IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
REGIONAL BENCH – COURT NO.2

Excise Appeal Nos. 78964-78967 of 2018

(Arising out of Order-in-Appeal No. 308-311/JSR/2018 dated 24.07.2018 passed by Commissioner of CGST & Central Excise, Kolkata.)

M/s Akshay Steel Works Pvt. Ltd.,
(B-37/38, 2nd Phasae, Industrial Area, Adityapur,
Jamshedpur, Jharkhand-832109)
Shri Debjit Hazra, Manager,
Sri Rajender Sachdev, Director
Sri Sudhir Khanna, Manager,

..Appellant

VERSUS

Commissioner of CGST & Central Excise, Jamshedpur
(Outer Circle Road, Bistupur, Jamshedpur-831001)

.. ...**Respondent**

APPERANCE :
Shri K. Kurmi, Advocate for the Appellant
Shri D. Sue, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR MEMBER (JUDICIAL)

FINAL ORDER No…77130-77133/2025

DATE OF HEARING : 24.07.2025

DATE OF PRONOUNCEMEN : 01.08.2025

PER R. Muralidhar :

The appellants are manufacturers of steel items like M S Channels, Angles falling under CET 73. They have entered into an Agreement on 10-03-2010 and appointed Suryamukhi Projects Pvt. Ltd., ("SPPL") as their agent for "sales promotion services" etc. SPPL is registered under the Service Tax vide Registration No. AAMCS5392JSD001 and had been collecting and depositing service tax with the Revenue Dept. The Appellant sold 6405.864 MT of their finished goods of the value of Rs.20.15 Crore during April, 2010 to February, 2011 through SPPL. For providing their aforesaid services, SPPL raised two bills of Rs.2,48,06,470/- [Invoice No. SPPL/2010-11/112 Dated 02-03-2011 and of Rs.51,95,130/- [Invoice No.

SPPL/2010-11/113 Dated 06-03-2011 on the Appellant, charging them Service Tax of Rs.28,01,600/-. Upon receipt of the said taxable services and after payment for the same through banking channel, the Appellant Company took CENVAT Credit of Rs.28,01,600/- on 30-03-2011 (March, 2011) and accounted for the same in their statutory records, books of accounts and disclosed in ER-1 Return of March, 2011. During the course of EA-2000 Audit conducted by the internal audit wing of the department on dated 10-10-2011, they raised the issue that the Appellant Company has claimed CENVAT credit of Rs.28,01,600/- purportedly without receiving the any services from SPPL. The appellant produced the evidence towards the service rendered by SPPL, payments made to them by way of Banking channels. After carrying out the investigation, recording of Statements of various persons etc., a Show Cause Notice was issued on 12.07.2015, by invoking the extended period provisions, demanding reversal of Rs.28,01,600 along with interest and also proposing to impose penalty. After due process the Adjudicating authority confirmed the demand. Penalties were imposed on other co-noticees. The appeals filed by the appellants were dismissed by the Commissioner (Appeals). Therefore, being aggrieved, the appellants are before the Tribunal.

2. The Ld Counsel appearing on behalf of the appellant makes the following submissions:

2.1 When this matter was heard on 12th May 2023, an Order was passed, wherein the appellant was directed to bring in the evidence towards the remittance of the Service Tax by the service provider [SPPL] by way of the ST 3 Return filed by the service provider. The Ld Counsel fairly concedes that the issue pertains to the year March 2011, towards the services rendered during the financial year 2010-11 and the appellant has not been having any business relationship with the Service Provider for the last more than 12 years. Therefore, the appellant is not in a position to get hold the ST 3 Return from the service provider.

2.1 He submits, this alone should not be the basis for denial the cenvat credit by the appellant. He submits that in the SCN / OIO, no stand was taken by the Revenue that the Service Provider has not remitted the Service Tax collected from the appellant. It is also not disputed that the Service Provider was duly registered with proper Service Tax Registration Number. No dispute has been raised that the Invoices raised by them are not proper documents in terms of Rule 9 of the CCR 2004. When these facts are considered together, non-providing of the ST 3 belonging to the service provider cannot be the deciding factor in this case.

