


<p>T017_आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हॉउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		<p>3374 ONE TAX ONE MARKET</p> <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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निबन्धित पावती डाक द्वारा/By R.P.A.D

DIN: 20240164WT000000BAD2

फा.सं./F.No. STC/15-312/OA/2021

आदेश की तारीख/Date of Order :- 03.01.2024

जारी करने की तारीख/Date of Issue :- 03.01.2024

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 63/ADC/LD/2023-24

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 विरुद्ध अपील, इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद - 380015 को प्रारूप संख्या एस टी -4 (ST-4) में दाखिल कर सकता है। इस अपील पर रु. 5.00 (पांच 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. 5.00 only.

इस आदेश के विरुद्ध अपील करने के लिए आयुक्त (अपील) के समक्ष नियमानुसार पूर्व जमा के धनराशी का प्रमाण देना आवश्यक है।

An appeal against this order shall lie before the Commissioner (Appeal) on giving proof of payment of pre deposit as per rules.

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या एस टी -4 (ST-4) 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 विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिस पर रु. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form एस टी -4 (ST-4) 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.5.00.

विषय:- कारण बताओ सूचना / Proceeding initiated against Show Cause Notice F. No. DGGI/AZU/36-92/2020-21 dated 21.10.2021 issued to M/s. M V Omni Projects (India) Ltd., A-201, 202, Shivalik Yash, 132 Ft. Ring Road, Opp. Shastrinagar BRTS Bus Stand, Ankur, Naranpura, Ahmedabad - 380013 and Shri Mathuraprasad Chandrabhan Pandey, Director of M/s. M V Omni Projects (India) Ltd., A-201, 202, Shivalik Yash, 132 Ft. Ring Road, Opp. Shastrinagar BRTS Bus Stand, Ankur, Naranpura, Ahmedabad - 380013

BRIEF FACTS OF THE CASE

M/s. M V Omni Projects (India) Ltd, A-201, 202, ShivalikYash, 132 Ft. Ring Road, Opp, Shastrinagar BRTS Bus Stand, Ankur, Naranpura, Ahmedabad-380013 (hereinafter referred to as "M/s MVOPIL" for the sake of brevity) bearing STC Number AADCM1155ASTOO1 are engaged in the business of manpower recruitment agency services, construction services in respect of commercial or industrial buildings and civil structures, works contract services etc. which are "Taxable Services" w.e.f. 01.07.2012. M/s MVOPIL are presently registered in Goods and Services Tax vide GSTIN: 24AADCM1155A1Z7 with CGST, Ahmedabad North Commissionerate.

2.1 Information shared by the Directorate General of Goods & Services Tax Intelligence (hereinafter referred to as 'DGGI'), Kolkata Zonal Unit revealed that an investigation against M/s. Radha Swami Infracon and Engineers Ltd alias M/s. Radha Swami Enterprises Pvt. Ltd(RSIEL for the sake of brevity) having STC No. AADCR2235ESTO01 was conducted by them and it was found that there is no physical existence of RSIEL at the declared and registered addresses. RSIEL filed NIL ST3 returns during the F.Y, 2014-15 to 2015-16 but have issued fake invoices. During the period F.Y. 2016-17, RSIEL had submitted ST-3 return but had shown to discharge their liability from CENVAT credit which appeared to be fake. Further, investigation by DGGI, KZU initiated against other entities like M/s, Abhijit Infra Projects Pvt Ltd, M/s. Adarsh Telemedia Pvt Ltd., M/s. Saket Infra Developers Ltd and M/s. Green Globus Management Solutions Pvt Ltd who have availed and utilized fake CENVAT credit on the basis of fake invoices issued by RSIEL have already started reversing/paying the irregular and illegal CENVAT credit avail from RSIEL. Further, during the course of investigation by DGGI, KZU it has been found that RSIEL have also issued fake invoices to M/s.MVOPIL wherein transaction amount as per 26AS comes to Rs. 2,93,50,000/- during the period 01 April 16 to 30 June 17.

Thus, the intelligence shared by DGGI, KZU revealed that RSIEL is a Non-Existent Company and merely engaged in paper transaction by issuing fake invoices to their buyers without actual supply of goods or services for passing on fraudulent Cenvat credit. Further, it was informed that M/s. M V Omni Projects (India) Ltd(M/s MVOPIL) is one of the recipients of such fake invoices during the period 01 April 16 to 30 June 17 and thereby has availed irregular cenvat credit.

2.2. Further, the Principal Place of business of M/s. Radha Swami Infracon and Engineers Ltd was searched on 12.04.2018 and panchnama was drawn at the premises by the officers of DGGI, KZU, Kolkata. During search proceedings, it was revealed that there is no physical existence of RSIEL at the declared and registered addresses. Accordingly panchnamas were drawn at the places visited by the officers of DGGI, KZU. The non-existence of M/s. RSIEL at their declared and registered premises proves that they were created with the ulterior motive of issuing fake invoices to pass on the fraudulent cenvat credit to their buyers.

2.3 Further, statement of Shri Vikas Shirvastav, Director of RSIEL, Shri Abhimanyu Kejriwal, Director of M/s Abhijit Infra Projects Pvt. Ltd(recipient firm), Shri Akash Agarwal, Director of M/s Adarsh Telemedia Pvt. Ltd. (recipient firm), Shri Than Mal Saraswat, Director of M/s Green

Globus Management Solutions Pvt. Ltd. (recipient firm) and Shri Saket Khaitan, Director of M/s Saket Infra Developers Pvt. Ltd. (recipient firm) was recorded by the officers of DGGI, KZU, Kolkata which indicate that M/s. Radha Swami Infracon Pvt. Ltd is a fake/dummy firm/company which has been created to only supply invoices to various recipient firms/companies without actual supply of any service to pass on the fraudulent Cenvat credit.

