CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 03

SERVICE TAX Appeal No. 11409 of 2014- SM

[Arising Out Of Order-In-Original/Appeal No VAP-EXCUS-000-APP-544-13-14 Dated 25.02.2014 Passed By Commissioner Of Central Excise, Customs And Service Tax-VAPI]

J R Fibreglass Industries **...Appellant**
Plot No. 809,
Gidc, Sarigam,
Valsad,
Gujarat

VERSUS

C.C.E. & S.T.-Vapi **...Respondent**
4th Floor...Adharsh Dham Building,
Opp. Town Police Station, Vapi-Daman Road, Vapi
Vapi
Gujarat-396191

APPEARANCE:

Shri Ambar Kumrawat, Advocate for the Appellant
Shri. Anand Kumar, Superintendent (Authorized Representative) for the Respondent

CORAM: HON'BLE MEMBER (TECHNICAL), MR. RAJU

FINAL ORDER NO.A / 12375 /2023

DATE OF HEARING: 26.10.2023
DATE OF DECISION: 26.10.2023

RAJU

This appeal has been filed by M/s. J R Fiber Glass industries against denial of CENVAT Credit.

2. Learned Counsel for the appellant pointed out that they are registered as manufacturer as well as service provider. They manufacture machines and also install the same. For the purpose of installation these machines the appellant avail services of sub-contractor. The credit in respect of services

availed from sub-contractor has been denied to them. He pointed out that they have given the entire correlation between the output services provided by them, the duty payable on out put service as well as the input service availed by them in a detailed manner however the same has been ignored by the lower authority.

3. Learned AR relied on the impugned order.

4. I have gone through the rival submissions. I find that before Commissioner (Appeals), the appellants have given entire co-relation of out put service with the input services availed by them is reproduced below:

JR FIBREGLASS INDUSTRIES PVT. LTD.
TABULATED STATEMENT

Sr. No.	Party's Name, P.O. No. & Date, Equipment Description,	Our Service Taxable Erection & Commissioning Assignment	Our Inv. value on the Buyer & Service Tax/cess thereof			Service Tax/cess paid & billed by the Sub Contractor on us (Credit availed)			
			Our Invoice No. Dt.	Net Value Rs.	Service Tax/Cess paid Rs.	Bill No & Date	Value Rs.	Service Tax/cess (availed by us) Rs.	Sub-contractor's Service Taxable Assignment
1	Party's Name- Steel Authority of India Ltd	Assignment -	L00009 DT 17.12.07	221155.00	27335.00	AE/JRF/542/2007 DT 06.08.07	72000.00	8899.00	
	Bokaro Jharkhand	Design & Engineering Civil	L00010 DT 17.12.07	313044.00	38692.00	AE/JRF/556/2007 DT 04.10.07	88000.00	10877.00	Design/detailed Engineering - Basic
	P.O. No. TC/M/AGT-945 dt. 24.08.07	Engineering Work, Training	L00011 DT 17.12.07	150000.00	18540.00	AE/JRF/563/2007 DT 13.11.07	96000.00	11866.00	laying out of Shed, Column
		Charges	W00001 DT 17.12.07	168300.00	20802.00	AE/JRF/581/2008 DT 14.01.08	80000.00	9888.00	Foundation, Foundation design for
	Equipment Description:-		W00002 DT 19.02.08	739200.00	91366.00	AE/JRF/601/2008-09 DT 03.04.08	31100.00	3844.00	pump, scrubber, Drawing layout for
	Fume Exhaust System	Value- 11,00,000/-	W00003 DT 25.02.08	368500.00	45547.00	SPE/PKD/08/11 DT 28.01.08	1343410.00	166045.00	lighting, cabling & Drawing for
			L00012 DT 05.03.08	28846.00	3565.00	BKR/PD/2007-410 DT 01.12.07	65000.00	8034.00	Earthing
		Service Tax-1,35,960/-	L00013 DT 05.03.08	136955.00	16928.00	SPE/PKD/08/27 DT 25.02.08	407376.00	50352.00	
			L00001 DT 06.06.08	200000.00	24720.00	BKR/PD/2007-411 DT 01.12.07	125000.00	15450.00	
		Work Contract Value-	L00002 dt 13.08.08	50000.00	6180.00				
		20,74,400/-	W00004 DT 05.03.08	49500.00	6118.00				
			W00005 DT 05.03.08	134000.00	16563.00				
		Service Tax - 2,56,397/-	W00006 DT 05.03.08	167500.00	20703.00				
			W00007 DT 10.03.08	49500.00	6118.00				
			W00008 DT 29.03.08	16500.00	2039.00				
			W00001 DT 05.04.08	33000.00	4079.00				
			W00002 DT 05.04.08	33500.00	4141.00				
			W00003 DT 05.04.08	33500.00	4141.00				
			W00004 DT 05.04.08	67000.00	8281.00				
			W00005 DT 09.04.08	46900.00	5797.00				
			W00006 DT 15.04.08	33500.00	4141.00				
			W00007 DT 13.08.08	67000.00	8281.00				
			W00009 DT 17.11.08	67000.00	8281.00				
			Total	3174400.00	392357.00	Total	2307886.00	285255.00	
2	Party's Name - Tata BP Solar India Ltd	Assignment-	L00007 dt 06.11.08	400692.00	49526.00	AE/JRF/619/2008-09 DT 16.05.08	275000.00	33990.00	Design/detailed Engineering - P & I
	Banglore	installation, Commissioning	L00008 dt 06.11.08	1170036.00	144617.00	AE/JRF/620/2008-09 DT 07.06.08	141500.00	17489.00	Diagram, SLD, Foundation Drawing
	P.O. No. 109978 dt. 21.04.08	Testing of Nox, Acid	L00009 dt 06.11.08	432639.00	53474.00	AE/JRF/631/2008-09 DT 03.07.08	110000.00	13596.00	Preliminary Ducting for SS & GA Duct
		Ammonia scrubbing System	L00010 dt 06.11.08	616716.00	76226.00	AE/JRF/638/2008-09 DT 07.08.08	35000.00	4326.00	instrument.
	Equipment Description:-	Solvent System, General	L00012 dt 04.12.08	676213.00	69650.00				
	Scrubbing & Exhaust System	Exhaust & Blower Damper							
		Value-32,96,298/-							
		service Tax- 3,93,493/-	Total	3296298.00	393493.00	Total	561500.00	69401.00	

Party's Name, P.O. No. & Date, Equipment Description,	Our Service Taxable Erection & Commissioning Assignment	Our Inv. value on the Buyer & Service Tax/cess thereof			Service Tax/cess paid & billed by the Sub Contractor on us (Credit availed)			
		Our Invoice No. Dt.	Net Value Rs.	Service Tax/Cess paid Rs.	Bill No & Date	Value Rs.	Service Tax/cess (availed by us) Rs.	Sub-contractor's Service Taxable Assignment
Party's Name - Directorate of Purchase & Stores - Tuticorine Tamilnadu P.O. No. HRPU/NFC(68)/PT/TPT/CAP/00 8053/XXXVII/2025 DT. 17.04.07 Equipment Description:- ScrubberSystem, Stack, Blower & Ducting system	Assignment - Unloading, Erection & Commissioning Value- 12,66,038/- Service Tax - 1,30,402/-	L00006 dt 12.08.09 L00007 dt 12.08.09 L00001 dt 05.04.10	542388.00 37500.00 686150.00	55866.00 3863.00 70673.00	AE/JRF/603/2008-09 DT. 03.04.08	125000.00	15450.00	Detailed electrical & instrumentation engineering services, Load list, SLD, GA Drawing, Instrument schedule.
		Total	1266038.00	130402.00	Total	125000.00	15450.00	
4 Party's Name - Directorate of Purchase & Stores - Mumbai P.O. No. DPS/10/ENG/27643-TPT/PO/ 39873 DT. 27.07.07 Equipment Description - Mixer Settler System including Agitator, Support Structure, & Interconnecting Pipe Fitting	Assignment - Erection & Commissioning Value - 12,45,000/- Service Tax - 1,28,235/-	L00014 dt. 31.03.09	1245000.00	128235.00	AE/JRF/571/2007 DT. 30.11.07 AE/JRF/602/2008-09 DT. 03.04.08 AE/JRF/621/2008-09 DT. 02.06.08	32500.00 32500.00 6000.00	4017.00 4017.00 742.00	Designing & Civil Engineering - Basic Design Structure (HWB Tank), Inspection
		Total	1245000.00	128235.00	Total	71000.00	8776.00	
5 Party's Name - The Tinplate Co. of India Ltd Jamshedpur P.O. No. 600527 dt. 20.09.2005 Equipment Description - Fume Extraction System	Assignment - Designing the layout civil Engineering & Erection & commissioning of your Fume Extraction System Value - 1,00,000/- Service Tax - 12,240/-	L00009 dt. 10.11.06	100000.00	12240.00	AE/HL/361/2005 DT. 28.11.05	15000.00	1530.00	Civil Design for Blowers, Pumps, Scrubber foundation, Chimney foundation
		Total	100000.00	12240.00	Total	15000.00	1530.00	