2.2 He also submits the copy of the Ledger showing the payment details thorough banking channels for the Two Invoices to the Service provider by 31.03.2011 itself.

2.3 He submits that in the course of investigation, statements U/s 14 recorded from Sri Rajender Sachdev, Director of Appellant on dated 16-06-2014, 23-06-2014 and 05-11-2014, Sri Debjit Hazra, Manager on dated 26-11-2014, Sri Subhasish Mandal, Accounts Clerk on dated 22-01-2015 and Sri Sudhir Khanna, Manager (Accounts) on dated 22-10-2014. None of these persons have admitted to the allegation of paper transaction with the service provider. They were not subjected to the procedure prescribed under Section 9D of the CEA 1944.

2.4 Statements were recorded from five buyers (Page 146, 147, 148, 149 and 151) out of total 98 buyers. Letter were taken from 4 buyers without recording any statement under Section 14 of the Central Excise Act, 1944 (Page 235, 236, 237 and 238). This is neither a proper sufficient sample to conclude that the service provided was only on paper, nor the letters can have any evidentiary value, since they are not recorded under Section 14 of CEA 1944.

2.5 In the course of said investigation, the Statement of one Sri Ranjit Gupta, Director of SPPL was recorded on 18-09-2014 and he purportedly stated that SPPL is not engaged in provision of any service but provided only book entries. This statement does not satisfy the conditions imposed under Section 9D of the CEA 1944, since he has not reiterated the same before the Adjudicating authority. The Appellant demanded testing of the statement of witness as per Section 9D which was not allowed, hence the said statement have become irrelevant piece of material on held by thus Hon'ble Tribunal in the case of ***Prinik Steels Pvt. Ltd. Vs. CCE*** reported in ***2023 (12) TMI 299-CESTAT Kolkata***.Therefore, even this statement has no evidentiary value.

2.6 The Ld Counsel relied on the case law of ***CCE Vs. Wilson Engineering Industries Pvt. Ltd.*** reported in ***(2013) 288 ELT 436 (Tri.Kol)*** (Para 5 and Para 6) this Bench of the Hon'ble Tribunal has held that CENVAT Credit cannot be denied, on the ground that the supplier has not paid duty (Para 5 and 6). Similar views have been expressed by the Hon'ble Delhi High Court in the case of ***On Quest Merchandising India P. Ltd. Vs. Govt. of NCT of Delhi*** reported in ***2018 (10) G.S.T.L. 182 (Del.)*** (Para 54) and upheld by Supreme Court in ***Commissioner of Trade & Taxes Vs. Arise India Ltd.*** reported in ***2022 (60) G.S.T.L. 215 (S.C.)***.

2.7 In the instant case it is also not the case of the department that the Appellant has not taken reasonable steps as prescribed under Rule 9(3) of the CENVAT Credit Rules, 2004.

2.8 Demand in the instant case is barred by normal period of limitation. The dispute in the instant case relates to 30-03-2011 whereas the instant Show Cause Notice is issued on dated 12-07-2015 i.e. much after the expiry of the normal period of limitation (after 4 years).

2.9 The claim of credit is disclosed in the ER-1 filed with the department; hence, there is no suppression of facts. The claim of impugned CENVAT Credit came to light from EA-2000 of books of accounts. It is submitted that when the transactions are disclosed in the books of accounts, there cannot be any suppression of fact. The Appellant relies on following decision:

> ***Vandana Global Ltd. Vs. CCE, reported in [2022 (12) TMI 450-CESTAT New Delhi.***