2.4 Acting on above information shared, an inquiry against M/s. M V Omni Projects (India) Ltd was initiated under the provisions of Section 67 of the CGST Act, 2017 at registered business premises at A-201, 202, ShivalikYash, 132 Ft. Ring Road, Opp, Shastrinagar BRTS Bus Stand, Ankur Naranpura, Ahmedabad-380013. The said premises were visited by officers of DGGI, AZU, Ahmedabad under "Authorization for Inspection" on 18.06.2019. During the visit, it was found that M/s. M V Omni Projects (India) Ltd is operating from the registered premises and maintaining the documents at the said premises. M/s. M V Omni Projects (India) Ltd submitted partial documents pertaining to the period 01 April 2016 to 30 June 2017 vide their submissions dated 19.06.2019. Further, a letter dated 06.09.2019 and subsequent reminders were issued to the said assessee on 01.11.2019, 27.11.2019, 12.02.2020, 08.06.2020, 25.11.2020, 23.06.2021 and 05.07.2021 to comply. However, M/s. MVOPIL replied vide their letter dated 02.12.2019 and 17.06.2020 that their office is under corporate insolvency resolution process as per order of National Company Law Tribunal, Ahmedabad Bench under the provisions of the Insolvency and Bankruptcy Code, 2016(IBC), wef. 29.08.2019. Further they informed that Shri Manish Kumar Bhagat and Shri Parthiv Parekh IRP of MVOPIL was appointed by the NCLT, Ahmedabad. Further it was also informed that under section 17 of the Insolvency and Bankruptcy Code, 2016, the powers of the Board of Directors stand suspended and as such powers shall be vested with the IRPs.

3. From the web site www.nclt.gov.in it was seen that NCLT Ahmedabad Bench has passed the order that the present Board of Directors was given the management and control of the company as per the Resolution plan approved by the Hon'ble NCLT on 28 Jan 2021. Therefore, summons was issued to M/s MVOPIL to submit the relevant, records and record the statement on 19.7.2021. M/s. MVOPIL vide their submissions 20.07.2021 submitted the some documents which pertains to F.Y 2016-17. Further, Statement of Shri Mathura Prasad C. Pandey Director of MVOPIL was recorded on 20.07.2021(enclosed as RUD-6 in SCN), in terms of section 14 of Central Excise Act, 1944 read with Section 83 of Service Tax Act 1994, and section 174 OF CGST Act, 2017 wherein he stated, interalia, that:

- I. As Director of MVOPIL, his responsibility is to look after management and administration of the company.
- II. MVOPIL is engaged in Civil Infrastructure, Irrigation, Railways Engineering, Signalling & Telecommunication, City Gas Distribution and Oil & Gas Pipelines works.
- III. When asked about other directors of MVOIPL he informed that consequent upon failure of the company in discharging certain contractual liability, Mr. Nandish Patel, an Operational Creditor filed

a petition under Section 9 of the Insolvency and Bankruptcy Code 2016 resulting in the admission of the matter before the Ahmedabad Bench of National Company Law Tribunal (NCLT) in the form of CP(IB) 404 of 2019. The management of the company was thereafter handed over to the Resolution Professional on 29-08-2019 who in turn, was managing the affairs of the company in co-ordination with the Committee of Creditors (CoC) etc. He informed that it may be appreciated that in view of this fact the present Board of Directors of the company had no power or authority to deal with the notices that may have been issued by the various departments in this period. It is further mentioned that in the subsequent development, The Group of Resolution Applicants filed a Resolution Plan to the Resolution Professional, which was there after approved by CoC with 97.79% voting in the favour. The Hon'ble NCLT accordingly passed an order, thereafter, bearing no. IA 846 in CP(IB) 404 of 2019 on 28th January 2021 approving this Resolution Plan. It is subsequent to the Hon'ble NCLT having passed this order dated 28.1.2021 that the present Board of Directors was given the management and control of the company. Thus, new board of directors has been formed as per the Resolution plan approved by the Hon'ble NCLT on 28 Jan 2021 are as under: 1. Mr. Mathura Prasad Chandrabhan Pandey 2. Mr.Vrindavan Chandrabhan Pandey 3. Mr.Gopal Ramial Agarawalla.

- IV. M/s RSIEL, had provided services of construction of civil infrastructure and other allied works on back to back basis to MVOPIL during the period 01 April 16 to 30 June 2017.
- V. The total value of CENVAT credit availed and utilized by MVOPIL on the strength of invoices issued by M/s Radha Swami Infracon Engineers Ltd was Rs. 1,49,03,386/-(S.Tax Rs. 14471263.24/and KKC Rs.432122.39/-).
- VI. Statement of Mr. Saket Khaitan, Director of M/s Saket Infra Developers Pvt. Ltd. recorded under summons on 18-02-2019, statement of Shri. Akash Agarwal, Director of M/s Telemedia Pvt. Ltd. recorded on 07-09-2018, statement of Shri. Abhimanyu Kejriwal, Director of M/s. Abhijit Infra Projects Pvt. Ltd. Recorded under 'summons' on 12-04-2018 and statement of Mr.Saraswat Director of M/s Green Globus Management Solutions Private Limited on 06-03-2019 have been perused by Mr.Mathuraprasad Chandrabhan Pandey and he put his dated signature on above mentioned statements as a token of seen the same. He also accepted that it is true that in their above statement, the concerned persons have categorically and explicitly stated that M/s Radha Swami Infracon Engineers Ltd have issued fake invoices and no underlying Service was ever provided by them under cover of such fake invoices.
- VII. Further he stated that they had sub-contracted the different work order to M/s Radha Swami Infracon and Engineers Ltd, they received proper invoices from M/s Radha Swami Infracon and Engineers Ltd with Service Tax and MVOPIL made proper payment after deduction of TDS to M/s Radha Swami Infracon and Engineers Ltd through the bank account. Based on these invoices, MVOPIL issued invoices to principal clients.

4.1 The scrutiny of invoices issued by M/s Radha Swami Infracon and Engineers Ltd to MVOPIIL revealed that invoices were issued for "handling & supervision of coal for different months" however the work orders executed between M/s. RSIEL and M/s, MVOIPL did not mention such service, instead the various work order executed between M/s Radha Swami Infracon and Engineers Ltd and MVOPIIL are for the "alignment of structural steel work for support of operation and handling services and repairing of DLF roads and buildings of various DLF projects". Further, the services mentioned as "handling & supervision of coal for different months" is not a service specified in Section 65(105) of the Finance Act, 1994. As per the provisions of Rule 4A of Service Tax rules, 1994, a service invoice should contain Description and value of taxable service and service as mentioned in invoices issued by M/s, RSIAL to M/s, MVOPIIL Is not a service specified in Section 65(105) of the Finance Act, 1994.

