commitments', it is seen mentioned that the Assessee company has availed a Term Loan of Rs.60 Crores from EXIM Bank and SBLC of EUR 14.25 Millian from Citibank N.A. to part finance the acquisition of 100% shares of the shareholding of Target Company [M/s Johnson Metall SA (also referred to as JMSA)]. The assessee paid Service Tax to the extent of Rs.38,51,540/- on procurement of the said services from and then distributed the same to their manufacturing units at Changodar & Moraiya.

37. Further, I find that the assessee hired legal services of M/s Trilegal valued at Rs.10,25,000/- in connection with representing Citibank for the SBLC Facility and EXIM bank for the Term Loan facility, and paid Rs.1,43,500/-. The CENVAT credit availed of the same was then distributed to their manufacturing units at Changodar & Moraiya.

38. Further, he assessee also hired professional services of M/s Delhi & Dublin Ventures LLC., CA 91326, USA in connection with representing Citibank for the SBLC Facility and EXIM bank for their Term Loan facility. In this specific case, the place of provision of service and receipt of service is outside India, hence the service is not taxable, but the assessee under the impression that the services so procured are liable to service tax, paid Service tax of Rs.4,63,893/- under RCM and distributed the same to their manufacturing units at Changodar & Moraiya. Further, the value of such service is to the extent of Rs.33,13,518. I also find that the assessee has willingly reversed an amount of Rs.4,63,893/- later as per their GSTR-3B for the month of March 2019.

39. Finally, during the test check of records of the assessee, it was also observed that during the year 2016-17, the assessee has made payment to Registrar of Companies towards factory license fees of Rs.46,087/-. The show cause notice also proposed to recover service tax of Rs.6,913/- on the said amount under reverse charge mechanism in terms of Notification 30/2012-ST dated 20.06.2012.

40. I find that in case of all the four services availed by the assessee as mentioned in Table-A in para-5 above, the services are availed specifically meant for the purposes of acquiring M/s Johnson Metall SRL, Romania by the assessee; and the acquisition was made through assessee's Foreign step down subsidiary company M/s Harsha Engineers SRL, Bucharest which in turn is a subsidiary of M/s Harsha Engineers B.V., Amsterdam, Netherland. Thus, I find that the acquisition is made by M/s Harsha Engineers SRL, Bucharest and not by the assessee. An establishment in India and a permanent establishment outside India are two separate legal entities for the purpose of taxation of Service tax in terms of Section 66A of the Finance Act, 1994. I also find that the services procured from M/s Motilal Oswal Investment Advisors Private Limited, M/s.Citigroup Global Markets Indian Private

Limited, M/s Trilegal and from M/s Delhi & Dublin Ventures LLC., CA 91326, USA were for the specific purpose of acquisition of a foreign company and those have no connection whatsoever with the manufacturing of the products by the units of the assessee situated at Changodar and Moraiya. Therefore, these services are ineligible input services under Rule 2(1) of Cenvat Credit Rules, 2004 for the assessee.

41. I find that as per Rule 7 of CENVAT Credit Rules, 2004 as amended from time to time, the input service distributor shall distribute the CENVAT credit in respect of service tax paid on the input service to its manufacturing units or units providing output service, as defined in Explanation 4, subject to the conditions specified. Further, as per condition (b), *"the credit of service tax attributable as input service to a particular unit shall be distributed only to that unit"*. As per condition (c), *"the credit of service tax attributable as input service to more than one unit but not to all the units shall be distributed only amongst such units to which the input service is attributable and such distribution shall be pro rata on the basis of the turnover of such units, during the relevant period."* In the instant case, I find that services were procured by the parent company exclusively for their affiliates M/s Harsha Engineers SRL, Bucharest. Therefore, these services are basically ineligible input services under Rule 2(1) of Cenvat Credit Rules, 2004 for the assessee. Though the expenses were met by the parent company, the availment of Cenvat Credit and distribution of the same to other sister concerns is contrary to the conditions laid down in Rule 7 of the Cenvat Credit Rules, 2004 also. Therefore, I find that the total Cenvat Credit of Rs.64,81,233/- so distributed is improper. Therefore, the same is to be recovered from them with interest under the provisions of Rule 14 of CENVAT Credit Rules, 2004 read with Section 11 A of the Central Excise Act, 1944 and under Section 11AA of the Central Excise Act, 1944. The arguments raised by the assessee that they had made the payments to the service provider, and services availed are in turn finally utilized by them for their business development purpose do not carry any weight as the basic Cenvat provisions do not allow distribution and availment of such credit. However, I appropriate the amount of Rs.4,63,893/- paid by the assessee as reflected in their GSTR-3B for the month of March 2019, towards their part liability.

