



प्रधान आयुक्त का कार्यालय,
Office of the Principal Commissioner,
केंद्रीय जीएसटी अहमदाबाद दक्षिण आयुक्तालय
Central GST, Commissionerate- Ahmedabad South,
चौथी मंजिल, अम्बावाड़ी अहमदाबाद ३८००१५.
4th Floor, GST Bhavan, 380015



फा.सं. STC/4-56/PERFECT/O&A/2020-21

DIN- 20230164WS000000EDC5

आदेश की तारीख: Date of Order: 13.01.2023

जारी करने की तारीख: Date of Issue : 13.1.2023

द्वारा पारित /Passed by: Shri Shravan Ram, JOINT COMMISSIONER

मूल आदेश सं./Order-In-Original No.: 74/CGST/Ahmd-South/JC/SR/2022-23

यह प्रति उस व्यक्ति लिए (जिनके) जिसके,को (यों) यह आदेश जारी किया गया है,उसके (उनके) व्यक्तिगत उपयोग के लिए निःशुल्क प्रदान की जाती है।

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यदि कोई व्यक्ति इस आदेश से स्वयं को असंतुष्ट अनुभव करता है, तो वह इस आदेश के विरुद्ध आयुक्त, (अपील)केन्द्रीय जीएसटी, केन्द्रीय जीएसटी भवनअहमदाबाद, आंबावाड़ी, -को प्रारूप 15 एस.टी.-4 में अपील कर सकता है। उक्त अपील पक्षकार पर आदेश तामील होने अथवा अथवा उसे डाक द्वारा प्राप्त करने की तारीख से दो माह के भीतर दाखिल की जानी चाहिए। इसपर रुपए -/2.00केवल का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this order in Form **S.T.4** to Commissioner (Appeals), Central GST, Central GST Bhavan, Near Government Polytechnic, Ambawadi, Ahmedabad -15 within sixty days from date of its communication. The appeal should bear a court fee stamp of Rs.2.00/- only.

उक्त अपील दो प्रतियों में प्रारूप सं. एस.टी.-4 में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क 2001, नियमावली (अपील)के नियम के 3उपबंधों के अनुसार अपीलकर्ताओं जद्वारा हस्ताक्षर किए जाने चाहिए। इसकेसाथ निम्नलिखित को संलग्न किया जाए :

The Appeal should be filed in form No. S.T.4 in duplicate. It should be filed by the appellants in accordance with provisions of Rule 3 of the Central Excise (Appeals) Rules, 2001. It shall be accompanied with the following:

उक्त अपील की प्रति।

Copy of the aforesaid appeal.

निर्णय की दो प्रतियाँ उसमें से एक उस आदेश की प्रमाणित प्रतिलिपि होनी चाहिए) जिसके विरुद्ध अपील की गई है -/2.00 अथवा उक्त आदेश की अन्य प्रति जिसपर रु (का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

Two copies of the Decision (one of which at least shall be certified copy of the order appealed against) or copy of the said Order bearing a court fee stamp of Rs. 2.00/-.

इस आदेश के विरुद्ध आयुक्त में शुल्क के (अपील)7.5% जहां शुल्क एवं जुर्माना का विवाद है अथवा जुर्माना जहां शिर्फ जुर्माना के बारे में विवाद है उसका भुक्तान करके अपील की जा सकती 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."

संदर्भ/Reference : कारण बताओ सूचना फा.सं. STC/4-56/Perfect/O&A/20-21 dated 12.4.2021 M/s Perfect Boring Pvt Ltd, 3822/A, Behind Indo German Tool Room, GIDC Estate, Phase-IV, Vatva, Ahmedabad.

Brief Facts of the case:

M/s Perfect Boring Pvt. Ltd. situated at 3822/A, behind Indo German Tool Room, GIDC Estate, Phase-IV, Vatva, Ahmedabad (herein after referred to as the said Noticee) was registered with Central Excise having registration no. AACCP7040EXM001 and engaged in the business of manufacturing machinery parts since 2002. After the implementation of GST and consequent to the issue of the Notification No. 12/2017 Central Excise (NT) to 14/2017 Central Excise (NT) all dated 09.06.2017, appointing the officers of various ranks as Central Excise officers reallocating the jurisdiction of the Central Excise Officers and Trade Notice No. 001 /2017 dated 16.06.2017 issued by the Chief Commissioner, Central Excise & Service Tax, Ahmedabad Zone, the said noticee is now registered under the Jurisdiction of the Division-III (Vatva-II), Ahmedabad South Commissionerate, Central Goods and Service Tax, Ahmedabad.