From the above, it appeared that the invoices issued by M/s Radha Swami Infracon and Engineers Ltd to MVOIPL are not eligible for taking CENVAT credit however M/s, MVOIPL had availed and utilized irregular CENVAT credit on the strength of fake Invoices issued by M/s. RSIEL to the tune of Rs. 1,49,03,386/-.

4.2 From verification of the service receivable ledger of MVOIPL and invoices of M/s Radha Swami Infracon & Engineers Ltd, statement of Shri Vikas Shrivastav and panchnama drawn at the premise of M/s Radha Swami Infracon & Engineers Ltd, it appeared that M/s Radha Swami Infracon & Engineers Ltd, was a bogus company and MVOIPL had availed and utilized irregular CENVAT credit on the strength of invoices issued by RSIEL without receiving any underlying service or goods. Further, the company mentioned above had no physical existence at their declared addresses and the same was confirmed by conducting search operations by DGGI, KZU.

4.3. As per provisions of Rule 9(6) of CENVAT Credit Rules 2004, ***"The manufacturer of final products or the provider of output service shall maintain proper records for the receipt and consumption of the input services in which the relevant information regarding the value, tax paid, CENVAT Credit taken & utilized, the person from whom the input service has been procured is recorded and the burden of proof regarding the admissibility of the CENVAT Credit shall lie upon the manufacturer or provider of output service taking such credit".*** And hence, the burden of admissibility of CENVAT credit, so Availed the basis of invoices of M/s Radha Swami Infracon & Engineers Ltd, lies on MVOPIIL.

4.4. From the above facts, it appeared that M/s Radha Swami Infracon and Engineers Ltd had not provided any underlying service/goods to MVOPIIL during the period 2016-2017. Further Sh. Vikash Shrivastava, Director of M/s RSIEL in his statement stated that M/s. RSIEL is controlled by the persons named Sh. Vinit Kejeriwal and Sh. Akash Agarwal and he received an amount of Rs. 1.3 lakhs/year for letting them use the company. M/s Radha Swami Infracon & Engineers Ltd who issued fake invoices did not pay service tax, they either filed NIL ST-3 returns or discharged their service tax liability by using only CENVAT Credit which prima facie appeared to be ineligible CENVAT Credit. Further during search of premise of M/s Radha Swami Infracon & Engineers Ltd no documents

related to RSIEL were found in the premise. It is a fact that M/s. RSIEL had discharged total service tax liability for the period 2016-17 through Cenvat Credit only which prima facie is fraudulent. Such payment of tax (through cenvat only) implies that no actual revenue has accrued to the Government Exchequer. Hence, MVOPIL can not avail CENVAT credit of such amount which is prima facie fraudulent ab-initio. MVOPIL have availed and utilized CENVAT credit on the strength of such irregular/illegitimate invoices which appeared to be fictitious, irregular and fraudulent and are only on paper.

4.5 Shri. Mathuraprasad Chandrabhan Pandey, Director of MVOPIL in his statement recorded on 20.07.2021 submitted that they have paid the bill amount along with service tax through RTGS. The statement of Shri. Mathuraprasad Chandrabhan Pandey that they paid the bill amount did not legitimate their wrong-doing or fraudulent activity. As per the facts and the discussions made above, no service has been provided by RSIEL to MVOPIL as per Section 68(1) of Finance Act'1994. Hence there is no question of Service Tax liability on the part of such non-existent suppliers and it happened so by not filing ST-3 returns or filing NIL ST-3 return. The invoices issued under cover of such invoices and no tax has been paid. Hence making payment through RTGS by MVOPIL is nothing but a deliberate attempt to make the invoices appear genuine for facilitating their service tax payment. It appeared that RSIEL is on paper, RSIEL have provided no service to MVOPIL and MVOPIL made only paper transaction with RSIEL to defraud the Government.

4.6 Considering the fact of non submission of ST-3 returns and non-payment of service tax on the part of RSIEL, their non-existence at their declared addresses, it appeared that MVOPIL has availed irregular CENVAT credit during the period 01 April 2016 to 30 June 2017. The total liability of service tax on the part of MVOPIL is Rs. 1,49,03,386/- (including KKC of Rs. 4,32,123/-).

4.7 Therefore, MVOPIL is required to pay/reverse the service tax/CENVAT of 1,49,03,386/- (including KKC of Rs. 4,32,123/-) which is required to be demanded and recovered from them in terms of proviso to Section 73(1) of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017 along with applicable interest as per provision of Rule 14 of CENVAT credit Rules 2004 and penalty as per provision of Rule 15 of CENVAT Credit Rule 2004.

5. MVOPIL did not declare their activity of availment and utilization of CENVAT credit on the basis of fake invoices issued by RSIEL during the period from 2016-17 as discussed in above Paras, to the department in any manner. MVOPIL, deliberately discharged their service tax liability by availing and utilizing irregular CENVAT credit amounting to Rs. 1,49,03,386/including KKC. Had DGGI (earlier DGCEI) not initiated the investigation based on intelligence, the above activities of MVOPIL would have remained unearthed and undetected.

5.1 From the investigation conducted as enumerated in above Paras, it appeared that MVOPIL has availed inadmissible CENVAT Credit to the tune of Rs. 1,49,03,386/(including KKC of Rs. 4,32,123/-) on the basis of fake invoices issued by RSIEL as discussed above. During the course of investigation, it was ascertained that RSIEL is a non-existent company,

having no capacity to conduct any business operations and no underlying services were provided under the cover of such fake invoices issued by RSIEL.

5.2 It appeared that MVOPIIL has availed inadmissible credit and failed to discharge their Service Tax liability during the period 01 April 2016 to June 2017 by way of suppression of material facts with deliberate intent to evade payment of Service Tax. Therefore, it appeared that MVOPIIL have contravened provisions of CENVAT Credit Rules 2004 and statutory provisions of Finance Act, 1994 and Rules made there under with deliberate and wilful intent to evade Service Tax. Hence, it appeared that the extended period of limitation as envisaged in the proviso to sub-Section (1) of Section 73 of the said Act is very much invocable for demand and recovery of CENVAT credit of Rs. 1,49,03,386/- including KKC under Section 73 of Finance Act 1994 along with applicable interest under Rule 14 of CENVAT credit Rules 2004.