42. With regard to the proposal for recovery of service tax on licence fee, I find that any service provided by Government or a local authority to a business entity has been made taxable w.e.f. 1st April, 2016. Further, it has been clarified vide Circular No. 192/2016 dated 13.04.2016, that any activity undertaken by Government or a local authority against a consideration constitutes a service and the amount charged for performing such activities is liable to Service Tax. It is immaterial whether such activities are undertaken as a statutory or mandatory requirement under the law and irrespective of whether the amount charged for such service is laid down in a statute or not. As long as the payment is made (or fee charged) for getting a service in return (i.e., as a *quid pro quo* for the service received), it has to be regarded as a consideration for that service and taxable irrespective of by what name such payment is called. It is also clarified that Service Tax is leviable on any payment, in lieu of any permission or license granted by the Government or a local authority. Therefore, I find that

the service tax of Rs.6,913/- is required to be paid by the assessee on the amount of licence fee of Rs.46,087/-. The said amount of service tax is required to be recovered from the assessee under Sec 73 of the Finance Act, 1994 with interest under Sec 75 of the said Act.

43. Further, I find that the assessee had not disclosed the irregular distribution and availment of Cenvat Credit as explained above, till the verification of their records by the officers. Had the verification not been done, the irregular availment of Cenvat Credit on short payment of service tax would not have been brought to the light, and that would have caused huge loss to the exchequer. I find that thus there is a suppression of facts on the part of the assessee and the extended period is rightly invoked for recovery of the Cenvat Credit and service tax payment.

44. With regard to the proposals for imposition of penalty, I find that the assessee being fully aware of the fact that the services were availed for their foreign associate company, wrongly distributed the Cenvat Credit to their other sister concerns, for utilizing the same for payment of final products, causing huge loss to the exchequer. I find that there is a suppression on the part of the assessee in not disclosing the facts before the department. Therefore, they are liable for penalty under Rule 15(2) of the Cenvat Credit Rules, 2004 read with Sec 11AC of the Central Excise Act, 1944. Similarly in the case of non-payment of service tax on licence fee also, I find that the assessee contravened the provisions of Finance Act, 1994 and suppressed the facts before the department causing a loss to the exchequer. Therefore, they are liable for penalty under Sec 78 of the Finance Act, 1994.

45. Accordingly, I pass the following order:

ORDER

46. (a) I disallow the CENVAT Credit of Service tax to the extent of Rs.64,81,233/- (Rupees sixty four lakhs eighty one thousand two hundred and thirty three only) wrongly availed by the assessee, and order for recovery of the amount with interest, under the provisions of Rule 14 of CENVAT Credit Rules, 2004 read with Section 11 A & Section 11AA of the Central Excise Act, 1944, and Section 73 and Section 75 of the Finance Act, 1994. I appropriate the amount of Rs 4,63,893/- already paid by the assessee towards their part liability.

(b) I order for recovery of Service tax amounting to Rs.6,913/- (Rupees six thousand nine hundred and thirteen only) under reverse charge mechanism along with interest at the appropriate rate as per the provisions of Section73 & Section 75 of the Finance Act, 1994/Finance (No.2) Act, 2004 read with Section 11 A & Section 11AA of the Central Excise Act, 1944;

(c) I impose a penalty of Rs.64,81,233/- (Rupees Sixty four lakhs eighty one thousand two hundred and thirty three only) under the provisions of Rule 15 (2) of CENVAT Credit Rules, 2004 read with Section 11AC of Central Excise Act, 1944;

(d) I also impose a penalty of Rs.6,913/- (Rupees six thousand nine hundred and thirteen only) under the provision of 78 of the Finance Act, 1994 read with Section 11AC of Central Excise Act, 1944.

(e) I further Order that in the event the entire amount demanded as above is paid within thirty days from the receipt of this Order along with applicable interest, the amount of penalty liable to be paid by them shall be 25% (twenty five per cent) of the penalty imposed at Sr. No.(c & d) above, subject to the condition that such reduced penalty is also paid within the said period of 30 days (thirty days) in terms of clause (ii) of Section 78(1) of the Finance Act, 1994.

47. The Show Cause Notice F.No.STC/15-62/OA/2019 dated 11.02.2020 issued against M/s.Harsha Engineers Ltd, Changodhar, Ahmedabad is disposed-of in the above manner.

(M. L. Meena)
Additional Commissioner

Date: 26-04-2021.

F.No.STC/15-62/OA/2019

By Regd. Post

To

M/s.Harsha Engineers Ltd
Plot No.388, Sarkhej-Bavla Road
Changodar, Ahmedabad.

Copy to :

1) The Commissioner, CGST & Central Excise, Ahmedabad North.
2) The Deputy Commissioner, CGST & Central Excise, Division-IV, Ahmedabad North
3) The Superintendent, CGST & Central Excise, Division-IV, Ahmedabad North.
4) Guard File.