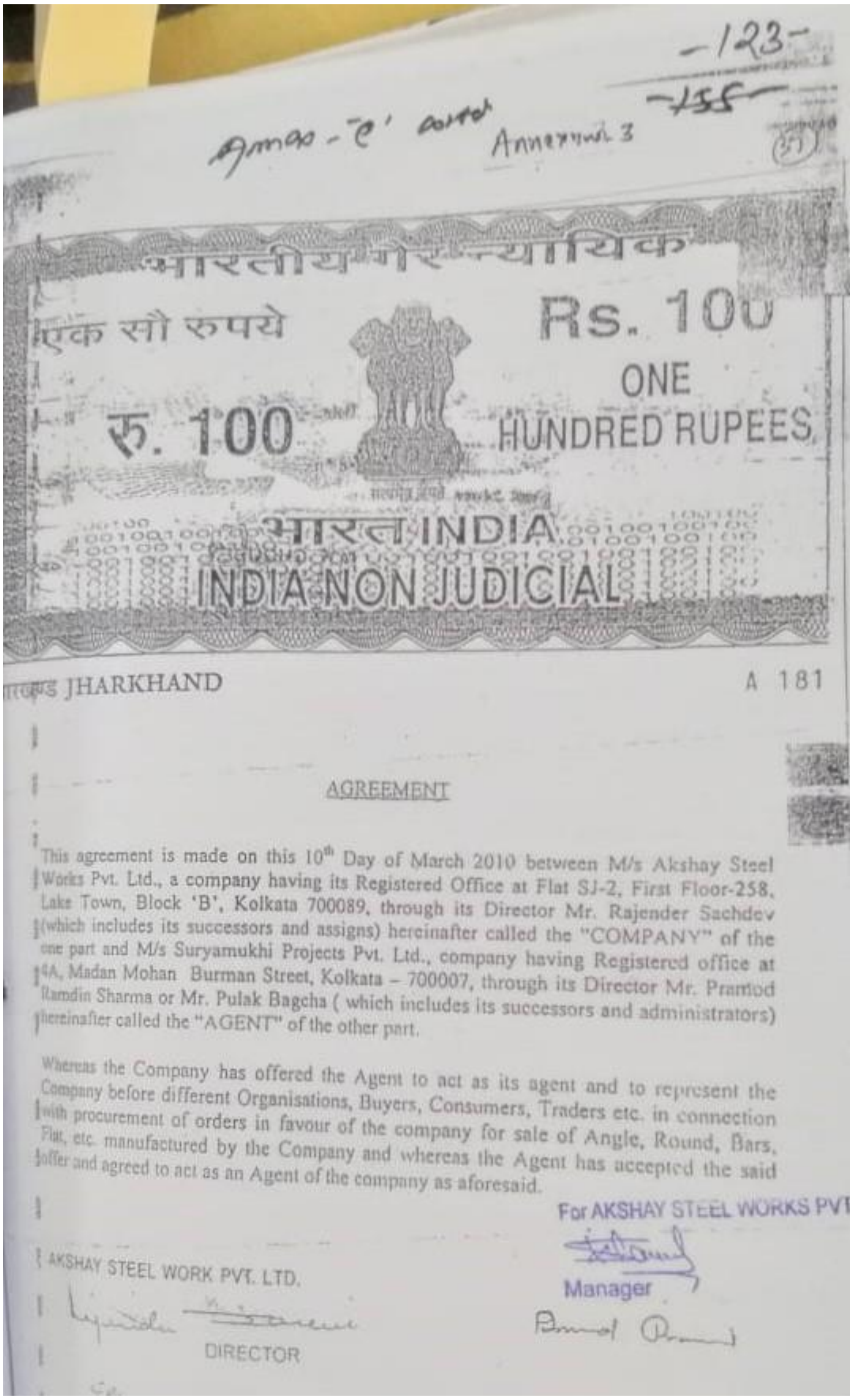
3. In respect of the other appellants, the Learned Counsel submits that as the main allegation itself is not sustainable the penalties on them are also not proper. They are employees and Director. Against whom no case has been made out for availing the CENVAT Credit.

4. In view of the above submissions, it is prayed that the appeal may be allowed both on merits as well as on account of time-bar.

5. The Ld A R relies on the detailed findings of the lower authorities. He submits that the service provider has not rendered any service, as has been admitted by the Director of the SPPL in his recorded statement. Therefore, once the service was not provided, it is not an input service in terms of Rule 2(l) of the CCR 2004. It gets clarified that the service provider has merely provided the Invoices, which cannot be the document for taking the Cenvat Credit. He prays that the appeals may be dismissed.