6.1 MVOPIIL appeared to have contravened Section 67, 68 and 70 of Finance Act 1994 read with Rule 6 and 7 of Service Tax Rule 1994 in as much as MVOPIIL failed to discharge their Service Tax liability, mis-declared the Cenvat credit in ST-3 Returns on account of fraudulent availment of CENVAT credit on the basis of fake invoices issued by such non-existent companies. And whereas, the availment and utilization of CENVAT Credit by M/s MVOPIIL as detailed hereinabove appeared to be in gross violation/contravention of the CENVAT Credit Rules, 2004 (as amended) particularly in violation of Rule 4 (Conditions for allowing CENVAT Credit) and Rule 9 (Documents and accounts) of such rules bid read with the provisions of the CENVAT Credit Rules, 2017 (Notification No. 20/2017-Central Excise (N.T.) dated 30/06/17 and valid from 01/07/2017).

6.2 A plain reading of Rule 4 and Rule 9 of the CENVAT Credit Rules, 2004 clearly indicates that the availment and utilization of CENVAT Credit has not been placed at the free will of the assessee. The CENVAT Credit Rules stipulate certain procedure to be followed by the assessee while availing CENVAT Credit. Also, stringent provisions like time-bound availment within a period of one year from the date of invoice/bill/challan &etc and reversals in the event of non-payment of the taxable amount and service tax in the invoice have been prescribed in the above rules ibid.

6.3 Thus, the CENVAT Credit of Rs. 1,49,03,386/- so availed by M/s MVOPIIL during the period 01 April 2016 to 30 June 2017 by contravention of the provisions of CENVAT Credit Rules, 2004 read with the provisions of the CENVAT Credit Rules, 2017, appeared to be in-admissible to M/s MVOPIIL and consequently the utilization of same by M/s MVOPIIL for the payment of their outward service tax liability appeared to be erroneous and irregular. Accordingly, the above CENVAT Credit of Rs1,49,03,386/- wrongly availed and utilized by M/s MVOPIIL for the period 01 April 2016 to 30 June 2017 is required to be demanded and recovered from them under Rule 14 of the CENVAT Credit Rules read with the proviso to Section 73(1) of the erstwhile Finance Act, 1994 along with applicable interest and penalty.

6.4 MVOPIIL appeared to have contravened the following provisions of CENVAT Credit Rules:-

- I. Rule 2(l)(i) of CENVAT Credit Rules 2004, in as much as MVOPIL failed to receive any sort of goods/input service, as defined, under cover of invoices of such shell companies.
- II. Rule 3 of CENVAT Credit Rules 2004, in as much as MVOPIL failed to prove that service tax leviable under section 66B of the said Act was actually paid by such non-existent companies.
- III. Rule 4 of CENVAT Credit Rules 2004, in as much as MVOPIL failed to provide genuine Invoices as per Rule 9 of Cenvat Credit Rules, 2004 under cover which underlying Goods/services have been received at their end.
- IV. Rule 9 of CENVAT Credit Rules 2004 in as much as MVOPIL have availed and utilized irregular CENVAT credit on the basis of fake invoices issued by such fake companies.

6.5 It is pertinent to mention here that the system of self-assessment is in vogue in respect of service tax. In the scheme of self-assessment, the department comes to know about the service rendered and payment made only during the scrutiny of the statutory returns filed by the service providers. Therefore, it places greater onus on the party/assessee to comply with higher standards of disclosure of information in the statutory returns. It is seen from the facts that emerged during the investigation of the instant case that M/s MVOPIL have not filed the correct service tax Returns and in fact they have suppressed their Cenvat credit of services received by them as discussed in foregoing paras. This appeared to be done intentionally so as to hide their actual Cenvat credit of the taxable services from the Department. Various Courts including the Apex Court have clearly laid down the principle that tax liability is a civil obligation and therefore, the intent to evade payment of tax cannot be established by peering into the minds of the tax payer, but has to be established through evaluation of tax behaviour. The responsibility of the tax payer to voluntarily make information disclosures is much greater in a system of self-assessment. The evaluation of tax behaviour of M/s MVOPIL shows clear intent to evade payment of service tax by an act of suppression and omission in as much as M/s MVOPIL though being well aware of the unambiguous provisions of the erstwhile Finance Act, 1994 and Rules made there under, failed to disclose to the department at any point of time, the correct Cenvat credit services received by them. Had the investigation proceedings not conducted by DGGI, Ahmedabad Zonal Unit, these facts would not have ever come to light.

Hence, the CENVAT Credit of Rs. 1,49,03,386/- so availed by M/s MVOPIL during the period 01 April 2016 to 30 June 2017 by contravention of the provisions of CENVAT Credit Rules, 2004 read with the provisions of the CENVAT Credit Rules, 2017, appeared to be in-admissible to M/s MVOPIL and consequently the utilization of same by M/s MVOPIL for the payment of their outward service tax liability appeared to erroneous and irregular. Accordingly, the above CENVAT Credit of Rs 1,49,03,20/- wrongly availed and utilized by M/s MVOPIL for the period 01 April 2016 to 30 June 2017 is required to be demanded and recovered from them under Rule 14 of the CENVAT Credit Rules read with the proviso to Section 73(1) of the erstwhile Finance Act, 1994 along with Rule 14 of Cenvat Credit

Rules, 2004 read with Section 75 of the Finance Act, 1994 and penalty in terms of Rule 15 of Cenvat Credit Rules, 2004 read with Section 78 of the Finance Act, 1994.

7. Shri Mathuraprasad C. Pandey, Managing Director of M/s MVOIPL was at the helm of the affairs of his company namely M/s MVOIPL during which the aforesaid acts of irregular availment of ineligible Cenvat Credit, fraudulent utilization of the same have occurred on part of M/s MVOIPL and as such, he had a decisive role to play in the present evasion. He himself had disclosed in his statement dated 20.07.2021 that he was looking after the management and administration and that he used to look after and supervise the entire Operations of M/s MVOIPL. Therefore, by committing such acts as described above, he appeared to have rendered himself liable to penalty under Section 78A of the Finance Act, 1994.