Sr. No.	Party's Name, P.O. No. & Date, Equipment Description,	Our Service Taxable Erection & Commissioning Assignment	Our Inv. value on the Buyer & Service Tax/cess thereof			Service Tax/cess paid & billed by the Sub Contractor on us (Credit availed)			
			Our Invoice No. Dt.	Net Value Rs.	Service Tax/Cess paid Rs.	Bill No & Date	Value Rs.	Service Tax/cess (availed by us) Rs.	Sub-contractor's Service Taxable Assignment
6	Party's Name - Shree Precoated Steels Ltd Pune P.O. No. P0103128 dt. 15.04.06 Equipment Description - Scrubber Stack	Assignment - Removal of existing Burnt Stack with necessary steel Work & Installation of your New Stack Value - 4,00,000/- service Tax - 48,960/-	L00008 dt. 19.08.06	400000.00	48960.00	06 DT. 26.06.06	200000.00	24480.00	Dismantling of existing plant, rearrangement and layout of new outfit.
			Total	400000.00	48960.00	Total	200000.00	24480.00	
7	Party's Name - Gujarat Alkalies Ltd Vadodara - Gujrat P.O. No. GACL/CPP/PAC/6346/0508/LOI/ M010B DT. 28.06.2005 Equipment Description - Scrubber Package	Assignment - Erection & Commissioning of Scrubber Package Value - 48,500/- Service Tax - 5,936/-	L00013 dt. 02.12.06 (Part) L00013A dt. 02.12.06 (Balance)	28433.00 20067.00	3480.00 2456.00	AF/2006-2007/158 DT. 22.06.06	48500.00	5936.00	Unloading material received, laying out and Erection & Commissioning
			Total	48500.00	5936.00	Total	48500.00	5936.00	
8	Party's Name - Bharat Heavy Electricals Ltd Tiruchirapalli - Tamilnadu P.O. No. 9121277 dt. 24.10.02 Equipment Description - Scrubbing System	Assignment - Testing & Commissioning of Scrubbing System Value- 1,85,000/- Service Tax - 22,644/-	L00005 dt. 13.07.06	185000.00	22644.00	C-1265/101/057 DT. 06.07.06	100000.00	12240.00	Monitoring & analysis of HCl fumes in Scrubber, Inlet & outlet.
			Total	185000.00	22644.00	Total	100000.00	12240.00	
		GRAND TOTAL		9715236.00	1134267.00	GRAND TOTAL	3428886.00	423068.00	

Date : - 10.05.12

For JR Fibreglass Industries Pvt Ltd

Authorised Signatory

- The aforesaid co-relation submitted before the Commissioner (Appeals) and Commissioner (Appeals) as observed as follows:

> *"6. I find no dispute that the appellant are manufacturer of excisable goods as well as output service provider of "Erection, commissioning and installation service" and the said service is being provided by them at their customer's sites with the help of sub-contractors engaged for the purpose. The appellant has contended that they are output service provider and they had availed the credit of service tax paid by their sub-contractors who helped them in executing the work of erection, commissioning and installation of equipment's and thus, they have correctly availed the cenvat credit of service tax paid by their sub-contractors as these are Input Service providers for them. In this regard, I have gone through the documentary evidence provided by the appellant and find that the "Installation and commissioning service" was provided at the site of the buyers of the Customized Capital equipments such as pollution Control Equipments, Scrubber Systems etc manufactured and sold by the Appellants with the help of sub- contractors. This being the case, by no stretch of imagination, the Appellant can be considered as receiver of these services. When the Appellant had not received any service, they are not entitled to cenvat credit of service tax paid on such service. From the definition of "input service" as contained in rule 2(1), it is clear that the input service is to be used by the provider of taxable service for providing an "output service" or used by a manufacturer whether directly or indirectly in or in relation to the manufacture of final products and clearance of the final products from the place of removal. <u>In the present case, the services of erection, installation and commissioning were arranged by the appellant through other service providers at various sites of their clients on their behalf. I find that in</u> respect of contract No. TC/M/AGT-945 dated 24.08.2007 of M/s SAIL, (Bokaro Steel Plant) for the project" Replacement of HCI Fume Exhaust System of Pickling Line No.2" (involving credit of Rs.2,85,255/- out total wrongly availed credit of Rs.4,23,078/-, the appellant had provided the service vide Invoice No. L00009 dated 17.12.2007 to M/S SAIL. But, I find from the documents submitted by <u>the appellant that the work relating to design, Civil work and support job has been carried out by the other Service provider viz. M/s Ameya Engineers, Thane on behalf of the appellant on 06.08.2007 against the purchase order No. 0214 dated 06.06.2007 of the appellant as is evident from the Letter/Bill Ref. AE/JRF/542/2007 dated 06.08.2007 of the said service provider. Thus, the said service has been provided by the other service provider to the appellant much before the contract of the appellant with the client</u>. Further, the appellant has also not submitted the*

> *copies of all the invoices/bills in this regard. It is observed that the appellant has not submitted any such evidence to substantiate their claim except few sample copies of invoices/bills, which are not sufficient to come to the final conclusion for the entire credit of Rs.2,85,255/- in respect of SAIL. Further, regarding the credit availed in respect of services provided to Directorate of purchase and stores, Department of Atomic Energy (P.O. No. NFC (68)/PT/TPT/CAP/ 008053/XXXVII/ 2025 dated 17.04.2007), on perusal of the appellant's purchase Order 1131 dated 25.01.2008 and the other service providers Letter Ref. No. AE/JRF/603/2008-09 dated 03.04.2008 (on the basis of which the credit has been availed), <u>I do not find any mention of the said service receiver either in the appellant's PO or the bill/letter of the said other service provider</u>. Under the circumstances, I conclude that the Appellant are not eligible to take credit of Service tax paid by the service providers, as they have failed to conclusively show that they received the said service relating to the service provided by them to their clients so as to enable them to avail the credit. It is difficult to accept the contention of the appellant that the said service provided by the other service providers is an input service for them. In the facts of the case, the ultimate customer is the receiver of the said service and thereby the said service would be 'input service' for them [customer] and not for the appellant as they have not received any such service. The CBEC Circular dated 23.08.2007 relied upon by the appellant deals with liability of payment of service tax by the sub-contractor who undertakes only part of the whole work and does not deal with credit of tax paid by such sub-contractor."*

5. I find that the Commissioner (Appeals) has given no logical justification for denying the CENVAT Credit. One of the reason given by the Commissioner (Appeals) is that the work of installation has been carried out by somebody else on behalf of the appellant. It is not understood as to how this can be a reason for denying the CENVAT Credit. Obviously when the work is sub contracted a different person will carry out the work. Another reason given is that he does not find any name of the sub-contractor in the purchase order. It is not mandatory for the appellant to provide the name of the sub-contractor in the purchase order. In this background, we do not find any justification and denial of CENVAT Credit. The appellant has given details of co-relation of the

input services and the out put services and the reasons given by the Commissioner (Appeals) for denying the credit are without any merit.

6. In this back ground, the impugned order is set aside. The appeal is allowed.

(Dictated & Pronounced in the open Court)

(RAJU)
MEMBER (TECHNICAL)

PALAK