2. An inspection under Form GST INS-1 (Authorization for Inspection), under Section-67 of CGST Act, 2017 was conducted on 23.04.2018 at above said registered premises of M/s Perfect Boring Pvt. Ltd. It was observed that they had filed ER-1 returns till May' 17 and not filed ER-1 for the month of June' 17.

3. During the course of inspection, statement dated 23.04.2018 of Shri Vasant Jayantilal Modi, Managing Director of the said noticee was recorded, wherein he submitted that they were availing and utilizing Cenvat Credit and they used to regularly maintain Cenvat Credit record in MS Excel; that the computer in which it was maintained had become corrupt in October, 2017; that they had all the Invoices in hard copy on the basis of which they had claimed Cenvat Credit and that they could reconstruct the Cenvat Credit register and submit the same to the Department.

4. Since the noticee did not submit the above documents, letters dated 13.07.2018 and 06.08.2019 were issued to the said noticee to submit the details of Cenvat Credit viz. Cenvat register, Cenvatable invoices, payment particulars etc. However, the said details/ documents were still not submitted by the said noticee. Therefore, summons dated 26.06.2020 and 17.02.2021 were issued to the noticee to submit the said documents. However, no compliance was received from them.

5. The said noticee vide e-mail dated 08.11.2019 forwarded (i) copy of Public Announcement dated 07.10.2019 under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for the attention of the creditors of M/s. Perfect Boring Pvt. Ltd. and (ii) copy of Order C. P. No. (IB) 148/9/NCLT/AHM/2019 dated 30.09.2019 of Adjudicating Authority (NCLT), Ahmedabad Bench in the matter of M/s. Devsaria Boring Pvt. Ltd., New Delhi (Operational Creditor) Vs. M/s. Perfect Boring Pvt. Ltd., Ahmedabad (Corporate Debtor) wherein it was inter alia ordered that it is a fit case to initiate Insolvency Resolution Process by admitting the Application under Section 9(5) (1) of the Code. Further, Shri Manish Kumar Bhagat was appointed by the adjudicating authority to act as an Interim Resolution Professional under Section 13(1) (c) of the Insolvency and Bankruptcy Code.

6. A letter dated 20.12.2019 was also issued to the said Interim Resolution Professional to provide the documents/ details of Cenvat Credit viz. Cenvat register, Cenvatable invoices, payment particulars etc. However, till date, the said documents/ details had not been provided by the said Interim Resolution Professional to the department.

7. Whereas from the Central Excise Returns (ER-1) filed by the said noticee, it was observed that they had availed Cenvat Credit of Rs. 1,04,32,442/- for the period from 2016-17 to 2017-18 (up to May, 2017) as shown in the table below:

Financial Year	Cenvat Credit availed (In Rs.)
2016-17	94,19,822
2017-18	10,12,620
TOTAL	1,04,32,442