8. Accordingly, A Show Cause Notice No.- DGGI/AZU/36-92/2020-21 dated 21.10.2021 was issued by Joint Director, DGGI, AZU calling upon M/s. M V Omni Projects (India) Ltd, having their office at A-201, 202, ShivalikYash, 132 Ft. Ring Road, Opp, Shastrinagar BRTS Bus Stand, Ankur, Naranpura, Ahmedabad-380013 having Service Tax Registration Number AADCM1155AST001(now GSTIN: 24AADCM1155A1Z7) as to why:-

- I. An amount of CENVAT credit of Rs. 1,44,71,263/- and Krishi Kalyan Cess of Rs 4,32,123/-total amounting to **Rs.1,49,03,386/-(Rupees One Crore Forty Nine Lakhs Three Thousand Three Hundred Eighty Six only)**, irregularly availed and utilized by them during the period 01.04.2016 to 30 June 2017 should not be recovered from them under the provision of Rule 14 of CENVAT credit Rules 2004, by invoking the extended period of limitation as envisaged under the proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 read with Section 142 and 174 of the Central Goods and service tax Act, 2017;
- II. Interest at an appropriate rate shall not be recovered from them in terms of the provision of Rule 14(2) of CENVAT credit Rules 2004 read with Section 75 of Finance Act, 1994 read with Section 142 and 174 of the Central Goods and service tax Act, 2017;
- III. Penalty should not be imposed upon them in terms of Rule 15 of CENVAT credit Rule 2004 read with Section 78 of Finance Act, 1994, for mis-stating and suppressing the facts relating to utilization of CENVAT credit in question for provision of taxable services, with sole intent to evade payment of Service Tax in contravention of the above quoted provisions of the Act and the Rules during the period 01.04.2016 to 30 June 2017;
- IV. Penalty should not be imposed upon them in terms of Section 77(2) of the Finance Act 1994 for violating provision of section 67, 68 and 70 of the said Act read with read with Rules 6 and 7 of the Service Tax Rules 1994.

9. Shri. Mathuraprasad Chandrabhan Pandey, Director of M/s. M V Omni Projects (India) Ltd is also called upon to show cause to Additional/Joint Commissioner, of Central Goods and Services Tax and

Central Excise, Anmedabad-North, having his office at GST Bhavan, Ambawadi, Ahmedabad within 30 (thirty) days of receipt of this Notice as to why a penalty should not be imposed upon him in terms of Section 78A of Finance Act 1994 read with Section 142 and 174 of the Central Goods and service tax Act, 2017 for availment and utilization of credit of taxes without actual receipt of taxable service in violation of the rules made under the CENVAT Credit Rules 2004 read with Finance Act 1994 and rules made there under.

DEFENCE REPLY

10. M/s. MVOPIL has filed their defence reply vide letter dated 22.11.2021 wherein they denied the allegations in the aforesaid SCN. Their reply is as under -

10.1 M/s. MVOPIL has submitted that Supreme Court of India in the case of Ghanashyam Misra and Sons Private Limited Versus M/s. Edelweiss Asset Reconstruction Company Limited in Civil Appeal No. 8129 of 2019 decided on 13/04/2021 with Civil No. 1554 of 2021 and Writ Petition (Civil) No. 1177 of 2020 whereby, upon considerations of various provisions under the Insolvency and Bankruptcy Code, 2016, the Honorable Supreme Court of India in Para 95 has held that:

- (a) Once a resolution plan is duly approved by the Adjudicating Authority under Sub-Section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan and
- (b) Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under Section 31 of the I&B Code 2016 could be continued and
- (c) 2019 amendment to Section 31 of I&B Code will be effective from the date on which I & B Code has come into effect AND

In the show cause notice under reply to the period for alleged wrongfully availing of Cenvat Credit is shown from 01/04/2016 to 30/06/2017, which is admittedly for the period prior to initiation of CIR process of the company, and not a part of resolution plan, which is now led by the New Management on approval of the Resolution Plan. In the present case the NCLT, Ahmedabad has appointed Interim Resolution Professional on 29th August 2019 and on 28/01/2021 approved the Resolution Plan dated of 22/09/2020 along with the addendum dated 13/11/2020. Under these circumstances the show cause notice under reply is required to be withdrawn and/or dropped forthwith being contrary to and without

jurisdiction of the law declared by the Honourable Supreme Court of India and hence unsustainable in law.

10.2 M/s. MVOPII has submitted that from statement of Shri Vikas Shrivastav, Director of M/s RSIEL, Shri Abhimanyu Kejriwal, Director of M/s Abhijit Infra Projects Pvt. Ltd, Shri Akash Agarwal, Director of M/s Adarsh Telemedia Pvt. Ltd, Shri Than Mal Saraswat, Director of M/s Green Globus Management Solutions Pvt. Ltd. and Shri Saket Khaitan, Director of M/s Saket Infra Developers Pvt. Ltd, it is not evident that transaction between their company and RSIEL is fake, therefore, said statements are irrelevant in the matter.

10.3 They further submitted that in relation to the statement dated 20/07/2021 of Shri Mathuraprasad C. Pandey, in his capacity as the Director of New Management of the company, recorded under Section 14 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994, they submitted that he denied the allegation of fake invoices and sated that the company has not availed and utilized Cenvat Credit by using fake invoices and there is no question of reversal of credit or payment.

10.4 In furtherance to the above, they reiterated that that their company are engaged in the business of civil Construction, Irrigation, Railway Engineering, Signaling and Telecommunication, City Gas Distribution and Oil and Gas Pipeline. M/s. RSIEL has provided services of construction of civil infrastructure and other allied works on back to back basis in the financial year 2016-17. For the services rendered by them to us, they raised invoices inter-alia showing therein their Address, particulars of services rendered, the Service Tax No, value of services rendered, Amount of service tax, SB Cess, KK Cess, PAN Number, Bank details for remittance. Having given all the details regarding the services rendered and the details of service tax regime in the invoice and having made the payments through banks only, there is no question of having no existence of M/s. RSIEL. It is required to be noted that M/s. RSIEL is a limited company and it remains in existence until it is wound up by the Registrar of Companies. Merely because it is not working at the address shown and/or visited by the officer of the taxing department does not establishes that the company is bogus and non-existent.