6. Heard both the sides. Perused the appeal papers and submissions made.

7. I find that the appellant has entered into an Agreement with SPPL. The relevant portion is extracted below :



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-155-

Annexure 3

भारतीय गैर न्यायिक

एक सौ रुपये

Rs. 100

ONE HUNDRED RUPEES

रु. 100

भारत INDIA

INDIA NON JUDICIAL

झारखण्ड JHARKHAND

A 181

AGREEMENT

This agreement is made on this 10th Day of March 2010 between M/s Akshay Steel Works Pvt. Ltd., a company having its Registered Office at Flat SJ-2, First Floor-258, Lake Town, Block 'B', Kolkata 700089, through its Director Mr. Rajender Sachdev (which includes its successors and assigns) hereinafter called the "COMPANY" of the one part and M/s Suryamukhi Projects Pvt. Ltd., company having Registered office at 4A, Madan Mohan Burman Street, Kolkata – 700007, through its Director Mr. Pramod Ramdin Sharma or Mr. Pulak Bagcha (which includes its successors and administrators) hereinafter called the "AGENT" of the other part.

Whereas the Company has offered the Agent to act as its agent and to represent the Company before different Organisations, Buyers, Consumers, Traders etc. in connection with procurement of orders in favour of the company for sale of Angle, Round, Bars, Flat, etc. manufactured by the Company and whereas the Agent has accepted the said offer and agreed to act as an Agent of the company as aforesaid.

For AKSHAY STEEL WORKS PVT

Manager

AKSHAY STEEL WORK PVT. LTD.

DIRECTOR

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Annex-'C', cont.

3

(57)
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5) That the Agent will not represent any other manufacturer producing similar products.

6) That the Agent will be liable for timely receipt of payment from customers for the supply of materials as agreed between the Company and the Agent from time to time.

7) That the Agent will follow up and collect Sales Tax Declaration Forms as applicable.

8) Liability to pay statutory levies, if applicable, will be the sole responsibility of the Agent. Agent will indemnify the company in case of any violation of applicable Laws, Rules and Regulations.

9) That the Company will pay 13.5% commission on sale of Company's product viz. Angle, Round, Bars, Flat, etc. on the gross value of the orders procured by Agent. The commission may be increased/ decreased as per the market condition after mutual agreement. However the commission amount is subject to achievement of the targeted sales of not less than Rs.20 Crores as assured for the financial year 2010-2011. The commission shall be payable in the last quarter of the Financial year on achievement of the targeted sales only.

10) That this agreement will be valid from 1st April 2010 to 31st March 2011 and can be renewed by mutual consent. During this period either party may terminate this arrangement by giving notice of minimum one calendar month to the other party in writing without assigning any reason. No compensation will be payable in such an event.

Irrespective of the expiry of the period of engagement and / or termination of this agreement, the mutual rights and obligation envisaged herein in respect of any tender/ contract pending on the date of expiry or termination as the case may be, will continue to remain operative until such pending tender/ contract is finally executed and payment in full there under is received.

11) In the event of breach of any of the terms and conditions contained in this agreement or such other terms and conditions as may be specified by the Company, in future, the Company will have the option to terminate this arrangement without assigning any reason or notice, in such event, the agent shall not be entitled to receive any payment towards commission or otherwise in respect of the tender/contract pending on the date of termination.

AKSHAY STEEL WORK PVT. LTD.