8. During the course of investigation, the said noticee was requested to submit the duty paying Cenvat Invoices and payment particulars to ascertain the eligibility of Cenvat credit availed. However, the said noticee failed to submit full documents for verification of eligibility of the Cenvat credit. The said noticee failed to submit or show original invoices for the verification of eligibility of Cenvat credit. Whereas, in terms of Rule 9(5) of Cenvat Credit Rules, 2004, the said noticee was required to maintain proper records for the receipt, disposal, consumption and inventory of the input and capital goods and the burden of proof regarding the admissibility of the Cenvat Credit lied upon them. Likewise, Rule 9(6) of the Cenvat Credit Rules, 2004 provides that the noticee was required to maintain proper records for the receipt, disposal, consumption and inventory of the input services and the burden of proof regarding the admissibility of the Cenvat Credit lied upon them. Further, Rule 9 (1) of the Cenvat Credit Rules, 2004 prescribes the documents on the strength of which Cenvat Credit can to be taken and Rule 9(2) *ibid* stipulates that no Cenvat Credit was to be taken if all the requisite particulars were not mentioned in the said duty paying documents. Thus, it is of vital importance for the purpose of taking Cenvat Credit, that the noticee should be in possession of the prescribed duty paying documents and should have maintained the records as prescribed under law. In the instant case, it was observed that the noticee had failed to produce the duty paying documents and the records despite several opportunities having been accorded to them as narrated hereinabove. In such circumstances, it appeared that the noticee were neither in possession of the prescribed duty paying documents nor had maintained the proper records as prescribed under law. Therefore, it appeared that, the Cenvat credit amounting to Rs. 1,04,32,442/- taken and utilized by them was inadmissible and needs to be recovered along with applicable interest under Rule 14 of the Cenvat Credit Rules, 2004 read with proviso to Section 11 A & Section 11 AA of the Central Excise Act along with penalty under Rule 15 of Cenvat Credit Rules, 2004 read with Section 11 AC of the Central Excise Act, 1944 as amended.

9. The relevant portion of Rule 14 of the Cenvat Credit Rules, 2004, as amended is reproduced herein below:

Rule 14. Recovery of CENVAT credit wrongly taken or erroneously refunded.-

Where the CENVAT credit has been taken or utilized wrongly or has been erroneously refunded, the same along with interest shall be recovered from the manufacturer or the provider of the output service and the provisions of sections 11 A and 11 AA of the Excise Act or sections 73 and 75 of the Finance Act, shall apply mutatis mutandis for effecting such recoveries.

10. The relevant portion of Rule 15 of the Cenvat Credit Rules, 2004, as amended is reproduced herein below:

Rule 15. Confiscation and penalty.-

(2) *In a case, where the CENVAT credit in respect of input or capital goods or input services has been taken or utilized wrongly by reason of fraud, collusion or any willful mis-statement or suppression of facts, or contravention of any of the provisions of the Excise Act, or of the rules made thereunder with intent to evade payment of duty, then, the manufacturer shall also be liable to pay penalty in terms of the provisions of Section 11 AC of the Excise Act.*

11. The relevant portion of Section 11 A of the Central Excise Act, 1944 is reproduced herein below:

SECTION 11 A. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded

(4) *Where any duty of excise has not been levied or paid or has been short levied or short-paid or erroneously refunded, by the reason of-*

(a) *fraud; or*

(b) *collusion; or*

(c) *any willful mis-statement; or*

(d) *suppression of facts; or*

(e) *contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty,*

by any person chargeable with the duty, the Central Excise Officer shall, within five years from the relevant date, serve notice on such person requiring him to show cause why he should not pay the amount specified in the notice along with interest payable thereon under section 11 AA and a penalty equivalent to the duty specified in the notice.

12. The relevant portion of Section 11 AA of the Central Excise Act, 1944 is reproduced herein below:

SECTION 11 AA. Interest on delayed payment of duty. -

(1) *Notwithstanding anything contained in any judgment, decree, order or direction of the Appellate Tribunal or any court or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty, shall, in addition to the duty, be liable to pay interest at the rate*

specified in sub-section (2), whether such payment is made voluntarily after determination of the amount of duty under section 11 A.

13. The relevant portion of Section 11 A of the Central, Excise Act, 1944 is reproduced herein below:

SECTION 11 AC. Penalty for short-levy or non-levy of duty in certain cases. -

(1) *The amount of penalty for non-levy or short-levy or non-payment or short payment or erroneous refund shall be as follows: -*

(a) *where any duty of excise has not been levied or paid or has been short levied or short-paid or erroneously refunded, for any reason other than the reason of fraud or collusion or any willful mis-statement or suppression of facts or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, the person who is liable to pay duty as determined under sub-section (10) of section 11A shall also be liable to pay a penalty not exceeding ten per cent of the duty so determined or rupees five thousand, whichever is higher:*

14. Whereas, Section 11 AA of the Central Excise Act, 1944 states, that the person, who was liable to pay duty, shall, in addition to the duty, be liable to pay interest at the rate specified. Further, where the Cenvat Credit had been taken/ utilized wrongly, the same along with interest was recoverable under the provisions of Rule 14 of Cenvat Credit Rules, 2004 read with Section 11 A & Section 11 AA of the Central Excise Act, 1944. Since the said noticee had availed Cenvat Credit wrongly, they were liable to pay the said amount along with interest. Thus, the said Cenvat Credit was required to be recovered from the said noticee along with interest under Section 11 AA of the Central Excise Act, 1944.