10.5 Regarding difference in description of services mentioned in invoices and the work orders, they submitted that their business with M/s. RSIEL is on back to back basis and it changes many time based on requirements and therefore there cannot be any co-relation between work order and invoices. Even in some cases, oral orders are being placed which modifies the work order and new orders are placed. The invoices raised by M/s. RSIEL are for the services rendered to them, which were for handling and supervision of coal for different months and as per our orders. Under these circumstances difference in description of work orders and invoices are irrelevant and cannot be a base for issuance of show cause notice. Further, they submitted that under Section 66D of the Finance Act 1994 negative list of services are given, therefore allegation that handling and supervision of coal is not a service specified under Section 65(105) of the Finance Act 1994 is not tenable.

10.6 They denied the allegation that M/s. RSIEL have provided no service to them and they made only paper transaction with them to defraud the

Government. Evasion of service tax or illegality may be at the end of M/s. RSIEL and for that no demand can be raised against them. Further, regarding invoking extended period of limitation for not declaring their activity of availment and utilization of Cenvat Credit on the basis of fake invoice issued by M/s. RSIEL during the period from 2016-17, M/s. MVOPIL has submitted that the Finance Act, 1944 and the rules framed there under does not mandate to declare every invoice to the department and they have complied with all the provisions of the Finance Act, 1944 and the rules framed there under and submitted the all ST-3 returns and there is no question of suppression of fact.

10.7 M/s. MVOPIL has contended that Section 67 of the Finance Act, 1994 is relating to valuation and in the present case considering the facts available on records, there is no allegation as to value of service provided and/or even value of service received. Section 68 of the Finance Act, 1994 deals with the persons by whom liability to pay service tax is fastened and bare reading of section makes it clear that liability to pay service tax is upon the Service Provider. In the present case service is provided by M/s. RSIEL and therefore there is no question of invoking said section qua us. So far as contravention of Section 70 of the Finance Act, 1994 is concerned it is applicable to the service provider, and so far as services provided by them, they have already filed the required Returns, which is an admitted fact. Rule 6 of the Service Tax Rules 1994 provides the period by which service tax is to be paid. Considering the facts of the case, they are under no obligation to make the payment of service tax for the services received and for the services provided by them, they have already made the payments in time and there is no allegation as to late payment on their part for the services provided by them. In relation to the violation of Rule 4 of Cenvat Credit Rules, 2004, it is submitted that said rule is meant for time to take credit on receipt of service received and they have taken the credit upon receipt of the service from the Service Provider and as there is no allegation as to taking time for availing Cenvat Credit and hence there is no violation of said rule as alleged. In so far as alleged violation of Rule 9 of the Cenvat Credit Rules, 2004 is concerned it is applicable to service provider and in the present case so far as output service are concerned, they have availed the Cenvat Credit on the basis of documents specified in the said rule (invoices in the present case) and the allegation is relating to the service provider in the present for the input service received by them and therefore there is no violation of said rule.

10.8 Further, they also stated that Rule 14(2) of Cenvat Credit Rules 2004 is applicable to service provider i.e. M/s RSIEL and therefore, they are not liable to pay interest under Section 75 of Finance Act 1994 read with Rule 14(2) of Cenvat Credit Rules 2004. Further, there is not evasion of Service tax on their part, therefore penalty under Section 78 of Finance Act 1994 read with Rule 15 of Cenvat Credit Rules 2004 and Section 77(2) of Finance Act 1994 is not applicable.

11. Shri Madhuraprasad C. Pandey, Director of M/s. MVOPIL also filed his defence reply vide letter dated 29.11.2021, *inter alia*, stating that reply dated 22.11.2021 filed by M/s. MVOPIL may be treated as reply filed by him also. Further, he relied upon on following case:-

- (i) Honorable the Supreme Court of India in the case of Ghanashyam Misra and Sons Private Limited Versus M/s. Edelweiss Asset Reconstruction Company Limited in Civil Appeal No. 8129 of 2019 decided on 13/04/2021 with Civil No. 1554 of 2021 and Writ Petition (Civil) No. 1177 of 2020.
- (ii) National Company Law Tribunal, New Delhi Bench (Court-II) in the case of M/s. Power2 SME Pvt. Limited versus M/s. Uttam Strips Limited.
- (iii) National Company Law Appellate Tribunal, New Delhi, in the case of the Commissioner of Central Taxes Goods and Service Tax Versus C.S. Ashish Sing & Others.

PERSONAL HEARING

12. M/s. MVOPIL was offered a personal hearing on 17.10.2023 wherein Shri Vijay N. Nair and Shri Jignesh Modi, Advocate appeared on behalf of the noticees and reiterated their defence reply dated 25.11.2021. He also referred to CBIC Circular No.- 1083/04/2022-CX9 dated 23.05.2022 and requested to decide the SCN on merits.

DISCUSSION AND FINDINGS

13. I have carefully gone through the case records, contents of show cause notice dated 21.10.2021, defence reply dated 22.11.2021 and 26.11.2021 filed by the M/s. M V Omni Projects (India) Ltd and Shri Mathura Prasad C. Pandey Director of MVOPIL respectively and the record of personal hearing. The proceedings under the provision of Finance Act 1994 and Service Tax Rules 1994 framed there under are saved by Section 174(2) of CGST Act 2017 and accordingly I am proceeding further.

14. I find that Principal place of business and others premises of M/s. Radha Swami Infracon and Enginerrrs Pvt. Ltd(RSIEL) was searched by officers of DGGI, KZU, Kolkata and found that said company was a fake/dummy firm/company which was created to only supply invoices to various recipient firms/companies without actual supply of any service to pass on the fraudulent Cenvat credit.