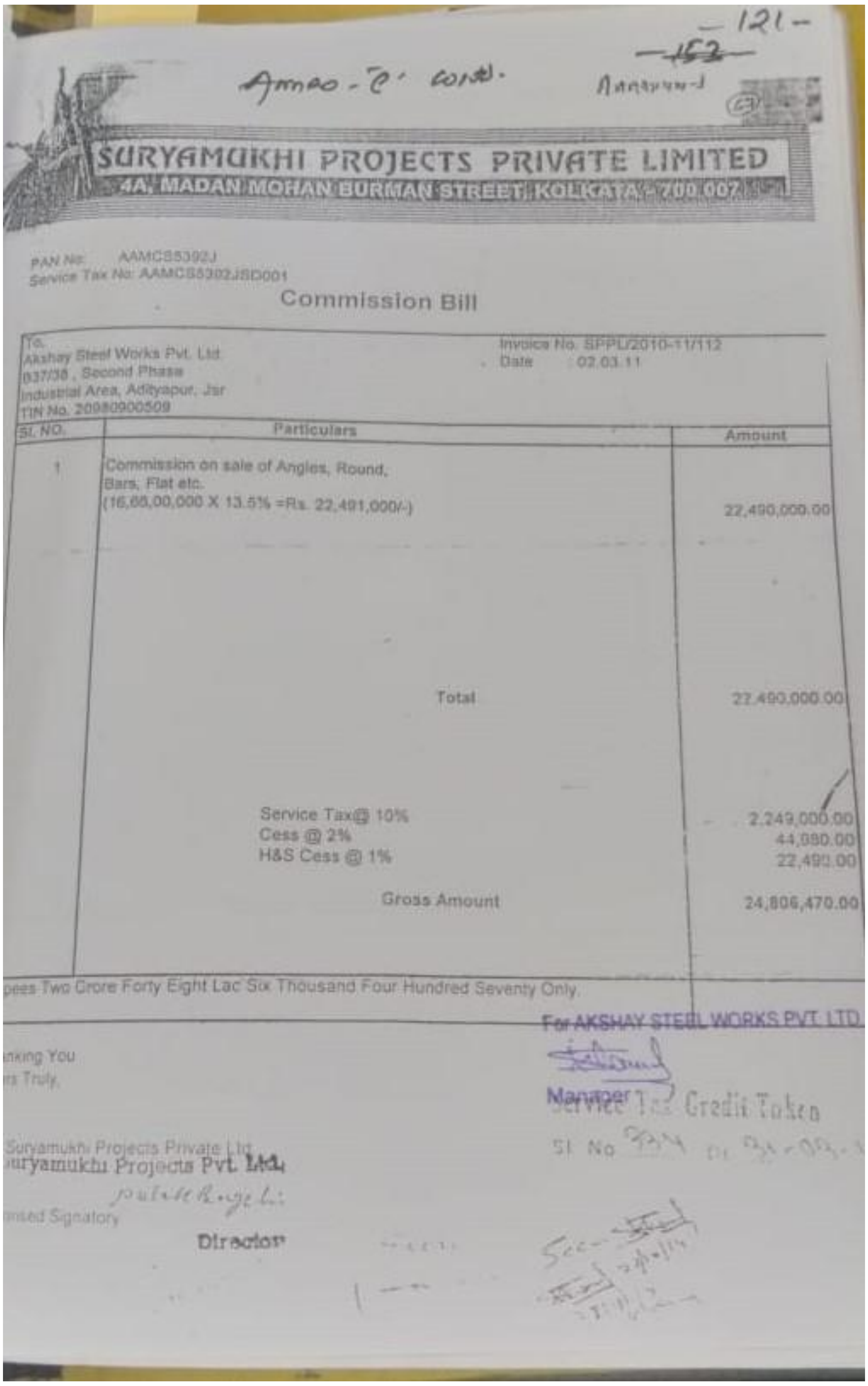
DIRECTOR

For AKSHAY STEEL WORKS PV

Manager

Brand Promo

8. The service provider has raised two Invoices, which are reproduced below:



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~~152~~

Annex-'C' contd.

Annexure-J

SURYAMUKHI PROJECTS PRIVATE LIMITED
4A, MADAN MOHAN BURMAN STREET, KOLKATA - 700 007

PAN No: AAMCS5392J
Service Tax No: AAMCS5392JSD001

Commission Bill

To,
Akshay Steel Works Pvt. Ltd.
837/38, Second Phase
Industrial Area, Adityapur, Jsr
TIN No. 20080900509

Invoice No. SPPL/2010-11/112
Date : 02.03.11

Sl. NO.	Particulars	Amount
1	Commission on sale of Angles, Round, Bars, Flat etc. (16,66,00,000 X 13.5% =Rs. 22,491,000/-)	22,490,000.00
	Total	22,490,000.00
	Service Tax@ 10%	2,249,000.00
	Cess @ 2%	44,980.00
	H&S Cess @ 1%	22,490.00
	Gross Amount	24,806,470.00

...pees Two Crore Forty Eight Lac Six Thousand Four Hundred Seventy Only.