15. Whereas, as per rule 12(1) of the Central Excise Rules, 2002 stipulates that every noticee shall submit to the Superintendent of Central Excise a monthly return (ER-1) in the form specified by notification by the Board, of production and removal of goods and other relevant particulars, within ten days after the close of the month to which the return relates provided also that where an noticee was eligible to avail of the exemption under a notification based on the value of clearances in a financial year, he shall file a quarterly return in the form specified, by notification, by the Board, of production and removal of goods and other relevant particulars within ten days after the close of the quarter to which the return relates. In the present case, the noticee had not filed monthly ER-1 return for the period June, 2017 and therefore, had contravened the provisions of Rule 12(1) of Central Excise Rules, 2002. Contravention of Rule 12(1) of Central Excise

Rules, 2002 attracted penalty under Rule 27 of the Central Excise Rules, 2002 at the relevant period of time when contravention took place.

16. The said. noticee was also liable for penal action as per Section 11 AC of the Central Excise Act, 1944 for making willful misstatement and suppression of facts from the department, with an intention to wrongly avail Cenvat Credit. Therefore, the Cenvat Credit of **Rs. 1,04,32,442/-**availed by the said noticee was required to be demanded and recovered along with interest at the applicable rate from them under the proviso to Section 11 A of the Central Excise Act, 1944 read with Rule 14 of Cenvat Credit Rules, 2004 (applicable In respect of recovery of wrongly taken Cenvat Credit) by invoking extended period of five years and penal action as per Section 11 AC of the Central Excise Act, 1944,

17. The government has, from the very beginning, placed full trust on the noticee so far service tax is concerned and accordingly measures like self-assessments etc., based on mutual trust and confidence are in place. Further, a taxable noticee is not required to maintain any statutory or separate records under the provisions of Central Excise Law as considerable amount of trust is placed on the noticee and private records maintained by him for normal business purposes are accepted, practically for all the purpose of Central Excise. All these operate on the basis of honesty of the noticee, therefore, the governing statutory provisions create an absolute liability when any provision is contravened or there is a breach of trust placed on the noticee. From the evidence, it appeared that the said noticee had wrongly availed Cenvat Credit in absence of requisite documents for the period from F.Y. 2016-17 to F.Y. 2017-18 (April May). Therefore, they had disregarded the requirements of law and breach of trust deposed on them. Such outright act of defiance of law appeared to have rendered themselves liable for stringent penal action as per the provisions of Section 11 AC of the Central Excise Act, 1944 read with Rule 15 of the Cenvat Credit Rules, 2004 for wrong availment of Cenvat credit in absence of requisite documents with intent to evade payment of Central Excise Duty. Further, since, the said noticee had willfully suppressed the aforesaid facts with intent to avail Cenvat Credit wrongly and as such it appeared that the extended period specified in the proviso to Section 11 A of the Central Excise Act, 1994 was invocable to demand & recover the amount of Cenvat Credit wrongly availed by them.

18. it appeared that on account of all the above narrated acts of commission and omissions on the part of the said noticee, they had rendered themselves liable for penalty under the following provisions of the Central Excise Act, 1944, Cenvat Credit Rules, as amended:

Rule 15 of the Cenvat Credit Rules, 2004 read with Section 11 AC of the Central Excise Act, 1944, in as much as they have wrongly availed the Cenvat credit inadmissible to them with an intention to evade payment of Central Excise duty.

19. The above provisions had been kept in force in the GST era vide Sections 142 & 174 of the Central Goods and Service Tax Act, 2017. Relevant provisions under 'The Central Goods and Service Tax Act, 2017:

Section 174.