15. Acting on above information shared, an inquiry against supplier of RSIEL i.e. M/s. M V Omni Projects (India) Ltd was initiated by officers of DGGI, AZU, Ahmedabad under "Authorization for Inspection" on 18.06.2019. During the pendency of investigation, M/s. MVOPIL replied vide their letter dated 02.12.2019 and 17.06.2020 that their office is under corporate insolvency resolution process as per order of National Company Law Tribunal, Ahmedabad Bench under the provisions of the Insolvency and Bankruptcy Code, 2016(IBC), w.ef. 29.08.2019. Further they informed that Shri Manish Kumar Bhagat and Shri Parthiv Parekh IRP of MVOPIL have been appointed by the NCLT, Ahmedabad. Further it was also informed that under section 17 of the Insolvency and Bankruptcy Code, 2016, the powers of the Board of Directors stand suspended and as such powers shall be vested with the IRPs.

16. I find that Resolution Plan was approved by the Hon'ble NCLT, Ahmedabad on 28 Jan 2021, after that A Show Cause Notice No.- DGGI/AZU/36-92/2020-21 dated 21.10.2021 amounting to Rs.

1,49,03,386/- was issued by Joint Director, DGGI, AZU to M/s. M V Omni Projects (India) Ltd. For sake of brevity, I reproduced below date wise details of events in present case.

- I. Date of search of premises of M/s Radha Swami Infracon and Engineers Limited by the officer of DGGI, KZU- **12.04.2018**.
- II. Date of Inspection of premises of M/s. M V Omni Projects (India) Ltd by the officers of DGGI, AZU- **18.06.2019**.
- III. Date of order of NCLT, Ahmedabad Bench under the provisions of the Insolvency and Bankruptcy Code, 2016(IBC) vide which management of company handed over to Interim Resolution Professional- **29.08.2019**.
- IV. Date of approval of Resolution Plan by NCLT, Ahmedabad on- **28.01.2021**.
- V. Date of submission of documents by M/s MVOPIL- **20.07.2021**.
- VI. Date of statement given by Shri Mathura Prasad C. Pandey Director of MVOPIL- **20.07.2021**.
- VII. Date of issuance of Show Cause Notice by DGGI, AZU- **21.10.2021**.

17. It is observed that main contention of M/s. MVOPIL is that SCN dated 21.10.2021 for period from 01.04.2016 to 30.06.2017 is issued after the approval of resolution plan vide order dated 28.01.2021, therefore action of issuance of said SCN is without jurisdiction and in defiance of the law declared by the Honorable the Supreme Court of India in the case of Ghanashyam Misra and Sons Private Limited Versus M/s. Edelweiss Asset Reconstruction Company Limited in Civil Appeal No. 8129 of 2019 decided on 13/04/2021 with Civil No. 1554 of 2021 and Writ Petition (Civil) No. 1177 of 2020. Further, they also quoted judgement delivered by the NCLT, New Delhi Bench-II in the case of M/s Power2 SME Pvt Ltd. V/s Uttam Strips Ltd. and in the case of the Commissioner of CGST V/s C.S. Ashish Singh & others. I have carefully considered the submissions made by M/s. MVOPIL and his director and find that National Company Law Tribunal, Ahmedabad Bench in the matter of Mr. Parthiv Parikh, Resolution Professional of M/s. MVOPIL v/s Mr. Mathura Prasad C. Pandey and others has passed the order by approving resolution plan on 28.01.2021, however present show cause notice is issued on 21.10.2021 i.e. after approval of resolution plan by NCLT, Ahmedabad.

18. On verification of the case records, I find that application for initiating Corporate Insolvency Resolution Process was admitted by National Company Law Tribunal (NCLT) under The Insolvency and Bankruptcy Code against the M/s. MVOPIL vide NCLT Order dated 29-08-2019. Then after, the Committee of Creditors was formed and Resolution Plan was approved by majority of 97.79% of the Committee of Creditors members and accordingly NCLT passed the order by approving resolution plan on 28.01.2021. Further as per records available, I find that no claim before the Resolution Professional regarding said matter/case is filed. In this regard, I relied upon on para 2 of CBIC Circular No.-1083/04/2022-CX9 dated 23.05.2022 wherein it is mentioned that no claims can be raised once the plan is approved and no demand can be raised on the resolution applicant. Para 2 of said circular is reproduced below for ready reference:-

"2. A timeline of 90 days from the insolvency commencement date is available for filing of claims. However, it has been observed that there is an inordinate delay in filing of claims by Customs and GST authorities. This leads to their claims not being admitted and extinguished once a resolution plan, is approved. It is also observed that the authorities then litigate on the rejection of each claims, despite the settled position that no claims can be raised once the plan is approved and no demands can be raised on The resolution applicant who has taken over the company through such a resolution plan."

19. Further, I find that Supreme Court of India in the case of Ghanashyam Misra and Sons Private Limited Versus M/s. Edelweiss Asset Reconstruction Company Limited has clearly held that claims/dues if not part of the resolution plan shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under Section 31 of the I&B Code 2016 could be continued. Para 95 of said judgement is reproduced below for ready reference:-

- I. *Once a resolution plan is duly approved by the Adjudicating Authority under Sub-Section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan and*
- II.
- III. *Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under Section 31 of the I&B Code 2016 could be continued.*

20. I also hold that Hon'ble High Court of Rajasthan in ULTRA TECH NATHDWARA CEMENT LTD. Versus UNION OF INDIA 2020 (37) G.S.T.L. 289 (Raj.) has observed that demand raised by the department for the period prior to the date on which, petitioner company took over the company under liquidation, after the resolution plan was finalized and approved is totally illegal. Relevant portion of said judgement is reproduced below for ready reference:-

"21. Therefore, we are of the firm opinion that the respondents would be acting in a totally illegal and arbitrary manner while pressing for demands raised vide the notices which are impugned in this writ petition and any other demands which they may contemplate for the period prior to the resolution plan being finalized.