...nking You
...rs Truly,

Suryamukhi Projects Private Ltd.
Suryamukhi Projects Pvt. Ltd.
...ised Signatory
Director

For AKSHAY STEEL WORKS PVT. LTD.
Manager

Service Tax Credit Taken
Sl. No ...

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(63) -154
Annex - 'C' contd. Annexure-2

SURYAMUKHI PROJECTS PRIVATE LIMITED
4A, MADAN MOHAN BURMAN STREET, KOLKATA - 700 007

AAMCS5392J
Tax No: AAMCS5392JSD001

Commission Bill

Invoice No. SPPL/2010-11/113
Date : 06.03.2011

Steel Works Pvt. Ltd.
Second Phase
Area, Adityapur, Jsr
20580900509

Particulars	Amount
Commission on sale of Angles, Round, Bars, Flat etc. (3,49,00000 X 13.5%=Rs.47,11,500/-)	47,10,000.00
Total	47,10,000.00
Service Tax@ 10%	471,000.00
Cess @ 2%	9,420.00
H&S Cess @ 1%	4,710.00
Gross Amount	51,95,130.00

...fty One Lac Ninety Five Thousand One Hundred Thirty Only.

For AKSHAY STEEL WORKS PVT. LTD.
Manager

Service Tax Credit Token
Sl. No 336 Dt. 31-03-11

...mukhiProjects Private Ltd
...ukhi Projects Pvt. Ltd.
Pulak Bangalia
...Signatory
Director

Seen

9. From the above Invoices, it is seen that the service provider has given the details of their Service Tax Registration Number, details of the service rendered, value of the service and the Service Tax charged by them. This meets the requirement of the document eligible for taking cenvat credit in terms of Rule 9 of the CCR 2004.

10. The appellant has also submitted the copy of the Ledger entry, which is reproduced below :

AKSHAY STEEL WORKS PVT. LTD.
B 37-38 2nd Phase Industrial Area,
Adityapur Jamshedpur.