(1)-----:

(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 Act.

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.*

Section 142 (BJ (a) where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes recoverable from the person, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act;

20. Therefore, the noticee was called upon to show cause as to why:

(i) The Cenvat Credit of **Rs. 1,04,32,442/-** (Rupees One Crore Four Lakh Thirty Two Thousand Four Hundred And Forty Two only) wrongly availed by them for the F.Y 2016-17 to F.Y. 2017-18 (upto May-2017) should not be denied and recovered from them under Rule 14 of the CENV AT Credit Rules, 2004 read with proviso to Section 11 A of the Central Excise Act, 1944;

(ii) Interest at the prescribed rate should not be charged and recovered on wrongly availed Cenvat Credit as mentioned in para (i) above under Rule 14 of Cenvat Credit Rules, 2004 read with Section 11 AA of the Central Excise Act, 1944;

(iii) The Penalty under Section 11 AC of the Central Excise Act, 1944 read with Rule 15 of Cenvat Credit Rules, 2004, as amended should not be imposed on them for suppressing the material facts and availing the wrong Cenvat Credit for the period from F.Y 2016-17 to F.Y. 2017-18 (upto May-2017).

(iv) The penalty under Rule 27 of the Central Excise Rules, 2002 should not be imposed on them for the contravention of Rule 12(1) of the Central Excise Rules, 2002 for not filing of ER-1 return for the period June, 2017.

DEFENCE REPLY:

21. The Insolvency Professional, Shri Manish Kumar Bhagat, vide his letter dated 04.05.2021, filed the defence reply in the said matter, wherein he has submitted that resolution plan in case of M/s Perfect Boring Pvt Ltd had been approved by Hon'ble NCLT, Ahmedabad Bench vide its order dated 16.3.2021 in IA 926 of 2020 in C.P.(I.B.) No. 148/NCLT/AHM/2019. Further, he also stated that once the Resolution Plan is approved by adjudicating authority, Resolution Professional ceases to exist and his duties and responsibilities as Resolution Professional finishes. A copy of the Order dtd. 16.03.2021 of the NCLT was also enclosed.

RECORD OF PERSONAL HEARING: -

22. The personal hearing in the same matter was given by my predecessor on dated 17.02.2022 and 01.03.2022. I have given personal hearing on 05.01.2023 but no one appeared for the hearing; they did not attend any personal hearing.

DISCUSSION AND FINDINGS: -

23. I have gone through the facts of the case, defence reply submitted by the noticee and records available on file.

24. I find that the said noticee was engaged in the business of manufacturing machinery parts since 2002. Further I find that they have availed Cenvat Credit of Rs. 1,04,32,442/- for the period from 2016-17 to 2017-18 (up to May, 2017) as shown in the table below:

Financial Year	Cenvat Credit availed (In Rs.)
2016-17	94,19,822
2017-18	10,12,620
TOTAL	1,04,32,442

25. The noticee was inspected on 23.04.2018 by the Department and a statement of the Managing Director was recorded wherein he submitted that they were availing cenvat credit and the records were maintained in the MS Excel in the computer and the computer in which it was maintained had become corrupt in October 2017. He also submitted that they have all the copies of the invoices in hard copies on the basis of which they had claimed Cenvat credit and they would, therefore, reconstruct the cenvat credit register and submit the same to the Department. However, despite letters and summons issued to the noticee they never responded and ultimately it was found that Corporate Insolvency Resolution Process was initiated by a Corporate Debtor. The said petition was admitted by the Adjudicating Authority and an Interim Resolution Professional (IRP) was also appointed. A letter dtd. 20.12.2019 was also issued to the said IRP to provide the copies of the invoices, cenvat register, payment particulars etc. but no was reply was also received from his end. Thus, this culminated in the present SCN.