22. The demand notices are ex facie illegal, arbitrary and per se and cannot be sustained.

23. Accordingly, the impugned demand notices and orders viz. notice dated 11-2-2019 (Annex. 10), letter dated 7-9-2018 (Annex. 11), order dated 20-3-2019 (Annex. 12), notice dated 6-3-2019 (Annex. 13), notice dated 8-3-2019 (Annex. 14), notice dated 29-3-2019 (Annex. 15), notice dated 29-3-2019 (Annex. 16), notice dated 10-4-2019 (Annex. 18), order dated 9-4-2019

(Annex. 19), two notices dated 11-6-2019 (Annex. 20) and any further demands pending as on the date of finalization of the resolution plan issued/raised by the respondents Central Goods and Services Tax Department, Govt., of India are quashed and struck down.

24. Before parting, we would like to express our serious reservation on the approach of the concerned Officers of the GST in persisting with the demands raised from the petitioner in gross ignorance of the pertinent statement made by Hon'ble the Finance Minister before the Parliament (referred to supra) and the amendment brought around in the IBC. We are of the firm view that the authorities should have adopted a pragmatic approach and immediately withdrawn the demands rather than indulging in a totally frivolous litigation, thereby unnecessarily adding to the overflowing dockets of cases in the courts."

21. I also refer to the order of the Hon'ble High Court of Gujarat in case of Garden Silk Mills Ltd. vs. UOI, 2022 (381) E.L.T. 445 (Guj.) wherein it was held that claims which are not part of resolution plan approved by the NCLT, stand extinguished and so proceedings related thereto should be terminated. The relevant part of the said decision read as under:-

"8. In our view, the legal position as regards the effect of resolution plan once approved by the NCLT vis-a-vis the claims pending adjudication is concerned, is no longer res integra in view of the recent pronouncement of the Supreme Court in the case of Ghanshyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd. reported in (2021) 9 SCC 657 wherein the Supreme Court took the view as regards 2019 amendment being incorporated to Section 31 of the Insolvency and Bankruptcy Code, 2016 being treated clarificatory and declaratory in nature and thereby treating it to have come into effect retrospectively. The relevant observation as recorded in Paragraph 138 of the aforesaid decision are reproduce as under :

"In the foregoing paragraphs, we have held, that 2019 amendment to Section 31 of I&B Code is clarificatory and declaratory in nature and therefore will have a retrospective operation. As such, when the resolution plan is approved by NCLT, the claims, which are not part of the resolution plan, shall stand extinguished and the proceedings related thereto shall stand terminated. Since the subject matter of the petition are the proceedings, which relate to the claims of the respondents prior to the approval of the plan, in the light of the view taken by us, the same cannot be continued. Equally the claims, which are not part of the resolution plan, shall stand extinguished."

9. In view of the aforesaid legal position as well as taking into consideration the provisions of the resolution plan as approved by the National Company Law Tribunal, Ahmedabad Bench, in case of the writ applicant along with all the reliefs, concessions and dispensations as granted in the approval order, we hereby hold that the present writ application is rendered infructuous, non est and is disposed of as abated. So far as the issue of extinguishment of claims pending adjudication of the respondent revenue department is concerned, Mr. Dhaval Vyas, the Learned Senior Standing Counsel appearing for the department has submitted that though the writ petition being declared as infructuous and abated, liberty may be reserved in favour of the revenue department to invoke Section 61 of the Insolvency and Bankruptcy Code, 2016, if in any eventuality such question arises for consideration in future. It would be appropriate to consider sub-section (3) of Section 61 of the Code.

10. Thus, we find that the provision itself makes it clear that if in case the revenue is dissatisfied in any manner with the sanctioning of the resolution plan by the National Company Law Tribunal then the liberty is always reserved in favour of the revenue to prefer an appeal under Section 61 of the Code, 2016 before the National Company Law Appellate Tribunal.

11. For the reasons stated above, the present writ application does not survive and is hereby disposed of as abated and infructuous. We further clarify that we have otherwise not expressed any opinion on the merits of the case and at the same time, we reserve the liberty in favour of the revenue department to file appropriate proceedings or an appeal as provided under Section 61 of the Code, 2016. Resultantly, the Civil Application bearing No. 1 of 2021 filed in the main writ application also stands disposed of accordingly. Notice stands discharged."

22. In view of the above discussion, findings and case laws I find that it is very settled position that when the resolution plan is approved by NCLT, the claims, which are not part of the resolution plan, shall stand extinguished and the proceedings related thereto shall stand terminated. I also find that present proceedings i.e. issuance of the SCN relates to the period prior to the approval of the plan and not the part of the approved plan, even the SCN was issued after the approval of the plan by NCLT. Therefore Show Cause Notice dated 21.10.2021 amounting to Rs. 1,49,03,386/- issued after approval of resolution plan is not sustainable and therefore required to be dropped. As the demand itself is not sustainable, the question of charging interest under Section 75 of Finance Act 1994 and imposing penalty under the provisions of Section 78/77(2)/78A of Finance Act 1994 does not arise.

23. Accordingly, I pass the following order:

O R D E R

1. I hereby order to drop proceedings initiated for demand and recovery of irregular availed Cenvat Credit of Rs. 1,49,03,386/- along with interest and penalty against M/s. M V Omni Projects (India) Ltd and his director vide SCN No. DGGI/AZU/36-92/2020-21 dated 21.10.2021.

24. Accordingly the Show Cause Notice No. DGGI/AZU/36-92/2020-21 dated 21.10.2021 is disposed off:



(Lokesh Damor)
Additional Commissioner,
Central GST & CE,
Ahmedabad North

F.NO.STC/15-312/OA/2021

Dated 03.01.2024

By RPAD/EMAIL

To,

M/s. M V Omni Projects (India) Ltd, A-201, 202,
Shivalik Yash, 132 Ft. Ring Road,
Opp, Shastrinagar BRTS Bus Stand, Ankur, Naranpura,
Ahmedabad-380013

Copy to:

1. The Commissioner, Central GST & Central Excise, Ahmedabad North.
2. The DC/AC, Central GST & Central Excise, Div- VII Ahmedabad North.
3. The Joint Director, DGGI, Ahmedabad Zonal Unit, 6th& 7th Floor, I the Address Building, Near Sola Flyover, Sola, Ahmedabad.
4. The Superintendent, Range-I, Division-VII, Central GST & Central Excise, Ahmedabad North.
- ✓ 5. The Supdt.(System), CGST & C.E. Ahmedabad North for uploading the order on website.
6. Guard File.