SURYAMUKHI PROJECTS PRIVATE LIMITED
Ledger Account
44, MADAN MOHAN BURMAN STREET, KOLKATA - 700007

1-Apr-10 to 31-Mar-11

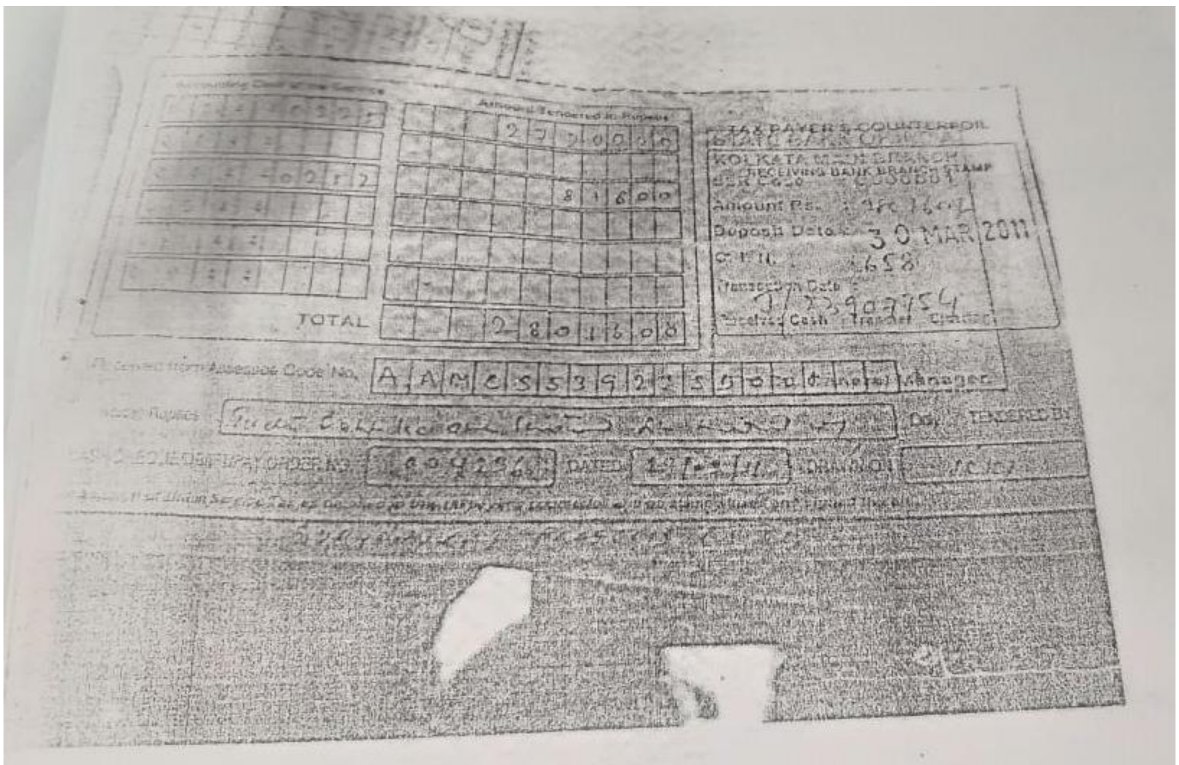
Date	Particulars	Vch Type		Debit	Credit
23-Feb-11 Cr	Union Bank of India	Payment		2000000.00	
04-Mar-11 Cr	Union Bank of India	Payment		4500000.00	
06-Mar-11 Dr	(as per details)	Journal			24806470.00
	Commision		22490000 Dr		
	Service Tax		2249000 Dr		
	Cess		44980 Dr		
	H S Cess		22490 Dr		
07-Mar-11 Cr	IDBI Bank	Payment		1500000.00	
07-Mar-11 Cr	Union Bank of India	Payment		1000000.00	
09-Mar-11 Cr	Union Bank of India	Payment		3400000.00	
10-Mar-11 Dr	(as per details)	Journal			5195130.00
	Commision		4710000 Dr		
	Service Tax		471000 Dr		
	Cess		9420 Dr		
	H S Cess		4710 Dr		
11-Mar-11 Cr	Union Bank of India	Payment		2500000.00	
17-Mar-11 Cr	IDBI Bank	Payment		2300000.00	
19-Mar-11 Cr	IDBI Bank	Payment		4000000.00	
24-Mar-11 Cr	Union Bank of India	Payment		2000000.00	
26-Mar-11 Cr	Union Bank of India	Payment		2000000.00	
29-Mar-11 Cr	Union Bank of India	Payment		2000000.00	
30-Mar-11 Cr	IDBI Bank	Payment		2801600.00	
				30001600.00	30001600.00

DATE :- 04/01/2024
UDIN :- 24051644BKCMBN3651

R. K. Dua & Co.
JAMSHEDPUR
Chartered Accountant

11. The ledger copy, duly certified by the Chartered Accountant, shows the details of the accounting for of the Invoices by the appellant in their records and the details of payments made through banking channels. This shows that the transactions with the service provider is fully accounted for by the appellant in their books of account.

12. We also find that the service provider, SSPL have remitted the Service Tax. The copy of the counterfoil of the challan, showing the Service Tax remittance of Rs.28,01,600 on 30.3.2011 with the Service Tax Registration of SSPL, is extracted below :



13. From a harmonious reading of the above documentary evidence, it gets clarified that there is an Agreement in existence, Invoices have been raised, Payments have been made and accounted for and also Service Tax has been remitted by the Appellant and the service provider. Thus I find that the factual details go against the allegations made by the Revenue.

14. I observe that even as the objection was raised by the Audit team in 2011, no investigation was immediately commenced. The Statements have been recorded in 2014 and 2015. Most importantly, the Revenue should have approached jurisdictional office of the Service provider to know as to whether SPPL was remitting the Service Tax and filing the

ST 3 Return. This important investigation has not been carried out. In the SCN, there is no allegation to the effect that the service provider was not registered or was not remitting the Service Tax.

15. While in the case of inputs, their receipt and utilization can be checked from the RG 23 A Part I, in case of the services, the only documents which can be verified is the Ledger of the service provider and Payment details to check if the service has been accounted for or not. As seen from the above paragraphs, the service has been accounted for in the books of account of the appellant.