26. The documents on the basis of which the Cenvat Credit can be availed by a manufacturer or the provider of output service or ISD is mentioned in Rule 9 of the Cenvat Credit Rules, 2004. For ease of reference, the said rule is reproduced below:-

Rule 9. Documents and accounts.-

1) *The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely :-*

(a) an invoice issued by-

(i) a manufacturer for clearance of -

(I) inputs or capital goods from his factory or depot or from the premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer;

(II) inputs or capital goods as such;

(ii) an importer;

- (iii) an importer from his depot or from the premises of the consignment agent of the said importer if the said depot or the premises, as the case may be, is registered in terms of the provisions of Central Excise Rules, 2002;
- (iv) a first stage dealer or a second stage dealer, as the case may be, in terms of the provisions of Central Excise Rules, 2002; or

(b) a supplementary invoice, issued by a manufacturer or importer of inputs or capital goods in terms of the provisions of Central Excise Rules, 2002 from his factory or depot or from the premises of the consignment agent of the said manufacturer or importer or from any other premises from where the goods are sold by, or on behalf of, the said manufacturer or importer, in case additional amount of excise duties or additional duty leviable under section 3 of the Customs Tariff Act, has been paid, except where the additional amount of duty became recoverable from the manufacturer or importer of inputs or capital goods on account of any non-levy or short-levy by reason of fraud, collusion or any wilful misstatement or suppression of facts or contravention of any provisions of the Excise Act, or of the Customs Act, 1962 (52 of 1962) or the rules made there under with intent to evade payment of duty.

Explanation.- For removal of doubts, it is clarified that supplementary invoice shall also include challan or any other similar document evidencing payment of additional amount of additional duty leviable under section 3 of the Customs Tariff Act; or

(c) a bill of entry; or

(d) a certificate issued by an appraiser of customs in respect of goods imported through a Foreign Post Office; or

(e) a challan evidencing payment of service tax by the person liable to pay service tax under sub-clauses (iii), (iv), (v) and (vii) of clause (d) of sub-rule (1) of rule (2) of the Service Tax Rules, 1994; or

(f) an invoice, a bill or challan issued by a provider of input service on or after the 10th day of, September, 2004; or

(g) an invoice, bill or challan issued by an input service distributor under rule 4A of the Service Tax Rules, 1994.

Provided that the credit of additional duty of customs levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975 (51 of 1975) shall not be allowed if the invoice or the supplementary invoice, as the case may be, bears an indication to the effect that no credit of the said additional duty shall be admissible;

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

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

* * * *

(6) 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 and 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.

* * * *

27. Thus, the primary condition for availing Cenvat Credit is that the manufacturer or Service provider should have a copy of the invoice issued by the manufacturer, importer, or the dealer, as the case maybe from whom they have purchased the goods or availed the service. In the instant case, I find that the noticee has failed to provide the copies of the invoices despite the fact that umpteen opportunities were provided to him. It was also found that the noticee was also asked to produce the records but despite the fact that the noticee's promise that he would reconstruct the records from the copies of invoices available with him, he has also not submitted the reconstructed records . This leads to the only conclusion

that the noticee had never maintained any records and neither they had the copies of any invoices on the basis of which they had availed cenvat credit. Thus, the cenvat credit amounting to Rs. 1,04,32,442/- availed by the noticee is liable for recovery under Section 11A of Central Excise Act, 1944 read with Rule 14 of the Cenvat Credit Rules, 2004. As interest is a natural corollary to the demand, the noticee is also liable to pay interest on the said illegally availed credit under Section 11AA of the Central Excise Act, 1944 read with Rule 14 of the Cenvat Credit Rules, 2004.

28. Trust has been placed on the assesseees by the Government and as a result of which measure like self assessment were put in place. They were also not required to maintain any statutory records under the law in view of this mutual trust, and the private records maintained by them for the purpose of normal business purposes were accepted. In the instant case, the noticee in utter disregard of the trust placed on them has not maintained any records and have availed cenvat credit without having any documents prescribed under Rule 9(1) of the CCR, 2004. Thus, there has been an intention on the part of the noticee to wilfully suppress the fact that he did not have any duty paying documents on the basis of which he had availed cenvat credit with an intention to evade payment of duty. Thus, the noticee is also liable for penalty under Section 11AC of the Central Excise Act, 1944 read with Rule 15 of the Cenvat Credit Rules, 2004.