16. It also is not disputed that the jurisdictional officials have not initiated any proceedings against the service provider. Therefore, the Service Tax collected and paid by the service provider stands appropriated by the jurisdictional officials. In such a case, the availment of the Cenvat at the end of the receiver would not be legal, as has been held in the following case :

2016 (43) S.T.R. 601 (Tri. - Hyd.)
AMARA RAJA ELECTRONICS LTD.
Versus COMMISSIONER OF C. EX., TIRUPATHI

7.When ARBL and MPPL have paid service tax under the category of BAS/BSS, the strong inference that can be drawn is that they have provided services as per the invoices raised by them. <u>Revenue has not been able to adduce any evidence that there is no service rendered. The said issue, whether the transactions are services or not, should be agitated by the department against service providers viz. ARBL and MPPL, from whom the service tax has been collected. Credit cannot be denied at the service recipient's end, alleging that no service has been provided.</u>

8.From the foregoing discussions, I am of the view that the denial of credit is unjustified. In the result, the impugned orders are set aside and the appeals are allowed with consequential reliefs, if any.

2021 (47) G.S.T.L. 263 (Tri. - Chennai)
CHOLAMANDALAM MS GENERAL INSURANCE CO. LTD.
Versus COMMR. OF GST & C. EX., CHENNAI

The Department was of the view that no service has been provided to the appellant by the car dealers and that the invoices do not reflect the consideration paid by the appellant to the car dealers for any service provided to them. For this reason, the appellant is not eligible to avail Cenvat credit of the Service Tax paid by them as per these invoices.

7.1 Though in the Show Cause Notice the main allegation is that the description of services in the documents on which credit has been availed is not correct, at the time of adjudication, the main finding is that no services have been provided by the dealers to the appellant and that therefore credit is not eligible. At this juncture, it needs to be pointed out that the Department has no dispute with the Service Tax collected from the appellant by the dealer and remitted to the Government. The assessment of Service Tax paid at the dealer's end has not been disturbed/questioned by the Department; only the credit availed at the service recipient's end has been questioned by issuing the present Show Cause Notice.

7.3 It is not disputed that the dealer has paid Service Tax on the services described in the invoices. If that be so, the denial of credit at the recipient's end cannot be justified by the Department without reopening the assessment at the dealer's end.

17. The Learned AR for Revenue has placed reliance on the case of Royal Sundaram General Insurance Co. Ltd. Vs. CGST-2024(8) TMI 92-CESTAT, Chennai, wherein there is a difference of opinion on the issue and the matter was referred to third Member Reference Bench. I find that the appellant had approached the Hon'ble Madras High Court against this Difference of opinion order. The Hon'ble High Court vide their order dated 24.05.2024 in W. P. No. 31725 & 31726 of 2025, quashed the decision of the Member (Technical). Accordingly, the Tribunal vide their order dated 29.07.2024, allowed the appeal by

setting aside the impugned order. Therefore, even this case would be applicable in respect of the present appeal.

18. I find that to the facts of the present, discussed in detail in the above paragraphs, the cited case laws are squarely applicable. Hence, applying the same, I set aside the impugned order and allow the appeal on merits.

19. I also find force in the arguments of the appellant on time-bar aspect. The appellant has taken the cenvat credit in March 2011 and accounted for the same in the ER 1 Return for the month of March 2011. The Audit pointed out the issue in October 2011. After the preliminary reply of the appellant, no further action was taken. The statements were recorded after more than 3 years. Even the investigation done after 3 years is not properly corroborated by way of documentary evidence. The appellant having received the service and the Service Invoice and having paid the invoice amount by way of Cheques, could have entertained bonafide belief about their eligibility for Cenvat Credit. Therefore, noting that no case of suppression with an intent to evade has been made out against the appellant, I hold that the entire proceedings are hit by time-bar.

20. Since the main case itself fails on merits and on account of limitation the penalties imposed on other co-noticees also do not survive.

21. The appeals allowed both on account of merits as well as on account of time bar. The appellants would be eligible for consequential relief, if any, as per law.

(Pronounced in the open court on……01.08.2025)

Sd/-
(R. Muralidhar)
Member (Judicial)

Tushar Kr.