29. Rule 12(1) of the Central Excise Rules, 2002 stipulates that every noticee shall submit to the Superintendent of Central Excise, a monthly return (ER-1) in the form specified by notification by the Board, of production and removal of goods and other relevant particulars, within ten days after the close of the month to which the return relates. It has been found that the noticee has not filed the return for the month of June 2017. Therefore, the noticee is also liable for penalty under Rule 27 of the Central Excise Rules, 2002.

30. As mentioned earlier, the insolvency resolution proceedings were initiated against the noticee and a resolution plan was approved by the NCLT on 16.03.2021. Para no 15 of the NCLT order dated 16.3.2021 in IA No. 926 of 2020 in C.P.(I.B.) No. 148/NCLT/AHM/2019 is as under-

“ It is needless to mention herein that approval of the Resolution Plan does not mean automatic waiver or abetment of legal proceedings, if any, which are pending by or against the Company/Corporate Debtor as those are the subject matter of the concerned Competent Authorities having their proper/own jurisdiction to pass any appropriate order or as the case may be. The Resolution Applicant(s) on approval of the Plan may approach those Competent Authorities/Courts/Legal Forums/Offices- Govt, or Semi Govt./ State or Central Govt, for appropriate relief(s) sought for in the Resolution Plan.”

Thus, as per the above order, the approval of the resolution plan does not mean that the legal proceedings pending against the Corporate debtor (i.e the noticee) has abated. The NCLT has not precluded the Department from continuing the legal proceedings and the Resolution applicant has to approach the competent authorities for appropriate relief

sought for in the Resolution Plan. The Resolution applicant has not approached the Department for any relief.

31. This order is issued by virtue of the Saving clause provided in section 174 of the CGST Act, 2017.

32. In view of the above facts, I pass the following order-

ORDER

1. I confirm the demand of Cenvat Credit of Rs. **Rs. 1,04,32,442/-(Rupees** One Crore Four Lakh Thirty-Two Thousand Four Hundred and Forty-Two only) wrongly availed by them for the F.Y 2016-17 to F.Y. 2017-18 (up to May-2017) under Rule 14 of the CENVAT Credit Rules, 2004 read with proviso to Section 11 A of the Central Excise Act, 1944;
2. I order to recover Interest at the applicable rate on the wrongly availed Cenvat Credit as mentioned in para (1) above, under Rule 14 of CENVAT Credit Rules, 2004 read with Section 11 AA of the Central Excise Act, 1944;
3. I impose penalty of Rs. **1,04,32,442/-(Rupees** One Crore Four Lakh Thirty-Two Thousand Four Hundred and Forty-Two only) under Section 11 AC of the Central Excise Act, 1944 read with Rule 15 of Cenvat Credit Rules, 2004, for suppressing the material facts and availing the wrong Cenvat Credit for the period from F.Y 2016-17 to F.Y. 2017-18 (up to May-2017).
4. I order to impose the penalty of Rs. 5000 /- under Rule 27 of the Central Excise Rules, 2002 should not be imposed on them for the contravention of Rule 12(1) of the Central Excise Rules, 2002 for not filing of ER-1 return for the period June, 2017.



(Shravan Ram)
Joint Commissioner,
Central GST-Ahmedabad South

BY Registered Post A.D./Email

F.No STC/04-56/Perfect/O&A/2020-21

Dated 13.01.2023

To,

(i) M/s. Perfect Boring Pvt. Ltd.
Situating at 3822/A,
Behind Indo German Tool Room,
GIDC Estate, Phase-IV,
Vatva, Ahmedabad.

(ii) Shri Manish Kumar,
Resolution Professional
103-104, Panchdeep Complex
Helmet House Lane,
Mithakali Six Roads, Navrangpura,
Ahmedabad-380009.

Copy to:

- 1) The Principal Commissioner, CGST, Ahmedabad South.
- 2) The Assistant Commissioner, CGST, Div-III, Ahmedabad South.
- 3) The Superintendent, CGST, AR-I, Division-III, Ahmedabad-South.
- 4) The Assistant Commissioner, CGST, TAR Section, HQ, Ahmedabad Sout
- ✓ 5) The Superintendent, CGST, System HQ, Ahmedabad South for uploading on the website.
- 6) Guard File